

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HERNANDO COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-4195
)	
MICHAEL ELLISON,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on January 5, 2006, in Brooksville, Florida.

APPEARANCES

For Petitioner: J. Paul Carland, II, Esquire
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Brooksville, Florida 34601

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
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STATEMENT OF THE ISSUE

The issue is whether Respondent's professional services contract with the Hernando County School Board should be terminated.

PRELIMINARY STATEMENT

Respondent Michael Ellison (Mr. Ellison) was informed by a Petition for Termination of Employment, dated October 17, 2005, that the Hernando County School Board (School Board) intended to terminate his teaching contract. In a letter dated the same day, Mr. Ellison, through counsel, requested a hearing.

Mr. Ellison was suspended from his teaching duties with pay on September 16, 2005. On November 15, 2005, he was suspended without pay. On November 16, 2005, the matter was forwarded to the Division of Administrative Hearings.

The case was set for hearing on January 5 and 6, 2006, in Brooksville, Florida. The hearing was completed by the end of the day on January 5, 2006.

At the hearing, the School Board offered Exhibit Nos. 1 through 12, which were admitted into evidence and called four witnesses. Mr. Ellison testified in his own behalf and presented the testimony of seven witnesses. It was further stipulated that an additional 20 witnesses were available to testify that Mr. Ellison was an outstanding teacher and a person of excellent character.

A Transcript was filed on February 9, 2006. After the hearing, Respondent and Petitioner timely filed their Proposed Findings of Fact and Conclusions of Law on February 16 and 17, 2006, respectively. The Proposed Findings of Fact and

Conclusions of Law were considered by the Administrative Law Judge in the preparation of this Recommended Order.

References to statutes are to Florida Statutes (2005) unless otherwise noted.

FINDINGS OF FACT

1. The School Board is the agency responsible for the administration of the school system in Hernando County.

2. The School Board has employed Mr. Ellison almost continuously since 1979. In addition to teaching, he has coached students in various sports. Until September 16, 2005, he taught pursuant to a professional services contract at Central High School.

3. On September 15, 2005, Mr. Ellison's 1996 Dodge truck was located at the school's auto shop. Mr. Ellison had driven it there. Students studying automobile repair were to attempt to repair his truck's air conditioner, which was not functioning. Mr. Ellison had provided the truck to the auto shop personally after having made arrangements with the automobile repair teachers the previous day. He was aware that the repair job was to be accomplished by students.

4. Peter Koukos, the vocational instructor, informed Mr. Ellison, that in order to repair the air conditioner the glove box would have to be removed. Mr. Ellison assented to this procedure.

5. While attempting to remove the glove box, students discovered a loaded Power Plus .38 special revolver in it.

6. The students who found it duly reported its presence to Mr. Koukos, who took custody of it. It was eventually delivered to the school resource officer, Deputy Sheriff Debra Ann Miles, who placed it into evidence in accordance with Hernando County Sheriff's Office procedures.

7. It is found as a fact that the revolver was owned by Mr. Ellison and it was he who had placed the weapon in the glove box of the truck and it was he who had driven it onto the Central High School grounds on September 15, 2005.

8. Mr. Ellison had experienced a previous incident with this weapon on January 21, 2002. This incident was precipitated when a citizen reported to the Hernando County Sheriff's Office that a man was standing by a parked pick-up truck in the Fort Dade Cemetery with a handgun in the left front pocket of his jacket.

9. A deputy was dispatched to the cemetery. The deputy stopped a truck as it exited the cemetery. The truck the deputy stopped was being driven by Mr. Ellison and it was the same 1996 Dodge that was involved in the September 15, 2005, incident. On the prior occasion Mr. Ellison related to the deputy that he was having domestic difficulties and the deputy, with Mr. Ellison's permission, seized the weapon which was in his possession. The

weapon seized by the deputy was the very same .38 special revolver found at Central High School on September 15, 2005.

10. The weapon was released to Mr. Ellison on February 12, 2002, because his actions with it on January 21, 2002, were completely lawful. He thereafter placed the weapon in the glove box of the 1996 Dodge. He forgot that it was there and if he had thought about it, he would not have left it in the glove box of the truck when he delivered it to the students in the auto repair shop on September 15, 2005.

11. There was no intent to bring the weapon on campus. Mr. Ellison is aware of the harm that can ensue from carelessly leaving weapons in an environment where curious students might retrieve it and harm themselves or others. He has never denied that the gun was his or that anyone other than himself was responsible for the weapon being brought to the campus.

12. Mr. Ellison knew that School Board Policy 3.40(6) provides that no one except law enforcement and security officers may possess any weapon on school property. This was explained to all of the teachers in a pre-school orientation session conducted August 1-5, 2005, which Mr. Ellison attended. Procedures to be followed in the event a gun or other dangerous weapon was found on campus were reviewed during this orientation session. These procedures are contained in the Central High

School Blue Book, 2005-06 and Mr. Ellison knew this at the time he drove his truck onto school property.

13. Mr. Ellison was and is familiar with the Code of Ethics and Principles of Professional Conduct that addresses the behavior of teachers. He is aware that he has a duty to make a reasonable effort to protect students from conditions that may be harmful.

14. Ed Poore, now retired, was an employee of the School Board for 31 years. He served in the district office as administrator of personnel and human resources, and specifically, was involved with the administration of discipline and the enforcement of School Board policy.

15. Mr. Poore stated that intent was not a factor in determining whether a violation of School Board Policy 3.40(6) had occurred. He further noted that the Policy does not provide for a sanction for its violation. He testified that in determining a sanction for a violation of this section, he had observed in the past that the School Board had considered the sanction imposed on others in similar situations, the individual person's time and service as a teacher, and any other pertinent mitigating circumstances.

16. Mr. Ellison's character was described by several witnesses as follows:

a. Brent Kalstead, the Athletic Director at Hernando High School, who has been a teacher for 18 years, stated that he had coached with Mr. Ellison and that he had entrusted his son to him so that he could teach him baseball. He said that Mr. Ellison was dedicated to the youth of Hernando County.

b. Marietta Gulino, is Mr. Ellison's girlfriend and a school bus driver. She stated that Mr. Ellison often takes care of children after working hours.

c. Richard Tombrink has been a circuit judge in Hernando County for 17 years. He has known Mr. Ellison for 15 years as a baseball coach and at social events. He said that Mr. Ellison is committed to educating children and has great character.

d. Lynn Tombrink is the wife of Judge Tombrink and is a teacher at Parrott Middle School and has known Mr. Ellison for 20 years. Ten years ago she taught in the room next to him. She would want him to teach her children.

e. Regina Salazo is a housewife. She stated that Mr. Ellison was her son's pitching coach and that he loves children and they love him.

f. Timothy Collins, a disabled man, said that his grandson and Mr. Ellison's grandson play baseball together and that he knows Mr. Ellison to be professional, a no nonsense type of person, and a gentleman. It is his opinion that the School Board needs people like him.

g. Gary Buel stated that Mr. Ellison was his assistant baseball coach and that Mr. Ellison was dedicated and motivated. He described him as selfless.

17. The parties stipulated that if called, the following witnesses would testify that they know Mr. Ellison to be a good, decent, honorable man; that they know him to be a good educator and coach; that they are aware of the circumstances surrounding the gun being in his truck on School Board property; that they do not believe that termination is the appropriate action in this case; and that he would remain an effective teacher:

Carole Noble of Ridge Manor; Rob and Vickie Fleisher of Floral City; Vinnie Vitalone of Brooksville; Tim Whatley of Brooksville; Rick Homer of Brooksville; Rob and Candy Taylor of Spring Hill; Robbie Fleisher; Mark Frazier of Brooksville; Miya Barber of Brooksville; Nate Dahmer of Brooksville; Hank Deslaurier of Spring Hill; John and Mary Jo McFarlane of Brooksville; Pete Crawford of Brooksville; Patrick Ryan of Tampa; Ed Bunnell of Spring Hill; and Alan and Cecilia Solomon of Brooksville.

18. It is found as a fact, based on the record of hearing, that Mr. Ellison is an excellent teacher who works well with children and whose character is above reproach. He is not the type of person who would consciously bring a weapon onto school

grounds or commit any other purposeful act which might endanger students.

19. Mr. Ellison has not been the subject of prior disciplinary actions.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.57(1), and 1012.33(6)(a), Fla. Stat.

21. Mr. Ellison is an instructional employee as defined by Section 1012.01(2), Florida Statutes.

22. The School Board has the authority to terminate or suspend instructional employees pursuant to Sections 1012.22(1)(f) and 1012.33(6)(a), Florida Statutes.

23. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). To meet this burden, the School Board must establish facts upon which its allegations of misconduct are proven by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990) and Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995). See also § 120.57(1)(j), Fla. Stat.

24. Section 1012.33(1)(a), Florida Statutes, provides that a teacher, such as Mr. Ellison, who is employed as a teacher

pursuant to a professional services contract, may be dismissed only for just cause.

25. Section 1012.33(1)(a), Florida Statutes, defines just cause as misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude, and states that these five reasons may be defined by rule of the State Board of Education.

26. The State Board of Education has provided definitions for the four of the five terms (willful neglect of duty is not specifically defined), along with some obsolete terms (which are not included below), in Florida Administrative Code Rule 6B-4.009, as follows:

6B-4.009. Criteria for Suspension and Dismissal.

The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for four of the five charges (willful neglect of duty is not included in the rule) is hereby defined:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes; (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

* * *

(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.

(4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing

of the act itself and not its prohibition by statute fixes the moral turpitude.

27. Florida Administrative Code Rule 6B-1.006(3)(a), provides as follows:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

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

28. Mr. Ellison did not make a reasonable effort to protect students from conditions harmful to students' health and safety. Moreover, allowing a loaded revolver to be introduced onto a schoolyard is misconduct in office as contemplated by Section 1012.33(1)(a), Florida Statutes. This is an offense that is so serious that it impaired Mr. Ellison's effectiveness in the school system.

29. Whether this single breach of school rules provides just cause for termination must be considered in the light of

the past performance of the violator. In this case, the un rebutted evidence in the record demonstrates that Mr. Ellison is a dedicated teacher, an accomplished coach, and a professional in his dealings with students and parents. He is a person who cares deeply about the well-being of his students, and young people in general.

30. In a similar case, School Board of Pinellas County v. Perry Hollis, Case No. 89-2447 (DOAH September 25, 1989), Hollis inadvertently brought a loaded firearm onto a campus in his vehicle, which was to be worked on by vocational students. Subsequently, a student found it and gave it to a fellow student who caused the weapon to discharge one round. The Hearing Officer recommended that Hollis be reprimanded and suspended without pay for ten days. Subsequently, the School Board of Pinellas County entered an order suspending Mr. Hollis without pay for thirty days.

31. In another similar case, Palm Beach County School Board v. Roberto Alonso, Case No. 96-4744 (DOAH July 1, 1997), Alonso, a special education instructor, brought a firearm onto campus on May 1, 1996, which was in a holster attached to his belt. Slightly more than a month earlier, March 29, 1996, he had carried a firearm onto campus and the campus police advised him it was inappropriate.

32. The Administrative Law Judge found that Alonso was aware that he was bringing a firearm onto campus in violation of a clear school policy. Alonso's actions reflected a cavalier attitude toward the Palm Beach County School Board's firearms policy. The Administrative Law Judge recommended a one-year suspension. The Palm Beach County School Board rejected the Administrative Law Judge's recommendation and terminated Alonso's contract.

33. In the Hollis case a round was fired. In the Alonso case, a teacher evinced a cavalier attitude toward the School Board's efforts to prevent firearms from being brought onto school grounds. Alonso's actions were more egregious than the actions of Mr. Ellison. In the Hollis case, the facts are almost identical to this case, except the Hollis case presented a more frightening scenario because a round was actually fired.

34. If one balances this single careless act committed by Mr. Ellison, with the overall good that is to be gained by allowing Mr. Ellison to continue his career as a teacher in the Hernando County School District, the inevitable conclusion is that just cause for termination is absent.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Final Order imposing a 30-calendar-day suspension without pay be imposed as a penalty in this cause, and that Respondent, Michael Ellison, be reinstated to a teaching status and be awarded back pay and benefits to which he would have otherwise been entitled since November 15, 2005, less the 30-calendar-day suspension without pay.

DONE AND ENTERED this 23rd day of February, 2006, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
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Filed with the Clerk of the
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this 23rd day of February, 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.