

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JEANINE BLOMBERG, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 08-5205PL
)
PATTI ROSE WITHERS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on January 15, 2009, in Land O'Lakes, Florida, and continued to January 21, 2009, in Zephyrhills, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kelly B. Holbrook, Esquire
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For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should impose a sanction against Respondent for alleged violations of statutes and rules relating to the practice of teaching.

PRELIMINARY STATEMENT

On September 5, 2007, Petitioner, Jeanine Blomberg, Commissioner of Education, filed an Administrative Complaint against Respondent, Patti Rose Withers ("Withers"), seeking to impose certain sanctions. Withers timely filed an Election of Rights form requesting a formal administrative hearing.

The Administrative Complaint and Election of Rights form were forwarded to the Division of Administrative Hearings ("DOAH") on October 20, 2008. At the final hearing, commenced on January 15, 2008, Petitioner called three witnesses: Norman Brown, assistant principal at Pasco County High School ("Pasco High"); Debra Neel, Spanish teacher and department head at Pasco High; and Patrick Reedy, principal at Pasco High. Petitioner's Exhibits 1 through 6 were admitted into evidence.

Withers testified on her own behalf and offered Exhibits 1 through 4 into evidence, each of which was received (with the caveat that Exhibits 3 and 4 were admitted solely to establish that the incident in question received public attention; the substance of the information in those exhibits was not admitted into evidence). Withers then asked that the proceeding remain

open until a second witness, Dr. Pius Jacob, could be deposed or questioned under oath. The record was kept open and on January 21, 2008, the parties and the Administrative Law Judge reconvened at the office of Dr. Pius where his sworn testimony was taken.

The parties advised the undersigned that a transcript would be ordered of the final hearing. Upon request, the parties were given 30 days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed at DOAH on February 6, 2009. Withers requested and the parties were granted an additional two days to file their post hearing submissions. Each party timely submitted a Proposed Recommended Order, and they were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is the person responsible for, inter alia, licensing and monitoring school teachers in the State of Florida.

2. Withers is a licensed and certified teacher in the State of Florida; she holds Florida Educator's Certificate No. 795790 covering Foreign Language-French and history. Withers' certificate is valid through June 30, 2010.

3. Withers has been teaching school for over 22 years, beginning as a teacher's aide in New York. Withers has been

under a continuing contract with Pasco County Public Schools since 1998. She was a teacher at Pasco High from 1998 until May 22, 2006.

4. Withers' state certification allows her to teach French and history. She also holds a county certification (through the HOUSSE program) which allows her to teach Spanish, but only in Pasco County Public Schools. The only formal reprimand received by Withers concerned her falling asleep during class on numerous occasions.

5. Withers is currently teaching at Wiregrass High School, another school under the authority of the Pasco County Public Schools.

6. During the 2005-2006 school year, Withers was teaching Spanish, French, and intensive reading at Pasco High. She held State of Florida certifications for French and history, but had not yet passed the examination for certification in Spanish. Pasco County Public Schools, at that time, allowed a non-certified teacher to teach subjects outside their field for up to five years without becoming State-certified. The French curriculum was being phased out at Pasco High, so Withers understood the need to obtain certification to teach Spanish.

7. During the 2005-2006 school year, Withers took the Spanish certification test (for the fourth time). She was under the impression that failure to pass the test would mean she

would lose her job and/or not be able to teach Spanish any longer at Pasco High.

8. On or about Saturday, May 20, 2006, Withers received a letter indicating that she had not passed the Spanish certification exam on her latest attempt. She had failed by a mere six points. The letter made Withers very despondent, and she became depressed and upset by the news. Almost immediately, Withers began to think her career was over and her thoughts turned dark. She began at that time to think about the idea of committing suicide.

9. At that point of time in her life, Withers was not in good health. She was suffering from a number of illnesses, including asthma, arthritis, Type II diabetes, high blood pressure, high cholesterol, paradoxical vocal chord disorder, anxiety, and depression, as well as the onset of Parkinson's disease. Withers was extremely overweight and under the influence of over 16 different medications. The medications caused side effects such as drowsiness, insomnia, increased sweating, and sensitivity to light, as well as exacerbation of her other symptoms. Withers would unilaterally change the dosages or frequencies of her medications, thus further affecting her mental state.

10. From Saturday, May 20, 2006, until arrival at school on Monday, May 22, 2006, Withers contemplated ending her life.

She mulled over the idea until reaching a decision sometime during the school day on Monday. That day was the first day of final exams for the school year, and Withers proctored final exams in her French classes throughout the day.

11. Some time during the course of that day, Withers drafted a number of "suicide notes" to be left behind when she died.¹ The notes were handwritten on different sizes and kinds of paper, indicating they were likely done over a period of hours (or perhaps on different days).

12. At the conclusion of the school day on May 22, 2006, Withers gathered together a number of medications, including Valium and Ativan. She then obtained water for the purpose of helping her take a large number of pills. She intended to ingest enough medicine to terminate her life.

13. The school day ended at 2:05 p.m. (final bell). At some point just after school let out, and while Withers was sitting at her desk in the portable classroom, she was visited by fellow teachers Debra Neel and Ms. Snell. They wanted to make sure Withers was handling the news of her latest certification examination results without any problems. Neel had also become concerned, because Withers did not answer her classroom telephone earlier. Neel and Snell went into the classroom and spoke briefly with Withers.

14. Withers, in an unusually brusque tone, asked Neel and Snell whether there was anything else she could do for them. Neel and Snell, feeling they were not welcome any longer, left the classroom.² It was between 2:30 p.m., and 2:45 p.m., at that time.

15. Neel noticed that Withers was unusually curt and that there was a bottle of water sitting on the desk. That was unusual as well, because Neel never knew Withers to drink water during the day. When Neel left Withers' classroom, she called another teacher to express her concern about Withers' behavior.

16. Once Neel and Snell were gone, Withers locked the door of her classroom (a portable building set apart from the main campus). Withers first made sure things were ready for exams to be given to her students the next day; she then began to take the medications. After taking an undetermined number of pills, Withers ran out of water. She then went outside, got on her motorized scooter and headed toward the main campus to locate some more water.³

17. On her way to the main campus buildings, Withers crossed paths with Norman Brown, the assistant principal at Pasco High. Withers did not acknowledge Brown as they passed and that concerned Brown; it was contrary to Withers' nature to be rude or to ignore her peers.

18. Withers then encountered other fellow teachers who somehow determined that Withers was trying to ingest the pills. The teachers began to argue with Withers and everyone got agitated. Neel saw the confrontation and ran to Principal Reedy's office to tell him what was going on. Reedy immediately issued a 911 call over the school radio system to obtain assistance from any available source.⁴

19. Meanwhile, Brown saw the confrontation going on just as he heard the 911 call over the radio. Brown immediately went to offer his assistance to Withers and the teachers. At that time, Brown discovered a pill bottle in Withers' hand and wrestled it away from her. Withers produced another bottle, and Brown was able to knock that bottle out of Withers' hand, as well.

20. This confrontation was going on just outside the administration building. At one point Brown noticed some students observing their actions, so he convinced Withers to move into the clinic so the students could not witness anything more than they had already seen. Shortly after entering the clinic, paramedics arrived and removed Withers to the hospital by way of ambulance.

21. Pasco High issued a statement to its staff and teachers generally describing what had happened. The statement said the school would offer counseling to any students who

requested it as a result of the incident. (That statement was Pasco High's only attempt to identify the students who had observed the confrontation. There is no evidence that any of the students ever requested or obtained counseling.)

22. Pasco High's administration was most concerned about two things: First, that Withers would be despondent enough to try to take her own life. Second, that she would do so on school grounds where students may witness the act or even discover her body after her death. The latter concern was less probable, because no students had keys to the portable classroom and custodians would likely have been the persons to discover the body. However, students often remain on campus after school hours to engage in any number of activities. That is why Withers took her pills with her when she went to get more water.

23. Prior to ingesting the pills, Withers had left several suicide notes and some cash in her classroom. The notes addressed her despondency and pain at having failed the Spanish certification exam. The notes also directed the school to use Withers' money to throw a party for students, to contribute money to the teachers' end-of-the-year party, and to give some of her personal belongings (toys and things) to students.

24. Withers presumed that her body would be discovered by janitors, rather than by any student, but her exact rationale

for that presumption was not adequately discussed at final hearing.

25. Withers has not worked at Pasco High since the date of the incident. She is otherwise gainfully employed in the teaching profession.

26. Withers continues to be under the care of a psychologist (counselor) and a psychiatrist. She continues to suffer the same mental illness that she was experiencing on the date of her suicide attempt. She continues to receive essentially the same medications that she was taking on that date.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2008).⁵

28. The Department of Education has the authority to investigate and prosecute alleged violations of Subsection 1012.795(1), Florida Statutes, and Florida Administrative Code Rule 6B-1.006. Petitioner has the right to take action on a complaint filed against a person who held a valid certificate during the period in which the alleged violation occurred. In this case, Withers held a valid certificate in May 2006.

29. Petitioner has the burden of proof in this case and must prove the charges set forth in the Administrative Complaint by the standard of clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern & Co., 670 So. 2d 932, 933 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987); and McKinney v. Castor, 667 So. 2d 387, 388 (Fla. 1st DCA 1995).

30. Clear and convincing evidence is an intermediate standard of proof which is more than the "preponderance of the evidence" standard used in most civil cases, but less than the "beyond a reasonable doubt" standard used in criminal cases. See State v. Graham, 240 So. 2d 486 (Fla. 2d DCA 1970). Clear and convincing evidence has been defined as evidence which:

[R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)

(citations omitted).

31. The allegations in the Administrative Complaint which must be proved by Petitioner are straight-forward and brief enough to include herein in their entirety:

[Paragraph 3] On or about May 22, 2006, [Withers] attempted to take her own life by swallowing an excessive amount of prescription drugs in the presence of students and other members of the faculty.

[Count 1] [Withers] is in violation of Section 1012.795(1)(c), Florida Statutes, in that [Withers] has been guilty of gross immorality or an act involving moral turpitude.

[Count 2] [Withers] is in violation of Section 1012.795(1)(i), Florida Statutes, in that [Withers] has violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules.

[Count 3] The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), Florida Administrative Code, in that [Withers] has failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

32. Subsection 1012.795(1)(c), Florida Statutes, allows for sanctions against a teacher who "[h]as been guilty of gross immorality or an act involving moral turpitude."

33. Subsection 1012.795(1)(i), Florida Statutes, allows the Education Practices Commission to take action against a teacher who "[h]as violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules."

34. As stated in Florida Administrative Code Rule 6B-1.006(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.

35. Neither "gross immorality" nor "moral turpitude" is defined in Section 1012.795, Florida Statutes. However, Florida Administrative Code Rule 6B-4.009 applies to disciplinary actions by school districts. The Rule is instructive in defining the terms used in Section 1012.795, Florida Statutes.

36. Immorality is defined in Florida Administrative Code Rule 6B-4.009(2), as:

[C]onduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

37. Gross immorality, which is not defined by statute or rule, must be interpreted by its plain meaning, i.e., that it involves immorality of an extreme nature. There is no clear and convincing evidence in this case that Withers is guilty of gross immorality.

38. Moral turpitude is defined in Florida Administrative Code Rule 6B-4.009(6) as:

[A] crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted stands 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.

39. Moral turpitude has also been defined by this tribunal as anything contrary to justice, honesty, principle, or good morals. See Gallagher v. Dupree, Case No. 99-2533 (DOAH February 11, 2000). However, that definition does not include the element of "crime" as set forth in the rule. There is no evidence that Withers in this matter was convicted of a crime related to her actions.

40. Withers did attempt to take her own life by taking excessive amounts of pills while on the school campus. However, whether she did so "in the presence of students or other members of the faculty," is not clear. Certainly there were students and faculty members on campus, and the evidence of that fact is clear and convincing. But it is also clear that no students or faculty members actually witnessed Withers taking the pills.

41. The remaining question, therefore, is whether Withers made "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."

42. Clearly, Withers made a conscious decision (albeit somewhat affected by her intake and misuse of medications) to take her own life on school grounds. Withers said the school was the one place she was "ever truly happy." It was, therefore, her desired location for ending her life.

43. Although Withers was lucid enough to make sure her suicide attempt took place after the end of the school day, her choice of a school classroom during a time that students would likely be in the vicinity did not reasonably protect her students from conditions harmful to their mental health. First, there is no guarantee students could not have come into the classroom, even if the door was locked. Second, it is extremely likely that students would become aware of the fact of her death (had she been successful) and would have had to deal with that fact while taking final exams. Third, any students who used that classroom may have some difficulty being in a room where a person had died.

44. All in all, Withers' actions were not indicative of the use of reasonable caution to protect students from harm. Petitioner met its burden of proof regarding Count III of the complaint.

45. Petitioner's recommended penalty in this matter presumes a finding of guilt on all three counts in the Administrative Complaint. For the reasons set forth above, only

one of the counts was proven by clear and convincing evidence. Thus, the penalty should not be as severe as Petitioner recommends.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that Withers is guilty of misconduct and should be placed on monitored probation for a period of two years. Further, a letter of reprimand concerning her actions should be placed in Withers' employee file.

DONE AND ENTERED this 25th day of March, 2009, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of March, 2009.

ENDNOTES

^{1/} Withers is very unclear as to when she actually drafted any of the suicide notes, but there is reason to believe as least some of them were done while at school on that day.

^{2/} While Neel was in the room, she remembers a student coming in to give Withers a picture. Withers has no recollection of the student coming in.

^{3/} Withers took her medications with her, ostensibly so that they would not be accessible should any students come into the portable while she was away.

^{4/} Reedy was justified in his concern. During the prior school year, Withers had been asked to leave campus due to her illness. However, when she reached her vehicle, Withers closed the door and did not start her engine. The outside heat was approximately 90 degrees and Withers soon passed out. Luckily, fellow employees found her and were able to keep her stable until paramedics arrived.

^{5/} Unless otherwise specified herein, all further references to the Florida Statutes will be to the 2007 version.

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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.