STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INDIAN RIVER COUNTY SCHOOL BOARD,	)	
Petitioner,	)	
vs.	)	Case No. 08-4250
GEORGE YOUNG,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on May 6 through 8, 2009, in Vero Beach, Florida, before J.D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Wayne L. Helsby, Esquire
Allen, Norton & Blue, P.A.
1477 West Fairbanks Avenue, Suite 100
Winter Park, Florida 32789

For Respondent: Mark Wilensky, Esquire
Dubiner & Wilensky, P.A.
515 North Flagler Drive, Suite 325
West Palm Beach, Florida 33401-4349

STATEMENT OF THE ISSUE

Whether there is just cause to suspend Respondent, George Young (Respondent), as alleged in the letter of the superintendent of schools dated June 9, 2008.

PRELIMINARY STATEMENT

On June 9, 2008, Petitioner, Indian River County School

Board (School Board or Petitioner) by and through its Superintendent of Schools issued a letter that notified Respondent that action would be taken to suspend him without pay for three days. The letter stands as the charging document in this matter and provided, in pertinent part:

> On April 8, 2008, you told Athletic Director, Michael Stutke, that an incident occurred during an out of town baseball tournament that involved wrestling with someone's pants being pulled down. When you made that statement you knew that was not the complete story, because the night before you met with a student's parents who told you their son's (the victim) pants were taken down and a bottle put near his rectum during the course of this incident. This is the same incident you described to Mr. Stutzke as mere wrestling and someone's pants pulled down. Then, after you made that statement, the victim's parents spoke with Mr. Stutzke, and you were thereafter called into his office with the parents still there. When the parents repeated their story and described the assault on their son as also involving a bottle, you said words to the effect that "I thought we agreed to keep that secret (or quiet)." This was a failure on your part to be fully honest in your professional dealings with the athletic director and school authorities.
>
> Based on your violation of State Board of Education Rules 6B-1.006, 3(b), 5(a), 5(n) as defined in Section 1012.795(1), Florida Statutes and the above incident, please be advised that as Superintendent of Schools, I am recommending to the School Board at their June 24, 2008 meeting that you be suspended without pay on 8/12/08, 8/13/08 and 8/14/08.

On August 26, 2008, Petitioner approved the recommendation of the Superintendent. Respondent served his suspension without pay but disputes the allegations against him. By letter dated

August 28, 2008, Respondent timely filed a request for a formal hearing to contest the allegations. Respondent seeks back pay and a clear personnel record. Respondent maintains he did not violate any provision of law and that the action of the school district is unjustified.

The matter was forwarded to the Division of Administrative Hearings on August 28, 2008. A Notice of Hearing scheduled the case for hearing for October 21, 2008. The case was continued and rescheduled on four occasions. Ultimately the matter was heard on the dates set forth above.

At the hearing, the following witnesses testified: L.C., the mother of the student victim; H.C., the victim; P.C., the father of the victim; Michael Stutzke, the athletic director for Sebastian River High School; T.W., Jr., a parent; T.W., III, a student; Dr. Peggy Jones, the principal at Sebastian River High School; Dr. Harry La Cava, the superintendent of schools for the School Board; William Wilson, an assistant principal at Sebastian River High School; Kevin Browning, Petitioner's executive director of human resources; Jim Mueller, a parent; Erica Young, Respondent's wife; B.A., a student; Chris Barcus, a parent; C.J., a student; R.J., a parent; Sue Gent, a private investigator; and Respondent. Petitioner's Exhibits 4, 15, and 16 were admitted into evidence. Respondent's Exhibit 14 was also received in evidence.

The Transcript of the proceedings was filed with the

Division of Administrative Hearings on June 2, 2009. The parties requested thirty days within which to file their Proposed Recommended Orders. That request was granted. The parties submitted Proposed Recommended Orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a duly constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Indian River County Public School District. As such, it has the authority to regulate all personnel matters for the school district, including those personnel decisions affecting the professional teaching staff.

2. At all times material to the allegations of this case, Respondent, George Young, was an employee of the School Board and was subject to the disciplinary rules and regulations pertinent to employees of the school district.

3. At all times material to this case, Respondent was assigned to teach at Sebastian River High School and served as head baseball coach for the varsity team. For purposes of this case, all acts or omissions complained of were in connection with Respondent’s responsibilities as a baseball coach.

4. By way of background, the allegations of this case evolved from an underlying incident that must be disclosed in order to put the proper perspective on Respondent’s role and responsibility in connection with the allegations. During March

of 2008, Respondent scheduled his team to participate in a baseball tournament held in Broward County, Florida. The tournament location and schedule made it convenient for the team to remain near the site for one night of the tournament. This was not the first over-night venture for Respondent and the teams he coached.

5. Prior to tournaments it was Respondent's policy to instruct the team that they were representatives of the school. Respondent encouraged the students to refrain from horseplay, roughhousing, or misbehavior that could discredit them or the school. In short, the team members were to conduct themselves as gentlemen.

6. Nevertheless, some of the students did engage in poor conduct. More specifically, several of the players began to wrestle in one of the hotel rooms. Some unspecified number of the players turned on their teammate, H.C. Without Respondent's knowledge or consent, the players wrestled H.C. (the victim) to a bed, pulled down his pants, and placed a plastic soda bottle at or near his rectum. It is unknown whether the bottle actually penetrated the victim, but the fact that an assault was perpetrated by the student players is certain.

7. After the assault, the victim escaped the room and fled to another hotel room. Several team players observed the victim to be quite upset. Moreover, at least one player believed that the student was so upset he was crying. Word spread among some

of the players that something bad had happened to the victim. The details of the assault were not general knowledge.

8. At least two adults who accompanied the team on the trip were also made aware that something untoward had occurred to the victim. At least one of the parents told Respondent that night that something had occurred. No specifics of the incident were disclosed to Respondent. He knew, however, that wrestling had occurred and that someone was upset. Respondent made no effort to personally discover what had happened to the victim that night. Presumably, he chalked it up as adolescent roughhousing.

9. The next morning Respondent called a team meeting before the team left the hotel. It was his custom to speak to the team before checkout but on this morning he had the additional task of attempting to find out what had occurred the night before. Not surprisingly, no one disclosed the full details of the assault.

10. From the hotel the team went on to a meal and played in the tournament. Respondent did not pursue further inquiry into the assault. Respondent did not question anyone individually regarding the events.

11. Approximately one week later the victim's parents heard about the assault. A parent telephoned them to share information that something had occurred on the tournament trip. They were stunned and surprised to learn of the incident. They questioned their sons (both of whom were on the tournament trip) and decided

something needed to be done to punish the students who committed the assault.

12. To that end, they went to Respondent's home and asked him about the incident. Respondent was surprised to learn of the details of the assault and represented that something would be done to appropriately discipline the perpetrators of the deed.

13. The weight of the credible evidence supports the finding that on the night of the parents' visit to Respondent's home, Respondent knew that the victim had been wrestled to the bed, had had his pants pulled down exposing his buttocks, and that a bottle may have been involved at or near the student's rectum. The bottle portion of the assault was stated as a possibility as the victim's parents at that time had not confirmed whether or not the bottle was used or merely threatened.

14. Nevertheless, when Respondent reported the incident the next day to the athletic director, the possibility of a bottle being involved in the assault was omitted.

15. Since Respondent did not disclose the full details of the assault, including the fact that a bottle may have been involved, to the athletic director, the punishment initially to be administered to the student perpetrators did not satisfy the victim's parents when they learned what would be imposed. Instead, they demanded that more harsh consequences befall the students who were involved in the assault. Their report of the

incident conflicted with Respondent's story to the athletic director.

16. It soon became clear that while the parents may have been willing to spare their son the embarrassment of the bottle portion of the story when they believed the penalty imposed against his attackers would be great, they were not going to let the perpetrators skate by on the penalty initially chosen. Thus Respondent's willingness to leave out the bottle portion of the assault became critical to the matter.

17. In fact, the omission of the bottle portion of the incident became the key allegation against Respondent. The superintendent's letter setting forth the allegation against Respondent stated, in part:

> On April 8, 2008, you told Athletic Director, Michael Stutzke, that an incident occurred during an out of town baseball tournament that involved wrestling with someone's pants being pulled down. When you made that statement you knew that was not the complete story, because the night before, you met with a student's parents who told you their son's (the victim) pants were taken down and a bottle put near his rectum during the course of this incident. This is the same incident you described to Mr. Stutzke as mere wrestling and someone's pants pulled down.

18. The credible weight of the evidence supports the finding that Respondent knew he had not given Mr. Stutzke the complete story of the incident. Although Respondent at that time may not have known for a fact that a bottle was used in the commission of the assault, he knew that the rumor of the bottle's

use was in question. An investigation of the matter would have proved or disproved the bottle portion of the story. Respondent did not, however, reveal that portion of the allegations to school authorities.

19. Although Respondent may have entertained the misguided notion that he was protecting the victim from embarrassment by not disclosing the full details of the assault, his failure to make school officials aware of the incident and the potential allegation of the bottle demonstrates a failure to fully and honestly conduct himself professionally.

20. Respondent has enjoyed a long, successful, and popular run as a baseball coach in the district. At the end of the day, however, responsibility for the safety and well-being of his team rested with him. That job is unrelated to the success of the team or their desire to play in tournaments. Moreover, school authorities must be able to rely on a coach's veracity to completely and accurately report any incident that may occur during a school-sanctioned event.

21. The stipulated facts of the parties provided:

a. On March 31, 2008, George Young was the head coach for the Sebastian River High School Varsity Baseball team.

b. On March 31, 2008, the Sebastian River High School Varsity Baseball team attended a baseball game in Plantation, Florida.

c. Kevin Browning, Director of Human Resources, investigated allegations of an incident that occurred on March 31, 2008 involving the baseball team.

d. Browning released his Report and Recommendation on June 26, 2008.

e. Young was given a three day suspension, which is the subject of the appeal.

CONCLUSIONS OF LAW

22. 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. (2008).

23. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent committed the violations alleged. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

24. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

25. Section 1012.33, Florida Statutes (2008), provides, in pertinent part:

> . . . 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 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). The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid.

26. In this case "just cause" includes those items specifically addressed by the statute but also includes other conduct that may be denoted by the "not limited to" language of the statute. See Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994). Also, “misconduct in office” in the instant matter must be considered in relation to the failure to comply with the identified violations set forth in the superintendent's letter; ie. Florida Administrative Code Rules 6B-1.006, 3(b), 4(b), 5(a), and 5(n).

27. "Misconduct in office" is defined by Florida Administrative Code Rule 6B-4.009, as:

> . . . a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C.,, and the Principals 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.

28. Florida Administrative Code Rule 6B-1.001, provides:

> (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.

29. Florida Administrative Code Rule 6B-1.006 provides in pertinent part:

(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:

* * *

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

* * *

(4) Obligation to the public requires that the individual:

* * *

(b) Shall not intentionally distort or

> misrepresent facts concerning an educational matter in direct or indirect public expression.
>
> * * *
>
> (5) Obligation to the profession of education requires that the individual:
>
> (a) Shall maintain honesty in all professional dealings.
>
> * * *
>
> (n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1)[now Section 1012.795], Florida Statutes.

30. An agency's interpretation of the policies it is charged to administer is entitled to deference and should not be overturned as long as the interpretation is within the range of reasonable alternatives. See Rollison v. City of Key West, 875 So. 2d 659 (Fla. 3rd DCA 2004).

31. In this case, Petitioner has alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(3)(b). It is concluded that the cited rule is inapplicable to the facts of this case. Consequently, no violation of the rule can be found.

32. Petitioner has also alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(4)(b). The rule required that Respondent not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression. Respondent misrepresented himself in a criminal matter. The weight of the credible evidence concludes

that Respondent did know his students were involved in some wrestling incident at or near the time it occurred. The Respondent failed to disclose the possibility that a bottle was used or threatened when he eventually disclosed the incident to Mr. Stutzke. When Respondent presented to Mr. Stutzke to report the incident he knew about the bottle rumor. At the minimum, Respondent should have reported the bottle portion of the incident as an unverified rumor so that school officials could take charge of an investigation. Moreover, since Respondent knew that the parents of the victims were very upset over the way the incident was handled, he should have taken more responsibility giving Mr. Stutzke the information needed to appropriately deal with the students involved.

33. Petitioner has alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(5)(a). This rule obligated Respondent to maintain honesty in all professional dealings. Respondent was not forthcoming in his dealing with the subject of the assault. Whether misplaced loyalty to his students or an intention of sparing the victim embarrassment or any other possible rationale, Respondent simply did not tell the complete truth to school authorities. This was a serious assault. To consider it adolescent horseplay or some minor infraction of team rules grossly discredits the potential harm to the victim. Adolescent males do not cry or become visibly distraught over minor matters. Respondent's professional obligation was to

completely disclose all material information that would assist school authorities to properly investigate the matter. He simply did not do so.

34. Finally, Petitioner alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(5)(n). That rule required that Respondent report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section Section 1012.795, Florida Statutes. It is concluded that Respondent did not timely report the allegation of assault to school authorities. Respondent engaged in a minimal investigation the morning after the incident. Expecting a team of adolescent males (most of whom had nothing to do with the incident) who were desirous of playing in a baseball tournament to self-report the serious incident that had occurred the night before is fairly improbable. Individuals in a group setting are not likely to disclose the matter. Had Respondent investigated the incident the prior night when it occurred, spoken to the victim, seen the extent to which the victim was distraught, talked to student witnesses, and made a report to the athletic director in a timely manner, it is unlikely the team would have continued to play in the tournament. At the minimum, Respondent would have disclosed the victim was assaulted.

35. As reviewed in this matter, Petitioner has established by a preponderance of the evidence that Respondent violated the

rules noted above substantiating “just cause” for disciplinary action. Misconduct may result when the conduct engaged in "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. Proof of the conduct and the failure to act appropriately may be considered proof of impaired effectiveness. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000) and Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2nd DCA 2000). It is concluded that Respondent did not exercise sound professional judgment and honesty by failing to timely report the incident to school officials and failing to completely disclose the allegations of the assault. At least one adult made Respondent aware that the students were wrestling during the evening that the assault occurred. Although hindsight is always clear, Respondent made no personal effort at that time to investigate what had occurred. Had he gone to the room where the victim was regaining his composure, he would have observed what others reported: that the student had gotten the worse of a wrestling event gone very bad. He would have seen the victim in the upset state that others reported. He could have challenged the students to come forth with the complete details. He could have alerted school officials that something had happened that might require investigation. In its discretion Petitioner did not charge Respondent with these oversights. Nor did Petitioner charge Respondent with other possible violations such as

inadequate supervision of students. Respondent's behavior discredited himself and the school district. Respondent is fortunate that a suspension was the only disciplinary action sought.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Indian River County School Board enter a Final Order sustaining the suspension of Respondent and denying his claim for salary reimbursement.

DONE AND ENTERED this 29th day of July, 2009, in Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 2009.

COPIES FURNISHED:

Mark Wilensky, Esquire
Dubiner & Wilensky, P.A.
515 North Flagler Drive, Suite 325
West Palm Beach, Florida 33401-4349

Wayne L. Helsby, Esquire
Allen, Norton & Blue, P.A.
1477 West Fairbanks Avenue, Suite 100
Winter Park, Florida 32789

Dr. Eric J. Smith
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Harry J. La Cava, Ed.D
Superintendent
Indian River County School Board
1900 25th Street
Vero Beach, Florida 32960-3150

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.