

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                        )  
  )  
vs.    )     Case No. 05-2316  
  )  
CYNTHIA BRADFORD,                        )  
  )  
          Respondent.                        )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on January 25, 2006, in Orlando, Florida.

APPEARANCES

For Petitioner: Brian F. Moes, Esquire  
Orange County School Board  
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For Respondent: Carol R. Buxton, Esquire  
Florida Education Association  
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STATEMENT OF THE ISSUES

Did Respondent, Cynthia Bradford, commit the violations as alleged in the Administrative Complaint, and, if so, what disciplinary action should be imposed?

PRELIMINARY STATEMENT

On May 26, 2005, Petitioner, Orange County School Board, filed an Administrative Complaint, seeking "the severance of Respondent's annual contract with Petitioner pursuant to Section 1012.33, Florida Statutes," for acts alleged in the Administrative Complaint, which are "in violation of School Board Policies and constitute misconduct in office, willful neglect of duty, gross insubordination, conduct unbecoming a public employee, and breach of Respondent's employment agreement with the School Board." On June 21, 2005, Respondent filed a Notice of Appeal of Petitioner's decision "to terminate Respondent's contract of employment" and requested a final hearing.

On June 28, 2005, the case was forwarded to the Division of Administrative Hearings. On that same date, an Initial Order was sent to both parties. Based on the responses of the parties, on July 25, 2005, the case was scheduled for final hearing on September 27, 2005, in Orlando, Florida. Thereafter, the case was rescheduled several times; it was heard on January 25, 2006.

At the January 25, 2006, hearing, Petitioner presented the testimony of Cynthia Gainous, Respondent's classroom assistant; Arnetta Heidelberg, assistant principal; Valeria Maxwell, principal; Johnathan McIntire, special student education

director for Orange County Public Schools, who was accepted as an expert witness in special education; D.C., a student who testified by deposition; and Donald Shearer, senior manager with Employee Relations. Petitioner offered nine exhibits, which were received into evidence and marked Petitioner's Exhibits 1 through 9.

Respondent testified on her behalf and offered the testimony of N.B., student; P.S., student; Frances Hinson, former school board employee; and Guy Kinney, a teacher. Respondent offered two exhibits, which were received into evidence and marked Respondent's Exhibits 1 and 2. The parties agreed to enter the Collective Bargaining Agreement as Joint Exhibit 1.

The Transcript of the hearing was filed with the Clerk of the Division of Administrative Hearings on February 13, 2006. Proposed recommended orders were to be filed by February 28, 2006. On February 28, 2006, Petitioner requested an extension of the filing date to March 6, 2006, which was not opposed, and an order extending the date for filing proposed recommended orders to March 6, 2006, was entered. Both parties timely filed Proposed Recommended Orders, which were thoughtfully considered.

In considering the deposition of D.C., the objection raised on page 22, lines 18 through 20, is overruled.

## FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of fact are made:

1. Petitioner, Orange County School Board, is the governmental entity responsible for the operation, supervision, and control of public schools in Orange County, Florida, including the employment of personnel associated with the educational process.

2. Respondent is a white, female employed by Petitioner as an exceptional student education (ESE) annual contract teacher. She taught students with learning and/or emotional disabilities at Meadowbrook Middle School.

3. The students that testified, D.C., N.B., and P.S., are all exceptional education students with mental handicaps, learning disabilities, and/or emotional disabilities. These students are African-American, which is the predominate race of the Meadowbrook Middle School population.

4. ESE students with mental handicaps, learning disabilities, and/or emotional disabilities require a greater period of time and more intensive instruction to acquire knowledge and skills taught in the school curriculum. Students with these problems have difficulty processing emotion, which impacts on their ability to function socially and academically in an educational setting.

5. These students are taught in a "self-contained" classroom environment with a lower teacher-to-student ratio and more individualized instruction time each school day. They remain within Respondent's classroom the greater part of each school day, leaving only for special classes.

6. These students have a diminished cognitive capacity for abstract thought processing and have difficulty grasping, intellectually and comfortably, the concepts described in the book noted hereinbelow. Some of these students would be at high risk for working with concepts articulated in the book.

7. Meadowbrook Middle School has a Reading Achievement and Progress course, referred to as the "RAP" program. RAP instruction is provided school-wide in every class each day during the sixth period. While the primary focus of RAP is to promote reading proficiency, it is also used to instruct students on character development. This is done with the teacher reading aloud to the class and engaging the student in pertinent discussion about character with reference to the topics discussed in the particular book.

8. All teachers at Meadowbrook Middle School, including Respondent, received training on the implementation of the RAP program before the start of the school year and throughout the school year. Respondent participated in the RAP pre-planning

and staff development meetings each of the three years that she taught at Meadowbrook Middle School.

9. In connection with RAP training, Respondent received a "R.A.P. Curriculum and Instruction Guide" to provide classroom assistance and resource information for teachers implementing the RAP program. In addition to containing a list of 140 recommended books, the curriculum guide provided teachers with the following guidance on the selection of reading materials:

Choose a quality book - this may seem like an obvious thing to do but it is one that many teachers failed to do. A poor book cannot be made better, no matter how well the reader reads it, so choose a book that:

- (1) Has significant literary value;
- (2) Is developmentally appropriate for the target age level students; and/or
- (3) Affords instructional opportunities (e.g., you can use it to teach a specific concept or skill) . . .

While there is a list of recommended books, there is no "approved" reading list. A teacher has the latitude to select any book he or she deems appropriate.

10. The Meadowbrook Middle School library has class sets of books for teachers to check out for RAP. Class sets are just that: forty novels--one for each student--so that each student can read his or her own copy of the book along with the teacher and the rest of the class.

11. Meadowbrook Middle School has a literary coach who is available to assist teachers in the selection of books or other aspects of implementation of the RAP program.

12. Respondent selected a book titled Dumb As Me to read to her ESE students during RAP. This book was not on the recommended book list or available in the school library. She believed the book would capture the interest of her students and present a negative example to stimulate character development discussions. She chose the book because it reflects African-American inter-city culture, similar to the Bluford series which is available in the school library. She did not consult with the literary coach or any other Meadowbrook Middle School educational professional in the selection of the book.

13. Dumb As Me, is fiction about a married, African-American male who lives a self-described "pimp" and "player" lifestyle. The book describes in graphic detail sexual behavior including cunnilingus, masturbation, fellatio, sadism, and sexual intercourse. The book is filled with profanity, including "shit," "fuck," "motherfucker," and such words as "ass," "pussy," "cock," and "dick" as descriptions of the human sexual organs.

14. If Respondent's students had uncensored access to the book, it would be harmful to them. Most of the time the book was locked in a cabinet in the classroom. Through unfortunate

circumstance, Respondent's students, or some of them, gained access to the book and read it.

15. When Respondent read the book in class, she sometimes edited the book substituting "F-word" for "fuck," for example. On other occasions, she read the plain text of the novel, including depictions of graphic sexual activity and profanity.

16. As a practical matter, the students are aware of most of the profanity contained in the book. When the same profanity is used by students in class, Respondent attempts to discuss the particular word, "bitch" for example, and explain why it is an inappropriate term.

17. An adult teacher's aid assigned to Respondent's classroom was present when Respondent read part of the novel to her students. She left the classroom after Respondent read a sexually explicit portion of the book about the protagonist engaging in cunnilingus with his mistress. This adult teacher's aid reported Respondent's having read the particular book to the school principal.

18. As a result of this report, the principal obtained and read portions of the book. Another administrative employee undertook an investigation that involved interviewing several of Respondent's students. The investigation confirmed that Respondent had read sexually explicit and profanity-laced portions of the novel to her students.



19. Respondent appears to be a sensitive and concerned teacher; however, the error in judgment demonstrated by her selection of Dumb As Me to be read to learning disabled, emotionally and mentally handicapped children raises question of her competence to teach children.

20. Reading the book, as she did, with its graphic depiction of sexual activity and profanity, exposed Respondent's students to conditions harmful to their social, emotional, and academic development.

21. During the investigation and subsequent activities, Respondent misstated the extent that she had read sexually explicit and profanity-laced portions of the book to her students.

22. Respondent's effectiveness as a teacher was diminished by her selection of the particular book and reading sexually explicit and profanity-laced sections of the book to her students.

#### CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of these proceedings. § 120.57, Fla. Stat. (2005); Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

24. Petitioner is the constitutional entity charged with the operation, control, and supervision of public schools in Orange County, Florida. Art. IX, § 4, Fla. Const.

25. A district school board is considered the "public employer," as that term is used in Chapter 447, Part II, Florida Statutes (2004). As such, it has the right "to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons." § 447.209, Fla. Stat. (2004). Any instructional staff member may be suspended or dismissed at any time during the school year for just cause, which includes misconduct in office as that term is defined by the State Board of Education. § 1012.33(1)(a), Fla. Stat. (2004).

26. The appropriate standard of proof in a school board dismissal proceeding, such as the instant case, is preponderance of evidence. Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995).

27. When a school board seeks to terminate an employee's contract for just cause, it must establish each and every element of the charge. MacMillan v. Nassau County School Board, 629 So. 2d 226 (Fla. 1st DCA 1993).

28. Any disciplinary action taken against the employee may be based only upon the conduct specifically alleged in the written notice of specific charges. Luskin v. Agency for

Health Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Department of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Department of Business and Professional Regulation, 625 So. 2d 1237, 1238 (Fla. 2d DCA 1993); and Delk v. Department of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

29. Petitioner's Administrative Complaint, which is the "charging document", alleges, in pertinent part,:

4. That on or about April 8, 2005, Ms. Ann Gainous, a paraprofessional in the classroom of the Respondent, gave a statement to management that the Respondent was reading a book containing sexually explicit language. Attached hereto and incorporated herein as attachment "A" is a copy of Ms. Gainous' statement.

5. Following this report the principal confiscated the book titled "Dumb As Me" from the Respondent. This book does have sexually graphic material. Attached hereto and incorporated herein as attachment "B" are copies of three pages from this book.

6. That on or about April 22, 2005, a student gave a statement confirming that an inappropriate book was being read to students in the Respondent's classroom. Attached hereto and incorporated herein as attachment "C" is a copy of the student's statement.

7. That on or about May 10, 2005, at a due process, pre-determination meeting, the Respondent admitted reading the book "Dumb As Me" to some of her students. The Respondent stated she was attempting to reach her students on their cultural and environmental level.

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11. Such actions by the Respondent are in violation of School Board Policies and constitute misconduct in office, willful neglect of duty, gross insubordination, conduct unbecoming a public employee, and a breach of Respondent's employment agreement with the School Board.

12. Said violations are sufficient grounds to sever the annual contract status of Respondent and to terminate her employment with the School Board of Orange County, Florida.

30. The term "misconduct in office" is not defined in Subsection 1012.33(1)(a), Florida Statutes (2004); the term is defined in Florida Administrative Code Rule 6B-4.009 as follows:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

31. The "Code of Ethics of the Education Profession," Florida Administrative Code Rule 6B-1.001, reads as follows:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and

for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

32. The "Principles of Professional Conduct for the Education Profession in Florida," Florida Administrative Code Rule 6B-1.006, reads, in pertinent part, as follows:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

33. Respondent's selection and oral reading of the portions of the book Dumb As Me, which were profanity-laced and contained graphic sexual content, to her class of ESE students violated Florida Administrative Code Rule 6B-1.001, the Code of Ethics of the Education Profession, in that it demonstrated a

lack of professional concern for her students. Respondent's actions further violated the Principles of Professional Conduct set forth in Florida Administrative Code Rule 6B-1.006(3)(a). Respondent exposed her students to conditions harmful to learning and their mental health and safety. Therefore, Petitioner has demonstrated, by a preponderance of evidence, that Respondent's actions constitute misconduct in office.

34. Petitioner failed to present sufficient evidence to sustain the remaining alleged violation enumerated in paragraph 11 of the Administrative Complaint.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a final order be entered finding that Respondent's "misconduct in office" constitutes "just cause" under Section 1012.33, Florida Statutes (2005), to dismiss her from her employment as a teacher with Petitioner, Orange County School Board.

DONE AND ENTERED this 17th day of March, 2006, in  
Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 17th day of March, 2006.

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.