

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH,)
AS COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-3491PL
)
SULTAN A. HASSAN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 27, 2009, a duly-noticed hearing was held by means of video teleconference with sites in Tallahassee and Jacksonville, Florida, before Lisa Shearer Nelson, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154

For Respondent: Sultan A. Hassan, pro se
3014 Phyllis Street
Jacksonville, Florida 32205

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent committed the acts alleged in the Administrative Complaint and if so, what penalties should be imposed?

PRELIMINARY STATEMENT

On February 4, 2009, Dr. Eric Smith as Commissioner of Education filed an Administrative Complaint against Respondent, Sultan A. Hassan, alleging violations of Section 1012.795(1)(c), (f), and (i), Florida Statutes (2007), and Florida Administrative Code Rule 6B-1.006(5)(d). Respondent disputed the allegations and on March 11, 2009, requested a hearing pursuant to Section 120.57(1), Florida Statutes. On June 25, 2009, the matter was referred to the Division of Administrative Hearings for assignment of an administrative law judge.

On July 7, 2009, Petitioner filed Petitioner's First Requests for Admissions to Respondent and Petitioner's First Set of Interrogatories to Respondent. A Notice of Hearing was issued on July 17, 2009, setting the hearing by video teleconference for September 16, 2009.

Respondent did not respond timely to the Request for Admissions, and on September 8, 2009, Petitioner filed a Motion to Deem Petitioner's First Requests for Admissions to Respondent as Admitted and to Relinquish Jurisdiction. Because of the proximity of the Motion to the scheduled hearing, on September 11, 2009, a hearing on Petitioner's Motion was held via telephone. As a result of the arguments presented, an Order Granting Continuance and Re-scheduling Hearing for October 27, 2009, was entered on September 11, 2009. In the Order, Respondent was directed to file his answers to the Request for

Admissions, as well as responses to the outstanding Interrogatories on or before September 16, 2009. If no responses were filed, the Order stated that the undersigned would conclude that no material dispute of fact remained, and jurisdiction would be relinquished to the Commission. On September 16, 2009, Respondent filed his responses to discovery as ordered, and the case proceeded to hearing October 27, 2009.

At hearing, Petitioner presented the testimony of Dr. Darrell Perry, Cheryl T. McGuffie, Kay D. Ahearn, Alan Moore, and Dewayne Thomas. Respondent presented no witnesses, and neither party submitted exhibits. The Transcript of the proceedings was filed with the Division on November 23, 2009, and on December 3, 2009, Petitioner filed its Proposed Recommended Order. To date, no post-hearing submission has been filed by Respondent.

FINDINGS OF FACT

1. At all times relevant to the Administrative Complaint, Respondent held Florida Educator's Certificate No. 821684, covering the area of Mathematics, which was valid through June 30, 2008.

2. At all times pertinent to the allegations in the Administrative Complaint, Respondent was employed as a math teacher at Paxon Middle School (Paxon) in the Duval County School District.

3. Cheryl McGuffie was a teacher at Paxon and had a classroom adjoining Respondent's. On or about November 20, 2007, during first period, Ms. McGuffie's class was involved in a lively and somewhat loud discussion. At some time during this class period, she heard a knock on the wall, coming from Respondent's adjoining classroom. A student in Ms. McGuffie's class went over to the wall and knocked back. Ms. McGuffie admonished the student to return to his seat and told her class to settle down so as not to disturb Respondent's class.

4. Later, during third period, Ms. McGuffie again heard knocking on the wall. At this point, her students were working on a worksheet. She went over to the door between the classrooms, opened it, and saw students standing at the front of the class and Respondent standing about four feet away. She asked who knocked on the wall, and received no answer, so returned to her classroom.

5. Sometime later during the same class period, students from Respondent's classroom came into her classroom. They were not supposed to be in her class and were disrupting the work her students were doing. Ms. McGuffie ushered them out and told the students to return to Respondent's classroom. While she was standing at the door to her classroom, Respondent came to the door of his classroom. She told Respondent, "those kids don't need to be coming into my classroom like that."

6. Respondent apparently was offended by Ms. McGuffie's statement and replied, "The way I see it, if you're the adult in the room then you need to handle the situation." He continued by saying, "I've been letting you slide anyway." Ms. McGuffie described Respondent's tone as quiet and menacing, and that he was motioning with his hands and standing close to her. She was uncomfortable as a result of the conversation.

7. The students from Respondent's third period class were in Ms. McGuffie's fourth period class. Several of these students overheard the interchange between Ms. McGuffie and Respondent, and they were discussing the incident when they came in to her classroom. The students' behavior during class was rowdy and hard to control, which was not usual for this group of students, to the point that Ms. McGuffie was forced to call Dr. Perry, the principal, in order to regain control of the classroom.

8. Ms. McGuffie did not normally have a problem with classroom control.

9. Ms. McGuffie was uncomfortable with Respondent following the incident. A few days afterward, Dr. Perry had a meeting with both teachers to address the situation between them. While Ms. McGuffie remained professional, Respondent became belligerent.

10. Several months later, on or about April 16, 2008, teachers were scheduled to attend a teacher training session in the afternoon. Dr. Perry, Paxon's principal, was standing in the

middle of the media center where the training was to take place when Respondent came into to media center. By all accounts, Respondent was angry and upset when he entered the media center, and his anger was directed at Dr. Perry.

11. Respondent approached Dr. Perry and stated that the administration was in a conspiracy to get him fired, and became loud. Dr. Perry suggested that they move to his office to discuss whatever was bothering Respondent, and Respondent refused, saying he wanted to address the situation "here and now." As Dr. Perry walked away from him, Respondent made statements such as "You're trying to get me in trouble," and that Dr. Perry "didn't know who he was messing with." He referred to Dr. Perry's office as a snakepit.

12. Respondent continued to be very upset and advanced toward Dr. Perry, making threatening statements. Other faculty members tried to calm him down, telling him this was not the place for this kind of behavior. Respondent could not be calmed down, and eventually had to be escorted from the media center by other faculty members.

13. As a result of Respondent's behavior, Dr. Perry had to leave the media center in an attempt to diffuse the situation. He perceived Respondent's threats toward him to be real, as did other staff members. Even after leaving the media center, Respondent continued to be upset. When Assistant Principal Alan Moore saw him outside the media center, he was still out of

control and angry, especially toward Dr. Perry. The evidence did not reveal what had caused Respondent to be so upset.

14. After the incident, Dr. Perry called the district office. He believed that Respondent's actions compromised his effectiveness as a teacher because of the Effect it had on other staff members. Dr. Perry did not want Respondent to continue teaching at his school, and his employment was terminated.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2009).

16. This proceeding is a disciplinary proceeding to take action against Respondent's certification to teach in the State of Florida. Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Clear and convincing evidence:

requires 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 lacking in confusion as to the facts in issue. The evidence must be of such a 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.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 797, 800 (Fla. 4th DCA 1983).

18. Section 1012.795(1), Florida Statutes (2007),^{1/} authorizes the Commission to suspend, revoke, or otherwise discipline a teaching certificateholder, where it is shown that he or she:

(c) Has been guilty of gross immorality or an act involving moral turpitude.

* * *

(f) Upon investigation, has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school district.

(i) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

19. 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.

* * *

(5) Obligation to the profession of education requires that the individual:

* * *

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

20. The Administrative Complaint alleges the following facts which the Commission asserts create a basis for discipline pursuant to Section 1012.795, and the Principles of Professional Conduct for the Education Profession:

3. In or around November 2007, the Respondent made derogatory comments to another teacher in front of students. The Respondent's comments caused the students to become disruptive and disrespectful toward the other teacher. The learning environment was adversely impacted due to the Respondent's comments.

4. On or about April 16, 2008, during the start of a faculty meeting, the Respondent became confrontational toward the principal of the school. The Respondent became menacing, and uttered threats and curses toward the principal.

21. The Commission has proven by clear and convincing evidence that Respondent made derogatory comments to another teacher in front of students. It also proved that following the interchange between Respondent and Ms. McGuffie, the students in Ms. McGuffie's class were unusually disruptive. However, the evidence is not clear and convincing that it was the comments made by Respondent that made the students disruptive and that the

learning environment was adversely impacted as a result. The unruly behavior could just as easily be attributed to some other event occurring on campus that day.

22. The Commission has also proven by clear and convincing evidence that Respondent became confrontational at the beginning of a faculty training session, and that he acted in a disrespectful and threatening manner toward the principal of the school.

23. Count One of the Administrative Complaint charges Respondent with gross immorality or an act involving moral turpitude, in violation of Section 1012.795(1)(c), Florida Statutes (2007). The Education Practices Commission has not defined "gross immorality" or "moral turpitude" for the purposes of discipline to be imposed pursuant to Section 1012.795, Florida Statutes. The Commission has, however defined "immorality" and "moral turpitude" for use by school districts in taking action against instructional personnel in Florida Administrative Code Rule 6B-4.009. This rule, which may provide guidance in this context, provides in pertinent part:

(2) Immorality is defined as conduct 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.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties; which, according to the accepted standards 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.

24. Moral turpitude has also been defined by the Supreme Court of Florida as "anything done contrary to justice, honesty, principle, or good morals, although it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660, 661 (1933).

25. The Commission has proven a violation of Count One. By threatening his principal and placing other faculty members in fear of his conduct, Respondent acted in a way that is inconsistent with adulthood, much less the behavior expected of an adult entrusted with teaching in a high school setting. Persons in Respondent's position are expected to diffuse hostile situations, not ignite them. Count One was proven by clear and convincing evidence.

26. Count Two charges Respondent with violating Section 1012.795(1)(f), Florida Statutes (2007), by committing personal conduct which seriously reduces his effectiveness as an employee of the school district. With respect to the factual conduct alleged in paragraph three of the Administrative Complaint, the facts proven do not support a finding that Respondent violated

Section 1012.795(1)(f). While the Commission has proven that Respondent spoke to Ms. McGuffie in a manner that was disrespectful and derogatory, it did not prove that his comments to her resulted in the disrespectful and unruly behavior of the students. To make such a finding would require reliance on the hearsay statements attributed to students who did not testify. See § 120.57(1)(c), Fla. Stat. (2009).

27. However, Respondent's confrontation with Dr. Perry in the media center does support a finding that Respondent violated Section 1012.795(1)(f). Respondent's behavior was unprofessional and threatening. He disrupted the faculty session that Dr. Perry was about to commence, and impaired Dr. Perry's ability to interact with other teachers on the faculty. Count Two has been proven by clear and convincing evidence.

28. Count Three alleges a violation of the Principles of Professional Conduct for the Education Profession, as prescribed in the State Board of Education rules. This charge depends upon a finding that Respondent violated Florida Administrative Code Rule 6B-1.006(5)(d), as charged in Count Four of the Administrative Complaint. As explained below, both counts have been proven by clear and convincing evidence.

29. When Respondent made derogatory comments to Ms. McGuffie, he engaged in harassment that resulted in an intimidating environment. His behavior was childish, made her uncomfortable, and is inconsistent with the behavior expected in

a collegial setting. Likewise, Respondent's outburst directed at Dr. Perry unreasonably interfered with the planned faculty activities of the afternoon and created a hostile and intimidating environment, both for Dr. Perry and for other faculty members present. The outburst also created apprehension amongst the faculty regarding any ongoing interactions with Respondent.

30. Based on the foregoing, Respondent is guilty of violations charged in Counts One through Four of the Administrative Complaint.

31. Section 1012.796(7), Florida Statutes (2007), provides the penalties for violations of Section 1012.796 and Rule 6B-1.006. Those penalties include denial of a certificate; revocation or suspension; probation, subject to such conditions as the Commission may specify; restriction of the authorized scope of practice; and administrative fines not to exceed \$2,000 per count or offense.

32. The Commission's disciplinary guidelines, adopted at Florida Administrative Code Rule 6B-11.007, provide a range of penalties for the violations proven in this case, from probation to revocation. Petitioner recommends permanent revocation.

33. While the evidence supports the violations charged, permanent revocation is not an appropriate penalty. Rule 6B-11.007 also provides a list of aggravating and mitigating

circumstances that may be taken into consideration when determining penalty. Included in this list are the number of repetitions of the violation; any previous discipline against the certificateholder; any actual damage caused by the violation; the effect of the penalty on the certificateholder's livelihood; and the degree of physical or mental harm to a student or a child. Rule 6B-11.007(3)(c), (e), (g), (i), and (r).

34. There are two factual bases for discipline in this case: the incident between Ms. McGuffie and Respondent, which is minor in nature, and the confrontation with Dr. Perry. While the confrontation with Dr. Perry clearly represents a serious breach of Respondent's responsibilities as a faculty member, it appears to be an isolated incident. There is no evidence of prior discipline against Respondent, and there is no evidence of actual damage caused by the incident. Moreover, no student or child was involved in the incident. Finally, permanent revocation, as suggested by Petitioner, would deprive Respondent of pursuing the profession for which he has trained.

35. By all accounts, Respondent is a gifted teacher. He has a positive rapport with his students, and with the benefit of maturity, could become an invaluable role model. He must however, learn to control his temper and to work with his peers within the structure of the education system.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That the Education Practices Commission enter a Final Order finding Respondent guilty of Subsections 1012.795(1)(c), (f) and (i), Florida Statutes (2007), and Florida Administrative Code Rule 6B-1.006(5)(d). In addition, it is recommended that the Commission suspend Respondent's certificate for a period of three months, followed by probation for two years. As a condition of probation, it is recommended that Respondent be required to take a course or courses in anger management.

DONE AND ENTERED this 24th day of December, 2009, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of December, 2009.

ENDNOTE

^{1/} Petitioner has cited to the 2009 codification of Section 1012.795, which renumbers the violations charged as subsections (d), (g), and (j). There is no substantive change with respect to the violations charged. However, licensees can only be found to have violated the statutory provision in effect at the time of the conduct alleged. Delk v. Department of Professional Regulation, 595 So. 2d 966 (Fla. 5th DCA 1992).

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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.