

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 04-2081
)
KIM LITTRELL,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on November 30, 2004, in Fort Pierce, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Elizabeth Coke, Esquire
David Miklas, Esquire
Richeson & Coke, P.A.
Post Office Box 4048
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For Respondent: Thomas L. Johnson, Esquire
Chamblee, Johnson & Haynes, P.A.
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STATEMENT OF THE ISSUE

Whether the Respondent, Kim Littrell, committed the acts complained of and should be terminated from her employment with the School District.

PRELIMINARY STATEMENT

This case began on May 18, 2004, when the Petitioner, St. Lucie County School Board, initiated action against the Respondent. The Respondent timely challenged the action to terminate her employment. The case was forwarded to the Division of Administrative Hearings for formal proceedings on June 15, 2004.

The case was promptly scheduled for hearing and by unopposed motion was continued. At the hearing conducted on November 30, 2004, the Petitioner presented testimony from Katie Owens, Lindsay Smith, David Allen Martin, Linn Bushore, Maurice Bonner, Russell Anderson, and Sue Ranew. The Petitioner's Exhibits A through I were admitted into evidence. The Respondent testified on her own behalf and offered Respondent's Exhibits 1 and 2 that were also received in evidence.

The transcript of the proceeding was filed with the Division of Administrative Hearings on December 20, 2004. By Order entered January 21, 2005, the parties were granted leave to file proposed recommended orders no later than January 26, 2005. Both parties timely filed Proposed Recommended Orders that have been fully considered.

FINDINGS OF FACT

1. The Petitioner, St. Lucie County School Board, is the

entity charged pursuant to Florida law to operate, govern and administer school personnel employed by the St. Lucie County School District (Petitioner or School District).

2. At all times material to the allegations of this case, the Petitioner employed the Respondent to serve as a teacher at Westwood High School. The Respondent has been a teacher with the School District for 16 years.

3. At all times material to the allegations of this case, Respondent held a professional services contract with the Petitioner.

4. The Respondent's seventh-period class on March 5, 2004, was composed of ninth-grade students. The class was designated as a creative writing course. The purpose of the class was to assist students with the Florida assessment known in this record as the "FCAT." Students in the class were encouraged to develop "critical thinking" skills. Presumably such skills enhance performance on the FCAT examination.

5. The Respondent was responsible for developing the curriculum for the class but was assisted by aides and instructive materials available through the school, the School District, as well as state resources. Although Respondent did not have a textbook for the "critical thinking" component of the class, appropriate resources were available from which appropriate educational materials could be prepared.

6. For the subject lesson (seventh-period class, March 5, 2004), the Respondent elected to offer an assignment that she hoped would encourage "critical thinking." In substance, the Respondent asked a series of questions and the students were asked to formulate an answer.

7. The title of the subject lesson, "Is Your Mind Clean?" sought to elicit answers that were not profane or "dirty." Respondent thought the subject lesson would be challenging and "fun."

8. The Respondent advised the students that none of the answers required the students to answer with profanity or improper language. The students were not supposed to verbally respond to the questions but were to write their answers on a sheet of paper.

9. Although perhaps not verbatim, it is found that Respondent posed the following questions, in substantially this form, to her class during the "Is Your Mind Clean?" assignment:

What is a four-letter word that ends in "k" and means the same as intercourse?

What is it that a cow has four of and a woman has only two of?

What can you find in a man's pants that is about six inches long, has a head on it, and that women love so much that they often blow it?

What word starts with "F" and ends with "u-c-k"?

Name five words that are each four letters long, end in "u-n-t" one of which is a word for a woman?

What does a dog do that you can step into?

What four-letter word begins with "F" and ends with "k," and if you can't get one you can use your hands?

What is hard, six inches long, has two nuts, and can make a girl fat?

What four-letter word ends in "i-t" and is found on the bottom of birdcages?

What is it that all men have one of; it's longer on some men than on others; the pope doesn't use his; and a man gives it to his wife after they're married?

10. Inappropriate responses were verbalized during the administration of the assignment.

11. In many instances the most apparent answer to the question posed could be considered profane. The Respondent should have foreseen that students would react inappropriately to the questions. The students thought the assignment was unusual. The assignment made the students feel uncomfortable. Some students were unable to come up with any non-profane response. Some students were fearful their responses would get them in trouble.

12. One student yelled out an inappropriate answer.

13. Some students thought the answers to the assignment were the profane words.

14. Teachers are required to get prior approval from school administrators if they want to use any teaching material that might be considered "controversial." The Respondent was aware of the procedure to obtain such approval.

15. The Respondent did not get prior approval before delivering the "Is Your Mind Clean?" assignment.

16. When students responded with inappropriate answers, the Respondent laughed.

17. The parent of one of the students complained to the principal regarding the "Is Your Mind Clean?" assignment. The complaint was the first notice the school administrators had regarding the subject lesson.

18. The use of inappropriate words in the Respondent's class was not permitted. Nevertheless, on more than one occasion the Respondent elected to explain the origins of certain words. For example, the Respondent lectured on the origin of the word "fuck." Respondent claimed the word was an acronym for "fornication under command of the king" or "for unlawful carnal knowledge." The Respondent believed that setting the record straight on the origin of the word would take the amusement value out of using the word such that usage would be deterred.

19. Similarly, the Respondent instructed the class regarding the origin of the word "shit." According to Respondent, historically, it was important that manure be "shipped high in transport." Manure left in the lower cargo holds created problems.

20. The origins of inappropriate words were not part of the Respondent's curriculum. Moreover, the Respondent did not have approval to discuss the origins of such words with her class.

21. When the school administration began to investigate the "Is Your Mind Clean?" assignment complaint, the Respondent confronted a student and claimed another student (the first student's friend whose parent had made the complaint) was trying to get her in trouble. This encounter made the confronted student uncomfortable.

22. The Respondent did not understand that the use of inappropriate words could and did make some students uncomfortable. Additionally, the Respondent did not comprehend that challenging the student about the complaint would also intimidate a student.

23. The Respondent was disciplined in the past regarding her failure to create a learning environment that does not embarrass or disparage students. The Respondent knew or should have known that embarrassing students is not acceptable

professional conduct. The Respondent knew or should have known that efforts to intimidate a student are not appropriate.

24. In fact, reprimands issued to Respondent during 2000 cited unprofessional conduct directed toward students. In connection with prior conduct, the Respondent was required to complete a course on professionalism or ethics.

25. The Respondent had a responsibility to protect students from conditions that would be harmful to learning.

26. The Respondent had a responsibility to refrain from exposing students to unnecessary embarrassment or disparagement.

27. After being fully apprised of the facts of this case, the Superintendent recommended that the Petitioner take action to suspend the Respondent from her employment without pay. In fact, the Petitioner approved that recommendation and initiated the instant action to terminate Respondent's employment.

28. The Respondent timely responded to the action and requested an administrative hearing to challenge the proposed action.

29. The Respondent maintained that the "Is Your Mind Clean?" assignment was a reasonable effort to teach "creative thinking" and that none of the students were unduly

embarrassed, disparaged, or humiliated by the assignment. Such assertion is contrary to the persuasive weight of the evidence presented in this matter.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

31. The Petitioner bears the burden of proof in this case to establish by a preponderance of the evidence the allegations against the Respondent. See Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990). The Petitioner has met that burden.

32. Section, 1012.33(1)(a), Florida Statutes (2004), provides:

Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s.1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

33. The "just cause" in this case arose from violations of the guidelines set forth in Florida Administrative Code Rules 6B-1001 and 6B-1006. More specifically, it is concluded that the Respondent failed to use professional judgment, engaged in a learning exercise that was inappropriate and caused the students embarrassment or disparagement, attempted to intimidate a student and did intimidate a student regarding the complaint associated with the inappropriate assignment, and failed to make a reasonable effort to protect students from conditions harmful to learning. Additionally, the Respondent failed to abide by the Petitioner's rules by using and engaging in activities that centered on discourteous and inappropriate language.

34. Sexual content and vulgarity-centered assignments, even if intended to promote "creative thinking," are not acceptable. The Respondent's explanations regarding the discussions of the "Is Your Mind Clean?" assignment as well as the origins of profane words has not been deemed persuasive or credible.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the St. Lucie County School Board enter a Final Order sustaining the termination of Respondent's employment.

DONE AND ENTERED this 1st day of April, 2005, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of April, 2005.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.