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FILED
2009 JUN -8 A 10:59
DIVISION OF ADMINISTRATIVE HEARINGS

TO: Tommy Hazouri
Chairman, Duval County School Board

VIA: Ed Pratt-Dannals
Superintendent

FROM: Sonita Young, Executive Director
Policy and Compliance

SUBJECT: Final Order of Dismissal – Altee

DATE: June 3, 2009

At the May 5, 2009 Board meeting, by majority vote, the Board voted by to terminate Michael Altee's employment with the Duval County School Board. Due to an oversight, the Final Order of Dismissal was not fully executed (only one of two signatures was obtained). Out of an abundance of caution, the attached Final Order is being resubmitted to you for signature. Once fully executed, a copy will be provided to each party and to the Department of Administrative Hearings.

Thank you in advance for your timely attention to this matter.

Attach: Final Order of Dismissal

Cc: Thomas A. Delegal, III, Esquire
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Division of Administrative Hearings
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STATE OF FLORIDA
DUVAL COUNTY SCHOOL BOARD

In Re: Dismissal of Instructional Employee

May 5, 2009

FILED
2009 JUN -8 A 10: 59
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Employer/Petitioner,

DOAH Case No.: 08-4819

vs.

MICHAEL ALTEE,

Employee/Respondent.

_______________________________________/

FINAL ORDER OF DISMISSAL

On September 17, 2008, the Superintendent of Duval County Public Schools issued to Michael Altee a Notice of Termination of his employment as a teacher based on a history of misconduct, including conduct during the 2006-2007 school year which violated Florida Department of Education Rules 6B-1.001(2),(3), 6B-1.006(3), and other applicable rules and regulations. Such violations, coupled with Mr. Altee's disciplinary record and prior acts of misconduct,[1] supported the decision to terminate his employment pursuant to the School District's Progressive Discipline Plan.[2]

Mr. Altee challenged his termination and, at his request, the above-styled case was opened and a hearing was held by an Administrative Law Judge ("ALJ") assigned by the State of Florida's Division of Administrative Hearings ("DOAH"). In sum, it was the ALJ's mission to determine: (a) whether the charges in the Notice of Discharge are

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[1] Mr. Altee does not dispute that he has been subject to disciplinary action in the past and does not challenge the bases for the past disciplinary actions summarized in the September 17, 2008 Notice of Termination.

[2] Mr. Altee's first Notice of Termination, dated May 17, 2007, contained additional charges against him pertaining to teacher certification issues. Those charges were subsequently dropped.

supported by competent and substantial evidence; and (b) whether the termination complied with due process and other protections afforded to Mr. Altee under the School District's Progressive Discipline Plan, the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941)("Tenure Act"), Chapter 120 of the Florida Statutes, and the Collective Bargaining Agreement between the School District and Duval Teachers United.

The hearing took place on February 10 and 11, 2009, and lasted approximately 17 hours. Both parties were represented by legal counsel, and the ALJ took evidence and sworn testimony of several witnesses. In light of the testimonial and documentary evidence, the argument of counsel, and both parties' proposed recommended orders, the Honorable Lisa Nelson issued a Recommended Order on April 1, 2009 which recommends the entry of a final order terminating Mr. Altee's employment for cause.

On April 16, 2009, Mr. Altee filed Exceptions to the Recommended order which takes exception to several findings of fact and conclusions of law drawn by Judge Nelson. The Board addresses each exception in its "Response to Exceptions," which is integrated herein by reference and is attached hereto as **Exhibit A.**

An independent examination of the entire record before us reveals no reason to disturb the ALJ's recommended disposition of this matter, and the Board finds that the charges contained in the September 17, 2008 Notice of Termination have been sustained by competent and substantial evidence of record.

Therefore, in light of the foregoing, it is **ORDERED** that:

1. Administrative Law Judge Lisa A. Nelson's Findings of Fact and Conclusions of Law are hereby **ADOPTED** in their entirety, and all exceptions to the same are hereby **REJECTED** and **DENIED**.

2. Administrative Law Judge Lisa A. Nelson's recommendation to enter a final order terminating Mr. Altee's employment for cause is hereby **ADOPTED**.

3. Mr. Altee's employment with Duval County Public Schools is **TERMINATED for cause.**

Entered this 5th day of May, 2009 by majority vote of the Duval County School Board.

School Board Chairperson

School Board Clerk

Copies to:

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EXHIBIT A

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DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
DUVAL COUNTY SCHOOL BOARD

In Re: Dismissal of Instructional Employee

May 5, 2009

DUVAL COUNTY SCHOOL BOARD,

Employer/Petitioner, DOAH Case No.: 08-4819

vs.

MICHAEL ALTEE,

Employee/Respondent.
_______________________________________/

RESPONSE TO EXCEPTIONS

Pending before us is Respondent Michael Altee's Exceptions to a Recommended Order recommending the discharge of his employment as a teacher. Petitioner has not filed any exceptions and the time for doing so has now expired. For the reasons discussed below, all of Mr. Altee's exceptions are rejected.

I. BACKGROUND

This matter was heard on February 10 and 11, 2009 by the Honorable Lisa S. Nelson, an Administrative Law Judge ("ALJ") serving Florida's Division of Administrative Hearings ("DOAH"). The hearing lasted approximately 17 hours, during which time the parties' legal counsel offered documentary evidence and sworn testimony of several witnesses. In light of the testimonial and documentary evidence, the argument of counsel, and both parties' proposed recommended orders, Judge Nelson issued a detailed, 32-page Recommended Order on April 1, 2009 which recommends the entry of a final order by the Duval County School Board ("the Board") terminating Mr. Altee's employment for cause.

On April 16, 2009, Mr. Altee submitted "Respondent's Exceptions to Recommended Order," which raises eight (8) exceptions to Judge Nelson's Findings of Fact and five (5) exceptions to Judge Nelson's Conclusions of Law. The Board rejects and denies all of Mr. Altee's exceptions.

II. LEGAL STANDARD

A. Criteria for Raising Exceptions

As a preliminary matter, the Board need not enter rulings on exceptions raised by the parties unless the exception: (a) clearly identifies the disputed portion of the Recommended Order by page number or paragraph; (b) clearly identifies the legal basis for the exception; and (c) includes appropriate and specific citations to the record. Although a number of his exceptions fall short on item (b), the Board has nevertheless considered all of Mr. Altee's arguments and exceptions.

B. Reviewing Findings of Fact

The Board cannot modify the ALJ's findings of fact unless it determines, from a review of the entire record, that: (a) the findings of fact were not based upon competent substantial evidence; or (b) the proceedings on which the findings were based did not comply with essential requirements of law. Here, Mr. Altee has failed to demonstrate either basis for disturbing Judge Nelson's findings.

C. Reviewing Conclusions of Law

The Board cannot modify or reject the ALJ's conclusions of law, unless the Board can state with particularity its reasons and explain why its substituted conclusions of law are equally as reasonable or more reasonable than the ALJ's. Mr. Altee has failed to

demonstrate the infirmity of Judge Nelson's conclusions of law, and the Board has no reason to modify or reject such conclusions.

ANALYSIS[1]

A. Exceptions to Findings of Fact

1. Mr. Altee's exception to Judge Nelson's finding of fact in paragraph 16 of the Recommended Order is rejected. The finding is supported by competent, substantial evidence of record and the proceedings on which it was based did not depart from the essential requirements of law. Although the finding of fact is supported by other competent, substantial evidence, the Board notes that Mr. Altee himself testified at the hearing that he had little knowledge of what constitutes appropriate 9th grade reading material.

Mr. Altee's exception to Judge Nelson's factual statement in paragraph 57 of the Recommended Order (a statement made in a conclusion of law) is likewise rejected. Even if the statement was a finding of fact, it is supported by competent, substantial evidence of record and the proceedings on which it is based did not depart from the essential requirements of law. Although the finding is supported by other competent, substantial evidence of record, the Board notes that Mr. Altee himself testified at the hearing that he read stories about Ted Bundy and others without considering whether the stories coincided with Sunshine State Standards. He also admitted that there were no classroom activities connected to the stories.

2. Mr. Altee's exception to Judge Nelson's finding of fact in paragraph 18 and his exceptions to the factual statements in paragraphs 43 and 44 of the Recommended Order (statements made in Judge Nelson's conclusions of law) are rejected. The finding

[1] The numbered paragraphs correspond to those set out in Mr. Altee's Exceptions to Recommended Order.

of fact and the statements made in paragraphs 43 and 44 accurately reflect that there was indeed "no teaching point" or educational purpose justifying: (a) Mr. Altee's decision to read aloud to his students stories about serial killing and "true crime"; or (b) his decision to show students autopsy photos and other graphic images. While Mr. Altee points to evidence that Intensive Reading teachers are expected to read aloud to students, he offers no credible explanation – and points to nothing in the record – that might explain why it was appropriate to read out loud the foregoing stories and show the foregoing images to his Intensive Reading students. In any event, the ALJ's factual finding and statements of fact are supported by competent, substantial evidence of record and the proceedings on which they are based did not depart from the essential requirements of law.

3. Mr. Altee's exceptions to Judge Nelson's findings of fact in paragraphs 41 and 42 are rejected. The findings are supported by competent, substantial evidence of record and the proceedings on which they were based did not depart from the essential requirements of law. In paragraphs 41 and 42, Judge Nelson states that it is more probable than not that the students were shown images of Bundy, JFK and Seung-Ho Cho (Virginia Tech Shooter) and it is more probable than not that Mr. Altee showed the Cho pictures to his students on April 19, 2007 in conjunction with a discussion of the Virginia Tech massacre.

In support of her findings, Judge Nelson accurately points to evidence in the record showing that: (a) the disturbing images of Cho and JFK's autopsy were found on Mr. Altee's school district-issued desktop computer; (b) the "file created stamp" appearing near to each picture in Petitioner's Exhibit 6 (photos printed from the desktop) only indicates the *last time* the pictures were viewed, not the *first time* the pictures were

viewed [According to the testimony of the School District's Senior Computer Specialist and computer forensics analyst, the fact that an image shows a "file created stamp" of 01/01/09 does not rule out the possibility that the image was visited or downloaded at an earlier date.]; (c) an analysis of Mr. Altee's school district-issued laptop computer showed that he visited a website containing the above-referenced JFK autopsy images on April 10, 2007; (d) Mr. Altee admitted that the Cho photos were available on April 18, 2007 and he taught intensive reading on April 19, 2007.

Accordingly, Mr. Altee's argument that "no competent ... evidence was presented to establish that Respondent showed his students any images of Cho, let alone that he showed his students images of Cho on his last day of teaching ... April 19, 2007" is itself groundless and therefore rejected.

4. Mr. Altee's exceptions to Judge Nelson's findings of fact in paragraphs 48 and 50 are rejected. The findings are supported by competent, substantial evidence of record and the proceedings on which they were based did not depart from the essential requirements of law. Mr. Altee takes exception to Judge Nelson's findings relating to the timing of his alleged comments about bringing a gun to school and whether or not they were made before or after a school lock-down or in conjunction with the Virginia Tech massacre. There is an abundance of evidence in the record supporting Judge Nelson's finding that: (1) Mr. Altee made a comment about bringing a gun to school; and that (2) the statement was made in conjunction with the Virginia Tech killings. Indeed, her findings of fact in paragraphs 45-50 bolster that position. Significantly, in paragraph 47, Judge Nelson accurately restates the sworn testimony of four student witnesses confirming that the gun comments were made in connection with the Virginia Tech

shootings. And even viewing such testimony with skepticism, in paragraph 50 the Judge finds that the comments were made some time between the school lock down and the investigation.

Regardless, in raising his exceptions to Judge Nelson's findings of fact in paragraphs 48 and 50, Mr. Altee entirely overlooks the fact that making comments to students in class about bringing a gun to school is completely inappropriate at any time – much less when such comments are made in the wake of a school lock-down and on the heels of the bloodiest school shooting rampage in the history of this country.

5. Mr. Altee's exceptions to Judge Nelson's findings of fact in paragraphs 48 and 50 are rejected. The findings are supported by competent, substantial evidence of record and the proceedings on which they were based did not depart from the essential requirements of law. Through his exceptions to the foregoing findings of fact, Mr. Altee attempts to reargue his entire case. The record contains an overabundance of competent evidence which demonstrates that Mr. Altee showed morbid and unsettling images of death to his students, apparently for shear shock value or some maladaptive form of entertainment. The images were found on Mr. Altee's computer, students identified them during an investigation taken shortly after the fact, and students identified them again at the hearing (in fact, some students testified at the hearing that they observed additional disturbing images which were not part of the record). Mr. Altee has failed to offer any competent evidence to undermine Judge Nelson's findings, and his main defense that all the children are lying is not persuasive in any measure.

6. Mr. Altee's exceptions to Judge Nelson's findings of fact in paragraphs 31 and 37 are rejected. The findings are supported by competent, substantial evidence of

record and the proceedings on which they were based did not depart from the essential requirements of law.

At the outset of the School District's investigation, students from the Intensive Reading class were individually called and asked to affix their names to any image that they were shown by Mr. Altee. The second student called and every student thereafter could see the signatures of those students called before them. As he argued throughout the hearing, Mr. Altee once again argues that the identification process was fatally flawed due to its "suggestibility" and should be given no credence at all.

In paragraphs 31 and 37, Judge Nelson disagrees with Mr. Altee and finds that "*the more credible evidence* is that the students were *generally* not affected by the signatures of students who signed before them," [emphasis added] and that one particular student was not influenced at all. It is obvious that Judge Nelson's findings were based (at least in part) on her consideration of the School District's investigation and her in-person observation and assessment of the witnesses and their testimony. We find no reason to disturb Judge Nelson's findings.

With respect to his attack against the credibility of one of the student witnesses, the Board also recognizes and agrees with Judge Nelson's finding that "[Mr. Altee's] self-serving and uncorroborated testimony that (the student) was emotionally unbalanced and therefore not believable is specifically rejected."

7. Mr. Altee's exceptions to Judge Nelson's findings of fact in paragraphs 38 and 47 are rejected. The findings are supported by competent, substantial evidence of record and the proceedings on which they were based did not depart from the essential requirements of law. In these paragraphs, Judge Nelson recounts the testimony of several

student witnesses who recalled that Mr. Altee's statements about bringing a gun to school were associated with the Virginia Tech massacre and "others who testified" stated he would bring a gun to school and show how it worked.

Mr. Altee takes exception to the latter finding because the only student who testified that Mr. Altee would bring a gun to school and show how it worked was a student whose testimony was deemed unreliable by the Judge. Mr. Altee misses the mark entirely, as the Judge never relied upon that student's testimony to arrive at the critical finding outlined in the very next paragraph of the Recommended Order (No. 48). There, Judge Nelson clearly rejects the testimony of the "unreliable" student by stating: "Given the totality of the evidence, *it is more probable than not that Altee made the statement that he could understand someone who had been bullied bringing a gun to school and made this statement in conjunction with the Virginia Tech killings*." Judge Nelson did not find it more probable than not that Mr. Altee stated he would bring in a gun to school and show how it works. Accordingly, Mr. Altee's contentions are without merit.

8. Mr. Altee's exception to Judge Nelson's finding of fact in paragraph 50 is rejected. The finding is supported by competent, substantial evidence of record and the proceedings on which it was based did not depart from the essential requirements of law. In paragraph 49, Judge Nelson accurately recounts that Mr. Altee's "reaction to the charges against him is that the students are lying and are motivated by his disciplinary actions against them." In paragraph 50, the Judge concludes that "[Mr. Altee's] position is simply not credible. While he claims the students are lying ... he identified [only two] that would have the motivation to lie [...]. . . there is no credible reason on the record for

the remainder of the students to lie about what they saw and heard in Mr. Altee's classroom."

Mr. Altee does not dispute whether or not Judge Nelson's finding is supported by competent and substantial evidence of record. Rather, he contends that Judge Nelson "ignored evidence in the record that [a student witness] had essentially orchestrated an effort to harm [Altee]." Again, it is obvious that Judge Nelson's finding as to Mr. Altee's defense (*i.e.*, all the students were lying) were based (at least in part) on her consideration of the School District's investigation and her in-person observation and assessment of the witnesses and their testimony. We find no reason to disturb Judge Nelson's finding.

We also note a lack of evidentiary foundation for the proposition that one particular student "orchestrated" a plot to harm Mr. Altee – which plot presumably lasted over the course of approximately two years (the time between the classroom events and the students' testimony at the hearing).

B. Exceptions to Conclusions of Law

1. Mr. Altee takes exception to paragraph 56 of Judge Nelson's conclusions of law. Upon review of the same, the Board finds no reason to modify or reject such conclusions and the exception is therefore rejected.

In paragraph 56, Judge Nelson concludes that: Mr. Altee has violated Florida Administrative Code Rules 6B-1.006(3)(a) and (c) and 6B-1.001(2) and (3); and such violations have been persistent and willful. Mr. Altee claims that the Judge and this Board cannot look to his prior acts of misconduct in determining whether misconduct in school year 2006-2007 was persistent and willful. Pointing out that he was never warned to refrain from presenting the objectionable reading material and images to his students,

Mr. Altee states that "there is no evidence to suggest that [his 2006-2007] violations ... was a [*sic*] persistent and willful refusal to obey, as required by [the Tenure Act], in order to justify his termination."

We reject Mr. Altee's contentions. As to his first argument, the Tenure Act supports termination where there is *either* a persistent violation *or* willful refusal to obey applicable rules and regulations. Although it is clear from the record that Mr. Altee's misconduct was indeed persistent, even if it were not, such misconduct was undeniably willful.

The balance of Mr. Altee's argument is patently absurd, as it overlooks the fundamental duties teachers have in exercising professional discretion and judgment in promoting and protecting the welfare of students. Even assuming a complete lack of guidelines for the Intensive Reading curriculum, it is inconceivable that any teacher of Intensive Reading for 14 and 15 year old students would require warnings to refrain from reading to students stories of serial killing and violent crime or warnings to refrain from showing students autopsy images and pictures of dead human subjects with open cranial wounds or warnings to refrain from talking to students about bringing a gun to school (in the wake of a school lock down and at or around the time of the Virginia Tech shootings).

In any event, the argument provides no reasonable basis for this Board to modify or reject the Judge's conclusions of law on this matter.

2. Mr. Altee takes exception to paragraph 58 of Judge Nelson's conclusions of law. Upon review of the same, the Board rejects the exception and grounds therefore, but modifies a scrivener's error in the Judge's conclusion of law as follows.

In paragraph 58, Judge Nelson states that Rule 6B-1.006(3)(c) prohibits the intentional exposure of a child to unnecessary embarrassment or disparagement.[2] She then concludes that although there was evidence in the record that Mr. Altee exposed some of his students to disparaging comments and treatment, such disparagement could not form the basis for his termination because he was not charged with such conduct with respect to the 2006-2007 school year.

Next Judge Nelson accurately states that Mr. Altee's prior acts of misconduct (the discipline for which he did not challenge at the hearing), "clearly indicates such intentional exposure, both by his boorish comments to students during the 2000-2001 school year and aggressive and threatening behavior toward students during the 2004-2005 school year."

Mr. Altee raises two exceptions. First, he points to Judge Nelson's "admission" that Mr. Altee "was not charged with intentionally exposing a child to unnecessary embarrassment for the 2006-2007 school year and thus that this conduct cannot form the basis for his termination from employment." Second, Mr. Altee argues that he has been exposed to "administrative double jeopardy... to the extent the ALJ is relying upon [his] prior charges" as a potential basis for discipline as to the 2006-2007 charges.

The Board rejects the first exception because Judge Nelson's "admission" simply states the obvious: *i.e.*, although there was testimony in the record regarding disparaging comments and treatment of students he was not charged with such misconduct for the

[2] The Recommended Order states that Rule 6B-1.006(3)(c) prohibits the intentional exposure of a child to unnecessary embarrassment or disparagement. However, that prohibition is found at subsection (e) of the Rule (and it is this subsection that appears on the September 2007 Notice of Termination). Rule 6B-1.006(3)(c), which prohibits teachers from unreasonably denying students access to diverse points of view, is not part of the 2006-2007 charges. It therefore appears that Judge Nelson intended to cite to Rule 6B-1.006(3)(e) in paragraphs 56 and 58 of the Recommended Order and in the recommendation appearing on page 30 of the Recommended Order.

2006-2007 school year, and such conduct cannot form the basis for terminating his employment. The second exception is likewise rejected, as there is no evidence in the record that either Judge Nelson or the School District disciplined Mr. Altee twice for the same offense or act of misconduct. While the Judge did reference Mr. Altee's boorish comments and threatening behavior toward students in years past, she did not conclude that such behavior (which constitutes a violation of Rule 6B-1.006(3)(e)) provided the basis for additional discipline. Rather, pursuant to the School District's Progressive Discipline Plan, Judge Nelson properly considered the past misconduct and disciplinary measures in determining the appropriate level of discipline for the charges arising from the 2006-2007 school year.

3. Mr. Altee takes exception to paragraphs 57 and 60 of Judge Nelson's conclusions of law. Upon review of the same, the Board finds no reason to modify or reject such conclusions and the exceptions are therefore rejected

In paragraph 57, Judge Nelson concludes that Mr. Altee violated Rule 6B-1.006(3)(a) [requiring a teacher to make a reasonable effort to protect students from conditions harmful to learning and/or to the student's mental or physical health] by reading stories and showing pictures "that had no relationship to the skills he was charged with improving and .. were disturbing to some of the students in his classroom." In paragraph 60, Judge Nelson states that "the comments about bringing a gun to school, whether said in earnest or in jest, show a total lack of judgment."

In essence, Mr. Altee argues that these conclusions are lacking because Judge Nelson did not state how the students were harmed or explain what a lack of judgment

means. Mr. Altee's arguments are without merit. The record before us is overwhelming and the Board finds no reason to disturb the Judge's conclusions of law.

4. Mr. Altee takes exceptions (again) to paragraphs 57, 58 and 59 of Judge Nelson's conclusions of law. Here, while he reargues many of the issues addressed above, Mr. Altee claims that, in the absence of any specific academic standards, Judge Nelson could not have concluded that the grotesque images and stories about serial killing and "true crime" were inappropriate and lacked a meaningful connection to the academic goals and objectives Mr. Altee was charged to meet with his Intensive Reading class.

Mr. Altee's claims are unsupported by the record before us. First, there was evidence of record going to the selection of material to be used with 14 and 15 year old students. Second, there was an absence of evidence showing how the stories Mr. Altee read and pictures he shared integrated into the curriculum or tied to any particular lessons – indeed, Mr. Altee admitted as much at the hearing. Third, the Board is unaware of any academic standard that would tolerate Mr. Altee's decision to read to 14 and 15 year olds stories about serial killing and violence or his decision to display to them random and disturbing images of human death, autopsy pictures, and self-portraits of the Virginia Tech. assailant before his violent and murderous rampage.

In our view of the record, Mr. Altee shocked the conscience of his students, created a negative atmosphere in his classroom and instilled negative feelings in at least some students who provided testimony at the hearing. In any event, the Board finds no reason to modify or reject such Judge Nelson's conclusions and the exceptions are rejected.

5. Mr. Altee takes exception (again) to paragraph 60 of Judge Nelson's conclusions of law. Here, while he reargues many of the exceptions and issues addressed above, Mr. Altee claims that Judge Nelson's comment that his statement about bringing a gun to school was "troubling at best," does not correspond to any standard for teacher conduct. Again, the Board is unaware of any standard that would tolerate Mr. Altee's comments about bringing a gun to school, and he offers no such standard in his exceptions. In any event, the Board finds no reason to modify or reject such conclusions and the exceptions are rejected.

Therefore, in light of the foregoing, all exceptions raised by Mr. Altee as to Administrative Law Judge Lisa A. Nelson's Findings of Fact and Conclusions of Law are hereby **REJECTED** and **DENIED**.

Entered this 5th day of May, 2009 by majority vote of the Duval County School Board.

School Board Chairperson

School Board Clerk

Copies to:

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