

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 08-2831
)
 RUTHA SCOTT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 11, 2008, by video teleconference, with the parties appearing in West Palm Beach, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Vicki L. Evans-Paré, Esquire
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Post Office Box 19239
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For Respondent: Rutha Scott, pro se
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STATEMENT OF THE ISSUE

Whether the Petitioner committed the violations alleged in the Respondent's Petition dated June 11, 2008, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In a Petition dated June 11, 2008, the Palm Beach County School Board ("School Board") charged Rutha Scott with violations of Florida Administrative Code Rules 6B-1.001(2) and 6B-1.006(3)(a)-(b). These charges were based on allegations that, during the school day, she sent students into the hallway without supervision and sent one student into a dark storage room as disciplinary action. The School Board seeks to terminate Ms. Scott's employment as a teacher. Ms. Scott timely requested an administrative hearing, and the School Board transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on December 11, 2008.

At the hearing, the School Board presented the testimony of J. B., Lawrence J. Greenberg, Burley Mondy, Vincent Mintus, Angelette Green, and, on rebuttal, Tammy Skinner. Petitioner's Exhibits 1 through 7, 10, 15 through 19, 21, 22, and 27 through 30 were offered and received into evidence. Ms. Scott testified in her own behalf, and Respondent's Exhibits 1 through 3 were offered and received into evidence.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on January 7, 2009, and the parties timely filed proposed findings of fact and

conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

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

1. The School Board is a duly-constituted school board charged with the duties of operating, controlling, and supervising all free public schools within the School District of Palm Beach County, Florida. Art. IX, § 4(b), Fla. Const; § 1001.32, Fla. Stat. (2008).¹ Specifically, the School Board has the authority to discipline employees. § 1012.22(1)(f), Fla. Stat.

2. Ms. Scott has been employed as a teacher with the School Board since 1986. She is a member of the Palm Beach County Classroom Teachers Association and is subject to the terms of the Collective Bargaining Agreement Between the School District of Palm Beach County, Florida, and the Palm Beach County Classroom Teachers Association ("Collective Bargaining Agreement").

3. At the times material to this proceeding, Ms. Scott taught business classes at Palm Beach Central High School ("Palm Beach Central").

4. In 2006, Ms. Scott was charged with shutting a student into a windowless, unventilated closet and leaving him there "for a time estimated to be between ten (10) minutes by you and fifty (50) minutes by the student and other witnesses."² The superintendent of schools recommended to the School Board that Ms. Scott be suspended without pay and her employment terminated. The termination was subsequently rescinded, and Ms. Scott's discipline for this incident was reduced to a 38-day suspension without pay.

5. During fourth period on February 1, 2008, Ms. Scott was teaching a course in computing for colleges and careers. While she was taking attendance, several students were causing their computers to "beep." As a result, Ms. Scott sent a few students outside the classroom, into the hallway. She sent another student to the storage room that connected her classroom to the classroom next to hers and told the student to step inside and shut the door. The student was a male who was 17 years of age at the time of the final hearing.

6. The storage room was approximately 10 feet wide and 15 feet long. The student remained in the storage room for approximately 10 minutes, during which time the lights in the storage room were off.

7. The storage room had two doors, neither of which had windows, and Ms. Scott could not see the student while he was in the storage room.

8. After approximately 10 minutes, Ms. Scott opened the storage room door and told the student he could leave the storage room.³

9. The student did not consider his being sent into the dark storage room a "big deal," and he did not report the incident to his parents, to another teacher, or to the school administration.⁴

10. On February 15, 2008, a student reported the incident to a teacher, who reported it to an assistant principal, who reported it to another assistant principal, who reported it to the principal, Burley Mondy. Mr. Mondy reported the matter to the School Board police and requested that a formal investigation be initiated. Mr. Mondy also removed Ms. Scott from the Palm Beach Central campus on February 15, 2008, and she was given an alternate assignment in the Palm Beach County School District's office.

11. After the investigation was completed, the matter was subject to an administrative review; a pre-disciplinary meeting was held with Ms. Scott in attendance; and the matter was reviewed by the School Board's Employee Investigation Committee. Based upon the recommendation of the Employee Investigation

Committee, the superintendent of schools recommended to the School Board that Ms. Scott be suspended without pay and that proceedings be initiated to terminate her employment. The School Board approved this recommendation at its June 4, 2008, meeting.

12. The evidence presented by the School Board is sufficient to establish that, by sending a student into a dark storage room for approximately 10 minutes, Ms. Scott exercised extremely poor professional judgment and that her actions posed a potential risk to the student's physical and mental health and safety. The School Board failed to present any evidence to establish that Ms. Scott's sending several students into the hall during class constituted poor professional judgment or posed a potential risk to the students' physical and mental health and safety. The School Board also failed to present any evidence to establish that Ms. Scott's effectiveness in the school system was impaired by the incident at issue, and it is not reasonable to infer from Ms. Scott's conduct that her effectiveness was impaired.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

14. Ms. Scott's request for an administrative hearing to resolve disputed issues of material fact pursuant to Section 120.57(1), Florida Statutes, initiated "a de novo proceeding intended to formulate agency action." Beverly Enters. v. Department of Health & Rehabilitative Servs. 573 So. 2d 19, 23 (Fla. 1st DCA 1990); see also Department of Transp. v. J.W.C. Co, Inc., 396 So. 2d 778, 785 (Fla. 1st DCA 1981)("The petition for a formal 120.57(1) hearing . . . commences a de novo proceeding. Section 120.57(1) proceedings 'are intended to formulate final agency action, not to review action taken earlier and preliminarily.'")(citations omitted).⁵

15. Pursuant to the terms of the Article II, Section M, of the Collective Bargaining Agreement, "[w]ithout the consent of the employee and the Association, disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence which supports the recommended disciplinary action." Accordingly, the School Board must have just cause to terminate Ms. Scott's employment, and it must prove the allegations in the Petition by clear and convincing evidence.

16. Section 1012.22(1)(f), Florida Statutes, provides that a school board has the power to suspend and dismiss employees as follows:

Suspension and dismissal and return to annual status.--Suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed or returned to annual contract except as provided in this chapter.

17. It is presumed that, at the times relevant to this proceeding, Ms. Scott was employed under a professional services contract.⁶ Section 1012.33, Florida Statutes, provides in pertinent part:

(1)(a) 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: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

* * *

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the

contract for just cause as provided in paragraph (1)(a). . . .

18. The definitions of the categories of "just cause" identified in Section 1012.33(1)(a), Florida Statutes, are set forth in Florida Administrative Code Rule 6B-4.009, which provides that "[t]he basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes [now codified in Section 1012.33, Florida Statutes]."

19. Before addressing the violations alleged against Ms. Scott, it is necessary to conform the charges set out in the Petition to the categories of "just cause" identified in Section 1012.33(1)(a), Florida Statutes. In its Petition, the School Board charged Ms. Scott with "violating the code of ethics and professional conduct." There is nothing in the Florida Statutes providing that School Board employees are subject to suspension or dismissal for failing to adhere to the Code of Ethics of the Education Profession as adopted in Florida Administrative Code Rule 6B-1.001, or to the Principles of Professional Conduct for the Education Profession in Florida as adopted in Florida Administrative Code Rule 6B-1.006.

20. Rather, the bases for the decision to terminate an employee must fall within one of the categories of "just cause" set forth in Section 1012.33(1)(a) and (6)(a), Florida Statutes,

as defined in Florida Administrative Code Rule 6B4.009. In this case, the violations of Florida Administrative Code Rules 6B-1.001 and 6B-1.006 identified in the Petition filed by the School Board against Ms. Scott fall within the definition of "misconduct in office" found in Florida Administrative Code Rule 6B-4.009(3), and the charges against her will be treated as a charge of misconduct in office.

21. "Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system." Fla. Admin. Code R. 6B-4.009(3).

22. The provision of the Code of Ethics of the Education Profession in Florida identified by the School Board in its Petition as one of the bases for the charge of misconduct in office against Ms. Scott is Florida Administrative Code Rule 6B-1.001(2), which provides:

(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.

The provisions of the Principles of Professional Conduct for the Education Profession in Florida identified by the School Board in its Petition as the other basis for the charge of misconduct in office against Ms. Scott are Florida Administrative Code Rule 6B-1.006(3)(a)-(b)⁷ which provides:

(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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

23. Based on the findings of fact herein, the School Board failed to meet its burden of proving by clear and convincing evidence that Ms. Scott violated Florida Administrative Code Rule 6B-1.006(3)(b). Based on the findings of fact herein, the School Board has, however, met its burden of proving by clear and convincing evidence that Ms. Scott failed to exercise her best professional judgment and potentially jeopardized the student's physical and mental health and safety when she directed the student to shut himself into a dark storage room, where she could not monitor his safety. The School Board has, therefore, proven that Ms. Scott violated Florida Administrative Code Rules 6B-1.001(2) and 6B-1.006(3)(a).

24. Although the School Board has met its burden of proving that Ms. Scott violated Florida Administrative Code Rules 6B-1.001(2) and 6B-1.006(3)(a), there are two elements to the charge of misconduct in office: In addition to the rule violations, it is necessary to establish that Ms. Scott's conduct was "so serious as to impair [her] effectiveness in the school system" in order to find her guilty of misconduct in office. Fla. Admin. Code R. 4.009(3).

25. In order to establish that Ms. Scott's effectiveness in the school system was impaired, the School Board must either offer clear and convincing evidence that her effectiveness was impaired, or the conduct must be so serious that it would be appropriate to infer from the conduct itself that her effectiveness was impaired. See Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000)(some conduct is so serious that, even without evidence of impaired effectiveness, it can appropriately be inferred that teacher's effectiveness in school system has been impaired; teacher lied under oath and resisted arrest); Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2d DCA 2000)(impaired effectiveness can be inferred when conduct is sufficiently serious; when teacher failed to follow School Board policy and lost control of the students in his classroom, impaired effectiveness was obvious); McNeill v. Pinellas County School

Board, 678 So. 2d 476 (Fla. 2d DCA 1996)(School Board failed to meet its burden of proof with respect to impaired effectiveness); MacMillan v. Nassau County School Board, 629 So. 2d 226 (Fla. 1st DCA 1993)(when only evidence of impaired effectiveness was superintendent's conclusory statements, evidence was not sufficient to demonstrate loss of effectiveness in school system).

26. The School Board did not offer any evidence to establish that Ms. Scott's effectiveness in the school system was impaired. Furthermore, Ms. Scott's conduct in ordering a student to enter a dark storage room and to shut the door and requiring him to remain in the storage room for approximately 10 minutes, though it demonstrated very poor professional judgment and posed a risk of physical and mental harm to the student, does not rise to the level of conduct that is so serious it would be reasonable to infer that Ms. Scott's effectiveness in the school system was impaired. The School Board has, therefore, failed to prove that Ms. Scott committed misconduct in office and has, consequently, failed to establish just cause to discipline Ms. Scott.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Palm Beach County School Board enter a final order dismissing the Petition filed against

Rutha Scott, immediately reinstating her, and awarding her back pay for the period of her suspension, as provided in Section 1012.33(6)(a), Florida Statutes.

DONE AND ENTERED this 16th day of February, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of February, 2009.

ENDNOTES

^{1/} References herein to the Florida Statutes shall be to the 2008 edition unless otherwise indicated.

^{2/} Respondent's Exhibit 24; see also transcript at page 135.

^{3/} Ms. Scott testified repeatedly that she did not put the student into the storage room. This testimony is rejected as unpersuasive; the testimony of the student is accepted as the more credible testimony.

^{4/} Transcript at pages 22 and 29.

^{5/} The issue in this de novo administrative proceeding is whether Ms. Scott committed the violations alleged in the Petition and, if so, the penalty that should be imposed. Ms. Scott did not raise any issue regarding the fairness of the

process by which the superintendent of schools decided to recommend to the School Board that Ms. Scott be suspended without pay and that termination proceedings should be initiated. The documents and testimony offered into evidence by the School Board that detailed the investigation into the complaint against Ms. Scott and the procedures followed by School Board personnel in providing the information on which the School Board based his decision are, therefore, largely irrelevant to the resolution of the issue presented in this case.

^{6/} Neither Ms. Scott nor the School Board presented evidence on this point, but she was employed subsequent to 1984 and, therefore, would not be under a continuing contract. See § 1012.33(4)(A), Fla. Stat.

^{7/} In the Executive Summary prepared for the School Board regarding the recommendation for the suspension and termination of Ms. Scott, it was observed that the potential violations committed by Ms. Scott were of "School Board Policy 1.013 Responsibilities of the School District Personnel and Staff, and Florida Administrative Code 6B-1.006,(3)(a)(e), and 6B-1.001(2)(3), Principals of Professional Conduct for the Education Profession in Florida." Respondent's Exhibit 1. In addition, in its Proposed Recommended Order, the School Board proposed that Ms. Scott be found to have violated Florida Administrative Code Rule 6B-1.006(3)(e), which provides that an educator "shall not intentionally expose a student to unnecessary embarrassment or disparagement."

As set out above in the Preliminary Statement, the Petition filed by the School Board charged Ms. Scott with violations of "Florida Administrative [Code] Rule 6B-1.001(2)" and "Florida Administrative Code Rule 6B-1.006(3)(a)-(b)." Petition, paragraphs 31 and 32. Because the School Board did not cite a violation of Florida Administrative Code Rule 6B-1.006(3)(e) in its Petition, Ms. Scott cannot be found to have violated this rule subsection. See Delk v. Dep't of Prof'l Regulation, 595 So. 2d 966 (Fla. Dist. Ct. App. 5th Dist. 1992)("[N]ot only must the proof at trial or hearing be that conduct charged in the accusatorial document, but also that the conduct proved must legally fall within the statute or rule claimed to have been violated.")

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.