

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-0157  
 )  
 KATHLEEN CARDEN, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on November 3, 2009. The parties, attorneys for the parties, witnesses, and court reporter participated by videoconference in West Palm Beach, Florida.

APPEARANCES

For Petitioner: Sonia E. Hill-Howard, Esquire  
Palm Beach County School District  
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For Respondent: Stuart Kaplan, Esquire  
Kramer, Ali, Fleck, Hughes,  
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STATEMENT OF THE ISSUE

The issue is whether Petitioner has good cause to suspend Respondent, an assistant principal, for ten days, without pay, for misconduct and unprofessional conduct in reporting student enrollments at her school.

PRELIMINARY STATEMENT

By Petition dated January 9, 2009, Petitioner alleged that Respondent is an assistant principal at Independence Middle School and was employed in this capacity in the 2007-08 school year. The Petition addresses student counts taken in September and October 2007 and states that the school provided overcounts on these two occasions.

The Petition alleges that Respondent was responsible for overseeing the student count and was aware of the inflated numbers, as she had received emails from school staff informing her that no-show students were appearing on school attendance rosters. The Petition alleges that, before the October 2007 student count, teachers questioned the school's data processor and guidance office about accounting for no-show students and, after the October 2007 student count, teachers questioned the "school's administration" about accounting for no-show students. The Petition alleges that, after the October 2007 student count, the "school's administration" informed teachers to assign such students with a grade of "C."

The Petition recites various bulletins specifying the correct procedure for counting students and accounting for no-shows and alleges that the bulletins were "addressed to Principals and shared with the management staff (including Respondent)." The Petition alleges that these bulletins "were not followed."

The Petition alleges that Respondent thus violated Florida Administrative Code Rules 6B-1.001(3) and 6B-1.006(4)(b) and (5)(a) and (h) and School Board Policies 1.013 and 1.014, as well as Section 1003.23, Florida Statutes.

On August 29, 2008, the parties filed a Joint Stipulation, which states, as Petitioner's position, that Respondent was responsible for complying with the bulletins and failed to do so.

At the hearing, Petitioner called seven witnesses and offered into evidence 21 exhibits: Petitioner Exhibits 3, 4, 11, 13, 15, 16, 18, 19, 21, 22, 23, 29, 30, 31, 32, 33, 35, 44, 46, 49, and 52, which were all admitted. Respondent called one witness and offered into evidence no exhibits.

The court reporter filed the Transcript on January 8, 2010. The parties agreed not to file proposed recommended orders.

#### FINDINGS OF FACT

1. At the time in question, Respondent was an assistant principal at Independence Middle School (IMS). She has been an

assistant principal in Petitioner's school district for ten years and has been the assistant principal at IMS since 2003.

2. Toward the end of each school year, Petitioner plans for the assignment of its approximately 170,000 students to schools for the following school year. Assuming that each student will be promoted and, where necessary, transferred to the appropriate middle- or high-school, the planning exercise initiates the process that culminates, during the summer, in the creation of a school-specific class schedule for each student.

3. Based on these class schedules, each school circulates among the teacher, during the ensuing school year, a biweekly attendance sheet, so that each teacher may take attendance by class. The biweekly attendance sheet contains bubbles to be filled in by the teacher, so an automated scanner can transfer the information from the sheet to a computer file.

4. In accordance with the practices of Petitioner, a classroom teacher is not to mark a student as "absent" until he first attends the class and then misses the class. A student who has not yet attended a class is classified as a "no-show." However, the biweekly attendance sheet lacks a bubble to indicate "no show," so classroom teachers typically handwrite the information on the sheet after the first two weeks of school. At the time in question, a student assistant collected the biweekly attendance sheets and fed them into the scanner,

and the handwritten information contained on the sheet could easily be lost.

5. Enrollment data are kept on Petitioner's TERMS program, which contains a wide range of information relevant to Petitioner's operations. In the main office of each school, a staffperson enters and updates enrollment data in TERMS. The staffperson removes a student from a school's enrollment by entering into TERMS the name of the new school that the student is attending or by entering "DNE," meaning "did not enter," if the student is a no-show, but the staffperson does not know what school the student is attending. Until the staffperson enters DNE, though, a no-show student--meaning a student who has never appeared in his assigned classroom--would continue to be shown as enrolled at the school to which he has been assigned the previous summer.

6. During the fall of the 2007-08 school year, each school in the Palm Beach County School District performed two student counts. Mandated by Petitioner, the 11-day count, which took place on September 7, 2007, allowed Petitioner, early in the school year, to reallocate teachers and administrators, among individual schools within the district, based on enrollments. Mandated by state law, the fall FTE count, which took place in October 2007, allowed the Florida Department of Education (DOE)

to allocate funds, for the first half of the school year, among the various school districts within the state.

7. By bulletin dated August 23, 2007, to all principals and approved by the Superintendent, Petitioner's Chief Academic Officer and Chief Operating Officer stated that DOE was conducting a survey count on August 31 for enrollment. The bulletin states: "Therefore, on Monday, August 27, 2007, any student not in attendance from the first day of school, at least one period, must be withdrawn. It is imperative that all schools adhere to this directive. An accurate assessment of student enrollment across the state may help mitigate budget reductions." The bulletin reminds the principals: "a DNE should be entered into [TERMS] for students whose current school location is unknown. For students transferring out of state, to another Florida school district, or private school, please enter the appropriate withdrawn (WD) code."

8. By bulletin dated August 31, 2007, to all principals and approved by the Superintendent, the Chief Academic Officer and Chief Operating Officer stated that "Count Day" was September 7, 2007, and the data was to have been taken "directly from . . . TERMS" without any "self-reporting by schools." The bulletin advises that personnel assignments within the district would be made based on this information obtained from the September 7 count. The bulletin notes that all student

enrollments and class schedules "must be accurately reported in . . . TERMS." The bulletin discloses that, on September 14, area superintendents would notify individual schools of personnel adjustments based on the information obtained from the September 7 count.

9. At IMS, for the 2007-08 school year, the principal was Dr. Gwendolyn Johnson and the staffperson assigned the job of entering enrollment data in TERMS was Angela Jones. Respondent was one of three assistant principals at IMS. Among her other duties, Respondent was responsible for creating student class schedules during the preceding summer, ensuring that all class conflicts were resolved at least one week prior to the start of the school year, and distributing the schedules on the day prior to the start of school.

10. At the start of the 2007-08 school year, Dr. Johnson assigned to Respondent the responsibility for the 11-day count. Due to the challenges of the task, eventually, Dr. Johnson and two other assistant principals helped Respondent collect the relevant data from different teachers. These four administrators brought all of the data to Respondent's office where they compiled the data.

11. The enrollment data from the 11-day count revealed 26 fewer students at IMS than were shown in TERMS. After the fall FTE count noted below, an audit revealed that the actual

discrepancy was 24 students: 23 no-shows and one who had withdrawn prior to the eleventh day of the school year. Respondent reported this discrepancy to Dr. Johnson and stated that it needed to be rectified. At this point, Respondent fully discharged the responsibilities that Dr. Johnson had placed on her, and this was the last involvement of Respondent in the reporting of enrollment information to the district office or DOE.

12. The 11-day count was correct, at least after the minor correction required after the audit, and the TERMS data were inflated. After learning of the discrepancy and despite the August 23 and 31 bulletins that had been sent to her, Dr. Johnson failed to take any action to correct the over-enrollment contained in TERMS. Exacerbating the situation, the subsequent audit revealed that someone at IMS "updated" TERMS for 17 of the students shown in the computer as enrolled, but never attending IMS, with inaccurate withdrawal dates after the 11-day count, implying, incorrectly, that the students actually had been in attendance on the date of the 11-day count.

13. In the presence of Respondent, after the 11-day count, Dr. Johnson directed Ms. Jones not to enter DNEs for no-show students until Ms. Jones learned where the students were attending school during the 2007-08 school year. The effect of this directive from Dr. Johnson, which ignored the instructions



that she had received from the district office, was to maintain inflated enrollment figures for IMS for an extended period of time after the 11-day count. The practical effect of Dr. Johnson's directive was to preserve an assistant principal position that had been provisionally assigned to IMS and to obtain an additional teaching position for IMS.

14. After Dr. Johnson instructed Ms. Jones to delay updating TERMS, in the manner described in the preceding paragraph, Respondent later repeated this directive of Dr. Johnson to Ms. Jones. But no evidence suggests that Respondent played any role in the formation of this IMS policy.

15. The fall FTE survey took place from October 8-12, 2007. The fall FTE survey numbers for Petitioner were drawn from the TERMS data, which were inflated for IMS. The subsequent audit revealed that, due to Dr. Johnson's directive to delay updating TERMS, the student count at IMS was inflated by 23 students: 21 no-shows and two who had withdrawn prior to the FTE survey week.

16. As the first grading period approached, toward the end of October, IMS teachers began to question what they were to do about the 24 no-shows who were still shown as enrolled on TERMS, but had never attended one day of school. Some of the teachers settled on assigning Fs to the no-show students. This raised a problem with the IMS policy to send a letter home to every

student who received an F in any course. When the guidance counselor approached Respondent and asked whether the teachers should send letters to the homes of the no-show students receiving Fs, Respondent told her not to, but to talk to the data-processing staffperson to see how this issue could be resolved. The guidance counselor, who was not alleged to have been involved with the scheme to inflate enrollments at IMS, believed that Respondent's advice not to mail the letters was proper to avoid "looking stupid."

17. On October 26, 2007, the data processing staffperson sent an email to the teachers and administrators acknowledging that TERMS would not accept an input to show an incomplete or missing grade. In another email on the same date, the data processor advised the teachers to give the no-show students a C and to assign them a conduct score as well, although an F was also "acceptable."

18. Fortunately, Petitioner learned that the TERMS enrollment numbers were inflated in time to correct the FTE data without incurring a financial penalty from DOE. Charging misconduct in connection with the misrepresentations and fraudulent statements that maintained inflated enrollment numbers in TERMS for IMS, Petitioner proposed a 20-day suspension without pay for Dr. Johnson and a five-day suspension without pay for Ms. Jones. Petitioner later dropped the charges

against Ms. Jones, but the charges against Dr. Johnson resulted in a formal administrative hearing in DOAH Case No. 08-3986, after which Petitioner issued a final order on June 3, 2009, finding her guilty and sustaining the penalty, although this case is now on appeal.

19. Based on similar charges in this case, Petitioner has proposed a 10-day suspension without pay for Respondent. In contrast to the case against Dr. Johnson, this case does not involve the person responsible for implementing district policy, as set forth in the two bulletins, or the person who decided to ignore this district policy. As IMS principal, Dr. Johnson ordered her subordinates, including Ms. Jones and Respondent, to implement her policy, which was to ignore district policy to maintain an inflated enrollment at IMS. Repeating the policy, as Respondent did to Ms. Jones, and helping to solve one of the problems that this unsustainable policy presented, as Respondent did when she told the guidance counselor not to send letters home to the no-show students who received Fs, do not so much represent marked departures from the honesty demanded of educational professionals, as they represent the behavior expected of subordinates to the principal.

20. The administration of a middle school requires strong leadership, which is vested in the principal. Insubordinate staff undermine this leadership and risk adverse job action for

their dissent. The facts of this case do not approach the point at which the demands of professional honesty imposed on Respondent override her obligation to conform to the directives of her principal, who was placed in this position of authority by Petitioner or the Superintendent. Respondent honestly discharged her duties in connection with the 11-day count and mentioned the enrollment discrepancies to Dr. Johnson, who misled Petitioner and DOE by maintaining the inflated enrollment numbers, even though she did not personally enter the data in TERMS or solve every problem, such as letters to the homes of phantom students, that her wrongful policy created.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat.

22. Although Section 1012.33(1)(b), Florida Statutes, provides that Respondent's contract shall allow dismissal for "just cause," Section 1012.33(6)(b), Florida Statutes, provides that Respondent may be dismissed or suspended only for "immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, any crime involving moral

turpitude." The distinction is irrelevant in this case,  
however.

23. Florida Administrative Code Rule 6B-1.001(3) provides:

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.

24. Florida Administrative Code Rule 1.006 states, in part:

\* \* \*

(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.

\* \* \*

(h) Shall not submit fraudulent information on any document in connection with professional activities.

\* \* \*

25. Petitioner's School Board Policy 1.013(2) requires administrative staff to ensure that district policies and state and federal law are adhered to.

26. Petitioner's School Board Policy 1.014(1) establishes the principal as the "administrative and supervisory instructional leader. . . of the school and shall be responsible for the policies of the school board as directed by the superintendent."

27. Petitioner bears the burden of proving the material allegations by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

28. Petitioner has failed to prove the material allegations against Respondent and thus has failed to prove any ground for the proposed suspension.

#### RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order dismissing the charges against Respondent.

DONE AND ENTERED this 14th day of January, 2010, in  
Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
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Filed with the Clerk of the  
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this 14th day of January, 2010.

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.