

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-3548
)
BARBARA PAUL,)
)
 Respondent.)

)

RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings (Division), on January 26, 2010, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Carol Mirando, Esquire
City Hall
St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

For Respondent: David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

The issue is whether the termination of Respondent, Barbara Paul, by Petitioner, "for cause," was justified.

PRELIMINARY STATEMENT

On June 11, 2009, Superintendent Ed Pratt-Dannals of Duval County Public Schools issued to Respondent a Notice of Discharge of her employment as a teacher ("2009 Notice of Discharge") based on charges, during school year 2008-2009, that Respondent violated Florida Administrative Code Rules 6B-1.006(3)(a) and (e), 6B-1.001(2), and 6B-1.001(3) by continuing to display a pattern of unprofessional behavior toward students and parents, including making inappropriate, disparaging, racial, and offensive comments to students and their parents and engaging in inappropriate physical contact with students, ending with the incident underlying the instant charge, in which she verbally abused students, used her body to block the students' access to her classroom, and physically pushed and struck two students. The Notice of Discharge referenced the various steps of the Progressive Discipline Policy set forth in Article V of the Collective Bargaining Agreement that the Duval County School Board ("DCSB") administered to Respondent, through two different principals, while she taught at two different schools during school years 2006-2007, 2007-2008, and 2008-2009.

Respondent filed her request for hearing with Petitioner on July 24, 2009. The matter was referred to the Division on July 2, 2009. The case was originally set for hearing in Jacksonville, Florida, on October 14, 2009, but upon Motion for

Continuance, was reset for January 26, 2010, also in Jacksonville. The matter proceeded to hearing on that date.

At the hearing, Petitioner presented the testimony of John Williams, Director of DCSB's Office of Professional Standards; John McCallum, Investigator for DCSB's Office of Professional Standards; Gary Finger, former principal of DuPont Middle School (DuPont); Loretta Hines, former assistant principal of DuPont; Shannon Judge, assistant principal of DuPont; Carmen Polanco, DuPont teacher; Dr. Darrell Perry, principal of Paxon Middle School (Paxon); Allen Moore, former assistant principal of Paxon; Ronnie Williams, assistant principal of Paxon; Ms. R.P., parent of D.P. (student at Paxon); and D.P. (male), an 11-year old student (at the time of the incident) at Paxon in Respondent's sixth-grade creative writing class. Petitioner also offered into evidence at the hearing Exhibits 1 through 28, all of which were admitted into evidence.

Respondent presented the testimony of Mary Combs, owner of Mary's Oriental Imports, and Javardo Jones, pastor of Faith Community Church. Respondent testified on her own behalf. Respondent did not offer any exhibits.

A Transcript was filed on February 11, 2010. After the hearing, Petitioner and Respondent timely filed their Proposed Findings of Fact and Conclusions of Law on March 15, 2010.

References to statutes are to Florida Statutes (2009) unless otherwise noted. References to Florida Administrative Code Rules covering the Florida Department of Education are hereinafter referred to as "FDOE" Rules.

FINDINGS OF FACT

1. Respondent Barbara Paul is a teacher covered under the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941), as amended ("Tenure Act") and the Collective Bargaining Agreement ("CBA") between Duval Teachers United and DCSB for 2006-2009.

2. Respondent is a tenured or experienced contract teacher, who can only be terminated for "just cause" as defined in the Tenure Act and the CBA.

3. Respondent has used the word "boy" on more than one occasion to address male students.

4. Respondent has told a female student to "shut her mouth" or "shut her face."

5. Respondent worked for DCSB as a full-time "tenured" teacher during the 2006-2007, 2007-2008, and 2008-2009 school years.

6. Respondent, originally born in Jamaica, moved to the United States in March 1989, where she has remained since that time and, with the exception of one year in 1998, has been employed as an English/Language Arts ("E/LA") teacher for DCSB.

7. E/LA consists of primarily literacy, English, grammar, some writing skills, and aspects of reading.

8. During the 2008-2009 school year, Respondent, a "tenured/professional contract" teacher, was certified by the Florida Department of Education (FDOE) to teach language arts and was assigned to teach creative writing to 12 and 13-year-old students (sixth grade) at Paxon.

9. DCSB is a duly-constituted school board charged with the responsibility to operate, control, and supervise all free public schools within the School District of Duval County, Florida, pursuant to Section 1001.31, Florida Statutes.

10. Pursuant to her contract with DCSB, and consequent to holding a professional teaching certificate issued by FDOE, Respondent was, at all times material, subject to DCSB's rules and regulations as well as all applicable Florida laws and regulations, including Sections 1012.23 and 1012.33, Florida Statutes, and FDOE Rules 6B-1.001 and 6B-1.006.

11. Teachers employed by DCSB are bound by a "Progressive Discipline" Policy, which generally prohibits adverse employment action based on misconduct unless the following steps are taken: (a) a verbal reprimand, (b) a written reprimand, (c) a suspension without pay, and (d) termination. The policy may be disregarded for "some more severe acts of misconduct."

12. Respondent does not dispute that the following steps in the Progressive Discipline Policy were taken, although she disputes the factual particulars of such disciplinary actions:

a) September 2006, Step I Verbal Reprimand, DuPont Middle School, based on inappropriate comments made during a parent conference;

b) October 2006, Step II Written Reprimand, DuPont Middle School, based on inappropriate, racial comments to students;

c) May 2007, Step III Five-Day Suspension, DuPont Middle School, for battery upon a student;

d) February 2008, Step II Written Reprimand, Paxon Middle School, for threatening to shove a broom down a student's throat.

13. If the instant charges are supported, Respondent's misconduct during school year 2007-2008 would constitute "Step Three," the final step of the Progressive Discipline Policy, which justifies termination of her employment.

14. The instant charges are based on an incident that occurred on March 19, 2009, at Paxon. During the fourth period (toward the end of the school day), six students reported to the sixth-grade administrative office at Paxon and reported that their creative writing teacher, Respondent, would not allow them into her classroom. Ronnie Williams was the assistant principal and the sixth-grade house administrator at that time.

Mr. Williams instructed the school's security officer, J.R. Johnson, to escort the students back to the classroom to find out what was going on, because they had no passes or referrals from the teacher, as required by school policy. Mr. Johnson returned about 15 or 20 minutes later with the students and reported that, contrary to school policy, Respondent still refused to allow them back into her class, and that she stated she would be writing them referrals.

15. Two of the students, K.W. (female) and D.P. (male), told Mr. Williams that Respondent had pushed K.W. and also stepped on K.W.'s foot. D.P. stated that Respondent had hit him in the face with a book. After that, because of the seriousness of the allegations, Mr. Williams asked each student to complete a written statement of what they observed in the classroom. The students were kept separated from one another while they wrote their statements, so that Mr. Williams could observe them. Mr. Williams testified that the children did not have an opportunity to speak with one another or to compare statements, and did not collaborate in any manner when the written statements were done. Mr. Williams then individually interviewed each student. Each of the student's statements was consistent with one another and with K.W.'s and D.P.'s accounts.

16. According to the students' written statements (all of which were entered into evidence without any objection from

Respondent) and interviews, D.P. and K.W. had entered Respondent's classroom before the final bell had rung. After she entered the class, K.W. realized she had left her purse with another student and stepped out of the class to retrieve it. D.P. reported that he asked Respondent for permission to go the restroom, which she granted. Both children had put their book bags and books down in the classroom. D.P. reported that when he returned, there was a line of students about four or five deep waiting outside the classroom trying to get in. Respondent was standing in the doorway blocking their entrance and trying to close the door against the students. D.P. went around the line to try to get back in the classroom, reminding Respondent that she had given him permission to go the restroom. Nonetheless, she would not let him back in. Instead, she twisted D.P.'s arm to remove his hand from the classroom door handle, pushed him back and back-handed him with a book across the bridge of his nose and his face. When K.W. tried to enter the classroom to retrieve her book bag, Respondent yelled at her and pushed her back with her forearm and elbowed her two or three times in the chest and in the course of doing so, Respondent also stepped on K.W.'s foot and scratched her. After striking K.W. and D.P., Respondent pushed them out of the classroom door and sent them and four other children to

Mr. Williams, the sixth-grade house administrator, without passes or referrals.

17. The following morning, Mr. Williams sent an e-mail to the principal, Dr. Darrell Perry, summarizing the incident. Mr. Williams described a telephone conversation he had with Ms. W. (mother of K.W.), in which Ms. W. told Mr. Williams that her daughter reported to her that Respondent had made several derogatory racial comments to students in class, including using the phrase "negro power," which Ms. W. found to be offensive.

18. The mothers of both K.W. and D.P. came to the school to complete statements. Ms. P. also filed a formal complaint against Respondent to the DCSB police officer on duty at Paxon, Officer Green.

19. Mr. Williams received a referral from Respondent concerning K.W. on the date of the incident, Thursday, March 19, 2009, but did not receive a referral concerning D.P. until Monday, March 23, 2009. Mr. Williams concluded from this delay that "the reason the referral [for D.P.] was written was because there were allegations made against Respondent from D.P."

20. Mr. Williams also observed on the date of the incident a recent scratch on K.W.'s arm that K.W. told him was caused by Respondent.

21. Respondent called Ms. P. (mother of D.P.) on March 19, 2009, telling her that Respondent was writing her son up for

skipping class. When Ms. P. tried to ask her about the details, Respondent proceeded to talk about other students in her class. When Ms. P. asked Respondent to tell her what happened with her son, Respondent got short with her and hung up. About five or ten minutes later, her son, D.P., called her and told her that when he got to the classroom, he asked Respondent for permission to go to the restroom, which Respondent granted. When he returned to the classroom, there was a line of children at the door of the classroom trying to get in, and Respondent was in the middle of an altercation with another female student, K.W. Respondent and K.W. were "going back and forth," and D.P. said that he saw Respondent push K.W. and then step on K.W.'s foot. When he tried to enter the classroom, Respondent pushed him and hit him in the face with a book.

22. When Ms. P. returned home, she received a call from Ms. W., the mother of K.W. Prior to the telephone conversation, Ms. P. had never spoken to Ms. W. They did not know each other because they lived in different parts of town. D.P. and K.W. did not have a chance to speak with each other after the incident, because it was the end of the day and Ms. P picked up her son from the office when he telephoned her. The story K.W. told her mother concerning the incident with Respondent was the "same exact thing that my son had just told me when I picked him up from school and when he had called me."

23. Prior to this incident, D.P. had received only one referral at any time in his school history for an altercation with another student. Ms. P.'s testimony was consistent with the written statement that she made on March 20, 2009, the day after the incident.

24. At the hearing, D.P. testified that after the warning bell had rung, but prior to the late bell ringing, he asked Respondent if he could leave the classroom and go to the restroom. Respondent said yes. When he was trying to get back into the classroom, another student was also trying to get into the class to get her things. Respondent was pushing her and stepped on her foot. When D.P. tried to go in, Respondent pushed him and then she hit him in the face with a book. D.P., a small-framed, 11-year-old male of only about five feet tall at the time of the incident, demonstrated how Respondent had hit him, and described the book she used as an oversized literature book with a hard cover. He demonstrated and testified that Respondent hit him with the book across the face, striking him in the nose, that it hurt him when she struck him and that it looked like it was intentional on her part and not an accident. D.P.'s testimony was consistent with the written statement he made to Mr. Williams on the day of the incident.

25. Upon receipt of the incident report, DCSB's Office of Professional Standards (OPS) initiated an investigation. The

investigation was primarily handled by OPS Investigator John G. McCallum, an experienced former detective with the Jacksonville Sheriff's Department and investigator with the State Attorney's Office, now serving DCSB.

26. While the principals generally handle Step I and Step II disciplinary actions, OPS normally investigates more serious cases, such as the instant case, alleging a battery on a student.

27. Within days of the incident, on Monday, March 23, 2009, Mr. McCallum went to the school and interviewed Assistant Principal Ivey Howard, who was in charge of curriculum; Mr. Williams, the sixth-grade house administrator; student-victim K.W.; student-victim D.P.; Security Officer Johnson; and Christina Price, a reading resource teacher assigned to Respondent's classroom that day. Mr. McCallum also attempted to interview Respondent, but she elected to provide her statement through her counsel. Mr. McCallum also reviewed all the statements that Mr. Williams had received from the students and Ms. P., the mother of D.P.

28. When he individually interviewed students D.P. and K.W., Mr. McCallum asked them also to demonstrate with him what happened, putting Mr. McCallum in the positions that they were in relative to Respondent and the other students. This helps him evaluate witness credibility, in that sometimes a child

witness will demonstrate details in the "role play" that he or she may not have put down in the written statement. Similarly, D.P. demonstrated to Mr. McCallum that Respondent "back-handed him" with a workbook across the bridge of his nose and across his face and yanked, twisted, and pulled his arm.

29. Mr. McCallum reported that K.W.'s and D.P.'s verbal statements from his interviews were consistent with their and the other students' written statements.

30. Respondent's version of the events of March 19, 2009, differs dramatically from those of the seven student and two adult witnesses. Respondent asserted that six students were seven minutes late to class, yet she allowed them in the class and wrote their names on the tardy log. She then stated that two students, C.B. and B.P. were "skipping class" and that she saw them at the end of the hallway. Although this detail was not mentioned in her written statement (and is completely contradictory to the testimony of Paxon Principal Darrell Perry), Respondent testified at the hearing that the teachers at Paxon were required to keep their classroom doors locked because "this is the inner city where guns were rampant in our classrooms and outside." She stated that someone knocked on the classroom door, and when she opened it, three students, K.W., D.P., and V.C. (a male student), ran out of her classroom. She then said that the three students stopped "at my door," and K.W.

tried to come back in to get her "stuff" from the room and in doing so "slammed" her body into her and cursed at Respondent, demanding her "stuff." Respondent claims to have received an injury from that contact which was treated at an emergency walk-in medical clinic later that evening. She further testified that V.C. and D.P. "forcefully kept the door ajar" as she attempted to close it "to diffuse the situation." Further, contrary to all of the students' statements, Respondent denies pushing or striking any student, although she admits she may have "accidentally" stepped on K.W.'s foot. In her written statement, she asserted that she "wrote referrals on all students who were outside, except A.W." In fact, the only referrals she wrote were for K.W. and D.P.

31. Mr. McCallum found the interviews with the two student victims to be credible and consistent. Conversely, he found Respondent's statement to be markedly distinct from the other statements.

32. Respondent's claim that she was injured and sought medical treatment is doubtful when she failed to report any such claim to the school's administration nor produce at any time any records or medical reports to support this claim.

Prior Discipline: A Pattern of Similar Misconduct

Paxon Middle School - February 2008 (Step II Written Reprimand)

33. Respondent was hired by Dr. Darrell Perry, principal of Paxon, to teach English and Language Arts to sixth-grade Paxon students beginning with the 2007-2008 school year, which was also Dr. Perry's first year at Paxon. Dr. Perry selected Respondent from the "voluntary surplus list" and interviewed her for the position. Based on her experience as a "seasoned English language arts teacher," he hired Respondent. Dr. Perry was aware of Respondent's prior disciplinary history when he brought her to Paxon, partly because Respondent had to serve out a suspension she received while at DuPont the prior school year for a Step III disciplinary action charging battery upon students. Notwithstanding her prior disciplinary history, Dr. Perry testified that he believed Respondent possessed the right skills and was willing to give her an opportunity to grow in a different setting.

34. Nonetheless, on May 24, 2008, Dr. Perry issued to Respondent a Step II Written Reprimand for Respondent's "inappropriate and offensive" remarks made and actions taken with female student, A.H., on February 14, 2008, in which A.H. alleged that Respondent placed a broom handle in A.H.'s face and stated, "I will shove this broom down your throat." Before issuing the discipline, however, Dr. Perry referred the matter

to the OPS (Director John Williams and Investigator Leroy Starling) to investigate. Based on their investigation, interview of Respondent, and review of witness statements, Investigator Starling issued his report sustaining the allegations.

35. Allen Moore, who was, at the time of the A.H. incident, assistant principal at Paxon and eighth-grade house administrator, performed the initial investigation of the alleged misconduct, which was part of his responsibilities as house administrator. Mr. Moore recalled that A.H. came to his office, directly from Respondent's class, and told him that after a verbal exchange between the two, Respondent held a broom handle in A.H.'s face and threatened to shove the broom handle down her throat. Mr. Moore then selected at random five other students from Respondent's class, those whom he knew to be credible and good students, and separately interviewed them and asked them to prepare statements. He also asked A.H. to prepare a written statement. Each student confirmed A.H.'s statement that Respondent threatened to put the broom handle down A.H.'s throat. Mr. Moore concluded that the incident took place as A.H. had stated.

36. In direct contrast to this set of facts, according to Respondent, one of the other female students in the class picked up the broom and asked if she could sweep the floor. Respondent

testified that she thought the student was going to hit A.H. or sweep her feet, because A.H. had tripped her. She asked the student to put the broom away. Respondent took the broom from her and was on her way to put it away, stating that she was walking away from A.H., when A.H. began cursing at her, telling Respondent to move or she would "beat" her "a - - " with the broom. Respondent stated that she responded: "and what should I do, stick [the broom] in your mouth?"

37. With respect to the level of discipline he gave to Respondent for the incident, a Step II Written Reprimand, Dr. Perry testified that while he could have given her a Step III termination based on the allegations of the A.H. incident and Respondent's previous Step III discipline issued at Dupont for similar behavior, he decided to give her a Step II. Dr. Perry believed Respondent had some strengths that she could contribute at Paxon. He hoped to rehabilitate her.

38. Shortly before the end of the 2006-2007 school year and before requesting a voluntary transfer to Paxon, Respondent received a five-day suspension for battery upon two DuPont students and for physically blocking another student from leaving her classroom in three separate incidents that took place within days of one another, on April 24, May 2, and May 3, 2007.

April 24, 2007 - Alleged Battery of Female Student P.C.

39. In the first occurrence on April 24, 2007, a female seventh-grade student, P.C., was trying to leave Respondent's classroom. P.C. reported that in an attempt to keep her from leaving the classroom, Respondent grabbed P.C.'s ID lanyard, which was around P.C.'s neck, as P.C. walked by Respondent and Respondent yanked her back, leaving her with a rope burn mark on her neck.

40. P.C. reported the incident right away to Assistant Principal Shannon Judge, who testified at the hearing and, shortly after the occurrence, had prepared a written statement to then-school Principal Gary Finger summarizing the incident and her investigation. P.C. stopped Ms. Judge in the hallway, coming straight from the classroom moments after the incident with Respondent, and was visibly upset. P.C. told Ms. Judge that Respondent had stopped her from leaving the room and had grabbed her by her badge as she attempted to leave, which she wore on a lanyard around her neck. P.C. said to Ms. Judge, "look at this," and P.C. turned around and held up her hair in the back. Ms. Judge could see "one dark red line and a smaller red line" on the back of P.C.'s neck, which was not a cut, but which looked like a "burn" where the lanyard had been pulled. P.C. told her that some students had been told by Respondent to stay after class, but that P.C. was not one of them. When P.C.

tried to leave the classroom, Respondent blocked the doorway. As she attempted to go around Respondent, Respondent grabbed her ID lanyard. Ms. Judge, who was on her way to another assignment in the lunch room, instructed P.C. to go to Ms. Judge's office and fill out an incident form. When Ms. Judge returned to her office approximately 45 minutes later, she reviewed P.C.'s statement, interviewed her, and took a photograph of the marks on the child's neck, which by then had somewhat faded.

41. P.C. had listed some witnesses in the classroom to the event, whom Ms. Judge interviewed and asked to complete written statements. Ms. Judge also "pulled some random kids from the class" who were not listed on P.C.'s list, each of whom also individually gave written statements and were separately interviewed by Ms. Judge. Ms. Judge also called Respondent and took a verbal statement from her over the telephone.

42. Respondent relied upon her written statement made through her attorney, delivered to DCSB nearly three months later on July 16, 2007, concerning the incident with P.C.

43. Respondent admitted she did have "words" with P.C., and that P.C. was trying to leave her class when she was not supposed to, but that she had not grabbed P.C. by her lanyard. Perhaps, she stated, her lanyard "got caught" on Respondent's arm as P.C. tried to push past her. In her written statement, Respondent also speculated that the marks on P.C.'s neck may

have been "self-inflicted or occurred at another time and place." When further questioned about that statement at the hearing, Respondent replied: "She did yank on her lanyard, but I don't know if that was sufficient to leave a mark." When questioned whether Ms. Judge would have any reason to lie about what P.C. told her and the marks on P.C.'s neck that Ms. Judge observed, Respondent replied: "I don't know of any reason." Respondent's statement and testimony, with no evidence to support it, does not support her version of the events.

44. Based on Ms. Judge's investigation, the consistency among all the student witness statements with P.C.'s account, the fact that P.C. was a good student who rarely, if ever, received any referrals or got into trouble, and Ms. Judge's observation of the red marks on P.C.'s neck within moments after the altercation, Ms. Judge concluded that the P.C.'s allegations were substantiated and recommended to Mr. Finger that Respondent should be disciplined for her actions.

May 2, 2007 - Alleged Battery of Male Student D.W.

45. On May 2, 2007, within days of the P.C. incident, Respondent had taken her class out into the hallway so that some of the children could use the restroom. One of the male students, D.W., came out of the restroom, and, according to Respondent, she thought he had not washed his hands and was attempting to wipe his hands on Respondent. Carmen Polenco, a

science and math teacher for seven years at DuPont and a former director of a program in New York treating women dually diagnosed with psychiatric problems and drug additions and their infant children, was coming out of the administrative office on May 2, 2007, and walking down the main hallway where Respondent and her students were located. As Ms. Polanco approached, she heard students yelling "let him go, let him go" and saw that Respondent had grabbed a male student, D.W., by the collar of his shirt held up around his throat and was pushing him backwards down the hallway toward Ms. Polanco, saying something like "Oh, no you won't" to the student. Ms. Polanco demonstrated at the hearing how Respondent was holding D.W. with one hand around his shirt collar and her other hand in the air. Ms. Polanco told Respondent to stop, and she let D.W. go. D.W. yelled to her, "she grabbed me and she wouldn't let me go and I was scared she was going to hit me." After Respondent let D.W. go, Ms. Polanco noticed that Respondent had scratched the student's neck and broken his necklace. Respondent told Ms. Polanco that the student had placed his hands, open palm on the top of her shoulder. Respondent was "very angry" by this and proceeded to grab him, because, as she stated to Ms. Polanco at the time, "I did not want his dirty hands on me."

46. Ms. Polanco also made a written statement to Assistant Principal Steele the day after the incident. Mr. Steele had

also observed some of the incident, and had also memorialized his observations in a memorandum to Mr. Finger one day later.

47. Respondent's version of events again differs dramatically from all the other witnesses' testimony. Again, Respondent relied on her written statement of July 16, 2007, which she affirmed at the hearing.

48. Respondent admitted that she held D.W. by his lapel (not his collar), but stated that she was walking with him "side by side," and not walking him backwards down the hallway as Ms. Polanco observed. At the hearing, Respondent did not have any explanation for Ms. Polanco's contradictory testimony other than that she "was not within close proximity enough to see what happened." In light of Ms. Polanco's testimony that she had a clear view of exactly what Respondent was doing, and the other witness testimony, Respondent's testimony is not credible.

May 3, 2007 - Blocking Student's Exit

49. One day later, while he was still in the process of writing up Respondent for the previous two incidents, Mr. Finger received a phone call in his office from Respondent telling him that one of her students would not leave her classroom. When he got there, Mr. Finger took the student out in the hallway and asked him why he did not leave the room. The student responded that it was because Respondent was blocking the door and would not let him out. Mr. Finger then selected some other students

at random from the class to find out if the student was telling the truth, and the other student statements were consistent - that Respondent had blocked the door.

50. Respondent's statement summary as to these three incidents is typical of her response of outright and blatant denial to all of the allegations of misconduct that have been lodged against her over a period of years and across two schools and administrations. Despite credible evidence to the contrary, Respondent has repeatedly placed the blame on the very students that she victimized.

51. As a result of the three incidents, on May 23, 2007, Mr. Finger recommended that Respondent receive a Step III five-day suspension, which was approved by DCSB, and which Respondent served out after she voluntarily transferred to Paxon.

DuPont Middle School - October 2006 (Step II Written Reprimand)

52. Respondent received a Step II Written Reprimand for comments that she made in class and during a parent-teacher conference in October 2006, in which Mr. Finger and then-Assistant Principal Loretta Hines were also present. The meeting was initiated by the female parent when her son came home and told her that Respondent exhibited prejudicial behavior toward the African-American children as compared to the white children, and made racist comments in the classroom. For example, the child told his mother that Respondent would let the

white children go to the bathroom, but not the African-American children, and that she told a white student that she had to send him to a "time-out" because she didn't want the others to think she was a racist. She also referred to African-Americans as "negroes" and called male black students "boy." During the conference, Respondent told the parent that she had no problem referring to African-American male students as "boy" because in her country of origin, Jamaica, this was not an offensive salutation. Respondent made other comments in the conference that angered the parent, and "embarrassed" and "disgusted" Ms. Hines and Mr. Finger. At that time, Respondent had been in the United States for approximately 16 years.

53. Respondent stipulated that she used the term "boy" to address male students, but denies she used it specifically with African-American male students. At the hearing, rather than testify concerning the specific allegations of her misconduct, Respondent "reaffirmed" the written statement she made to Principal Finger on October 18, 2006, in which she denied being a racist, although she admitted that "sixteen years should be long enough to be able to use the proper terminology. However, habits do not just disappear overnight."

DuPont Middle School - September 2006 (Step I Verbal Reprimand)

54. Respondent received a Step I verbal warning for telling students to "shut their mouths" or "shut their faces."

In her written statement, Respondent stated that she told a female student on at least one occasion to "shut her face because her face was in mine." She also stipulated to this fact in her pretrial stipulation.

CONCLUSIONS OF LAW

55. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding, pursuant to Sections 120.569, 120.57(1), 120.65, and 1003.57(3)(i)(e), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311.

56. Petitioner has the burden to prove the allegations in the petition. See Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49 (2005); see also Devine v. Indian River County Sch. Bd., 249 F.3d 1289, 1291-92 (11th Cir. 2001); cert. denied, 537 U.S. 815 (2002).

57. While the standard of proof applied to license revocation cases is clear and convincing evidence, the standard of proof applied to employment termination cases is a preponderance of the evidence. See Ferris v. Austin, 487 So. 2d 1163 (Fla. 5th DCA 1986); see also So. Fla. Water Mgmt. Dist. v. Caluwe, 459 So. 2d 390 (Fla. 4th DCA 1984).

58. Respondent is an instructional employee as defined by Subsection 1012.01(2), Florida Statutes. DCSB has the authority

to suspend or terminate instructional employees pursuant to Subsections 1012.22(1)(f) and 1012.33(6)(a), Florida Statutes.

59. Respondent was discharged "for cause," as that term is defined under Sections 3 and 4 of the Tenure Act.

60. Section 3 states that a "tenured" teacher shall not be discharged or demoted unless there is a finding of one or more causes outlined at Section 4.

61. In turn, Section 4 lists the following five "causes" for discharge or demotion of a teacher: (a) immoral character or conduct, or physical or mental incapacity to perform one's duties; (b) persistent violation or willful refusal to obey state laws or regulations adopted by authority of law relating to public schools; (c) excessive absence or refusal and inexcusable failure to discharge one's duties of employment; (d) dishonesty while employed or conviction of a crime of moral turpitude; and (e) professional incompetency.

62. According to the 2009 Notice of Termination, the specific "cause" for termination is Respondent's violation of FDOE Rules 6B-1.001(2) and (3), and 6B-1.006(3)(a) and (e).

63. Florida Administrative Code Chapter 6B-1 is the "Code of Ethics of the Education Profession in Florida." Conduct which violates the Code of Ethics and impairs a teacher's effectiveness provides ground for discharging a teacher's

employment and taking adverse action on the teacher's professional teaching certificate.

64. As the statutory language suggests, the acts and omissions listed in the statute, such as "misconduct in office, incompetency, gross insubordination, willful neglect of duty, or a crime involving moral turpitude" are illustrative, not exhaustive, and other acts or omissions may also constitute "just cause." Dietz v. Lee County Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA 1994) (Blue, J., specially concurring).

65. FDOE Rule 6B-1.001(2) states that:

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.

66. FDOE Rule 6B-1.001(3) states that:

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.

67. FDOE Rule 6B-1.006, which sets out the "Principles of Professional Conduct for the Education Profession in Florida" states, in pertinent part, that:

(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:
- (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.
 - (b) Shall not unreasonably restrain a student from independent action in pursuit of learning.
 - (c) Shall not unreasonably deny a student access to diverse points of view.
 - (d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.
 - (e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.
 - (f) Shall not intentionally violate or deny a student's legal rights.
 - (g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.
 - (h) Shall not exploit a relationship with a student for personal gain or advantage.
 - (i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

68. Any conduct which violates the Principles of Professional Conduct for the Education Profession in Florida supports dismissal of a teacher. See Duval County Sch. Bd. v.

Trawick, 1996 Fla. Div. Adm. Hear. Lexis 3209 (DOAH Case No. 95-5328) (Petitioner/school board alleged in its notice of dismissal that respondent violated Rules 6B-1.006(5)(d) and 6B-1.006(5)(h), and was thereby subject to dismissal based upon a preponderance of the evidence). See also Spurlin v. Sch. Bd. of Sarasota County, 520 So. 2d 294 (Fla. 2d DCA 1988) ("Seven deadly sins" enumerated in statute apply to suspension or dismissal of personnel under contract).

69. The term "misconduct" under FDOE Rule 6B-1.001 is to be broadly interpreted to achieve the underlying intention of the Code of Ethics: to maintain a high moral standard for members of the education profession. Adams v. State Prof'l Practices Counsel, 406 So.2d 1170, 1172 (Fla. 1st DCA 1981); and Negrich v. Dade County Bd. of Public Instruction, 143 So. 2d 498 (Fla. 3d DCA 1960).

70. To establish a violation of FDOE Rules 6B-1.001 or 1.006 the misconduct at hand must be "so serious as to impair the individual's effectiveness in the school system." Alachua County School Bd. v. Carlisle, 2007 Fla. Div. Adm. Hear. Lexis 76 (DOAH Case No. 06-3812) (citing MacMillan v. Nassau County Sch. Bd., 629 So. 2d 226, 228 (Fla. 1st DCA 1993)).

71. Such "impairment" may be shown by direct evidence or may be inferred from the misconduct itself. See Palm Beach County Sch. Bd. v. Scott, 2009 Fla. Div. Adm. Hear. Lexis 646

(DOAH Case No. 08-2831) (" . . . the School Board must either offer . . . evidence that her effectiveness was impaired, or the conduct must be so serious that it would be appropriate to infer from the conduct itself that her effectiveness was impaired."). See also Lee County Sch. Bd. v. Lewis, 2005 Fla. Div. Adm. Hear. Lexis 1327 (DOAH Case No. 05-1450) ("A teacher's misconduct can be so serious that it can be reasonably inferred from the misconduct itself that the teacher's effectiveness in the school system is impaired.") citing Purvis v. Marion County Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000); Walker v. Highlands County Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000).

72. Conduct which breaches the trust and confidence needed in a healthy student-teacher relationship raises an inference of impairment. See Miami-Dade County Sch. Bd. v. Spivey, 2007 Fla. Div. Adm. Hear. Lexis 126 (DOAH Case No. 06-1073) (Finding an inference of impairment based on dishonesty and stating "[A]s a teacher and coach, Sapp was required to be a role model for his students. To be effective in this position of trust and confidence, he needed to maintain a high degree of trustworthiness, honesty, judgment, and discretion.").

73. Conduct which inspires negative feelings in the classroom, by definition, seriously impairs a teacher's effectiveness and supports not only termination of one's employment, but also adverse action one's teaching certificate

based on violations of FDOE Rules 6B-1.001 and 6B-1.006. See Castor v. Roberts and Marsh v. Roberts, 1992 Fla. Div. Adm. Hear. Lexis 6910 (DOAH Case No. 91-6677) (Conduct contrary to Rules 6B-1.001 and 6B-1.006, which produces negative feelings in the classroom, diminishes the effectiveness of the appellant's teaching ability. Such conduct is a valid ground for suspension of a teaching certificate and dismissal from employment.).

74. Making inappropriate comments to students can violate FDOE Rules 6B-1.001 and 6B-1.006. See Roberts v. Castor, 629 So. 2d 311, 313 (Fla. 1st DCA 1993) (students' testimony "that they and other students were uncomfortable, embarrassed, mad, or upset about the sexual innuendoes and comments" supported termination of employment based on violations of Rules 6B-1.001 and 6B-1.006). Accord, Castor v. Wright, 1988 Fla. Div. Adm. Hear. Lexis 4361 (DOAH Case No. 92-4906) (Action of teacher in subjecting students to sexual suggestion and inappropriate language constitutes fostering of, as opposed to protection from, condition harmful to learning, health or safety. His conduct constituted exposure of those students to unnecessary embarrassment or disparagement.); see also Educ. Prac. Comm'n v. Gryte, 1986 Fla. Div. Adm. Hear. Lexis 4038 (DOAH Case No. 85-1446) (A teacher's use of inappropriate language, physical gestures and promotion of a classroom structure which allowed inappropriate behavior, confrontations, and verbal and

physical attacks constitutes a violation of Rule 6B-1 and supported revocation of this teaching certificate.).

75. Making inappropriate racial comments constitutes a violation of FDOE Rule 6B-1.001(3). See Gallagher v. Jenkins, 2001 Fla. Div. Adm. Hear. Lexis 2366 (DOAH Case No. 00-3345PL) ("Petitioner has established that Mr. Jenkins violated Rule 6B-1.001(3), Florida Administrative Code, by his [aggressive] actions towards [teachers and school administrators], his calling Haitian-American students monkeys, his saying that he had a gun, his calling another teacher 'Deadwood,' and his 'nothing' letter concerning [a school administrator].").

76. Physical conduct against a student is grounds for termination of a teacher because it violates the teacher's Code of Ethics, FDOE Rule 6B-1.006, impairs effectiveness as a teacher, and constitutes misconduct in the office. See Miami-Dade County Sch. Board v. Wilner Saint Juste, DOAH Case No. 00-2937 (Final Order Aug. 22, 2001) (Respondent pushed, grabbed and choked a student in between two water fountains, which was witnessed and testified to by three students); Orange County School Board v. Bingham, 1993 Fla. Div. Adm. Hear. Lexis 5087 (DOAH Case No. 92-3138) (Respondent's continued failure to comply with directives given to maintain class order resulted in injury to student when Respondent shoved student into a locker,

therefore causing school board to lose confidence in Respondent's effectiveness as a teacher and justified Respondent's termination); Miami-Dade County Sch. Board v. Wagensommer, 2009 Fla. Div. Adm. Hear. Lexis 641 (DOAH Case No. 08-2680) (School Board has "just cause" to terminate Respondent's employment because she pushed and grabbed students, forced them to stand for long period of time with book bags on their heads, and threatened to throw students out of the classroom window, all adding up to "misconduct in the office"); Miami-Dade County Sch. Board v. Moore, 2004 Fla. Div. Adm. Hear. Lexis 2445 (DOAH Case No. 03-3102) (Respondent was found to commit misconduct in the office and that "just cause" existed for suspension and dismissal because of Respondent's "use of violent, abusive, and inappropriate language with students and wholly inappropriate physical restraint of the students constitutes violations of 6B-1.006(3)(a) and (e)" and "are so serious as to impair his effectiveness in the school system."); Sch. Bd. of Miami-Dade County v. Al-Quddus, 2000 Fla. Div. Adm. Hear. Lexis 4900 (DOAH Case No. 98-4624) (Respondent's effectiveness as a classroom teacher was found to be impaired and violated the standards for professional conduct when Respondent "physically mistreated a student, subjected students to derogatory names, and used unprofessional and inappropriate

language in the classroom" which justified employment termination).

77. The evidence clearly demonstrates that Respondent, engaged in a long-term pattern of inappropriate physical contact and language with her students. The inappropriate acts include telling students to "shut their face"; referring to male African-American students as "boy" and making other inappropriate racial comments; threatening to "shove a broom down" a female student's throat; yanking a female student by her ID lanyard around her neck, causing a mark on the child's neck; grabbing a student by his collar and pushing him down the hallway, scratching his neck and breaking his necklace in the process; repeatedly pushing and shoving a female student with her forearm and elbow, causing a scratch on the child; and hitting a small-framed male student across his face with a book. Through her actions, Respondent has actually created and fostered conditions that were harmful to her students' mental and physical health and safety, exposed students to unnecessary embarrassment or disparagement, and discriminated against students based on their race and color, all in violation of the teacher's Code of Ethics. This type of conduct clearly provides grounds for dismissal.

78. Respondent's behavior over a period of years, in two schools, and across two administrations, demonstrates a pattern

of misjudgment and willful failure to comply with state and district rules and regulations. See Alachua County School Bd. v. Mosley, 1998 Fla. Div. Adm. Hear. Lexis 5473 (DOAH Case No. 97-1680) ("[Respondent's] prior acts of misconduct may be considered in determining the existence of proper cause for termination or discipline.") (citing C.F. Industries, Inc. v. Long, 346 So. 2d 864 (Fla. 2d DCA 1978)); State v. Wadsworth, 210 So. 3d 4 (Fla. 1968); Johnson v. Sch. Bd. of Dade County, Florida, 578 So. 2d 387 (Fla. 3d DCA 1991). Respondent's refusal to acknowledge few, if any, of her transgressions, even in the face of overwhelming evidence, shows her lack of understanding, or even disregard, of the negative impact of her actions on the students entrusted to her care.

79. Petitioner proved by a preponderance of the evidence that Respondent violated Florida Administrative Code Rules 6B-1.001(2) and (3), and 6B-1.006(3)(a) and (e).

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Duval County School Board enter a final order terminating the employment of Barbara Paul as a teacher.

DONE AND ENTERED this 6th day of May, 2010, in Tallahassee,
Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 2010.

COPIES FURNISHED:

David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

Carol Mirando, Esquire
City Hall
St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

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

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

Ed Pratt-Dannals, Superintendent
Duval County School Board
1701 Prudential Drive
Jacksonville, Florida 32207

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.