

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 09-4092
)
 WALKYRIA DOLZ,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on October 23, 2009, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Janeen Richard, Esquire
Miami-Dade County School Board
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For Respondent: Mark Herdman, Esquire
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STATEMENT OF THE ISSUES

The first issue in this case is whether, as the district school board alleges, a teacher called her students "tonto" or stupid, threw books to the ground and forced students to pick them up, and put her feet and shoes in students' faces; if these allegations are proved to be true, than it will be necessary to

decide whether the school board has just cause to suspend the teacher for 10 workdays, without pay.

PRELIMINARY STATEMENT

At its regular meeting on July 15, 2009, Petitioner School Board of Miami-Dade County suspended Respondent Walkyria Dolz without pay for 10 workdays. This action resulted from allegations that in November 2008, Ms. Dolz had called her students "tonto" or stupid, thrown music books to the ground and forced students to pick them up, and put her feet and shoes in students' faces.

Ms. Dolz timely requested a formal administrative hearing to contest Petitioner's action. On July 31, 2009, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings. Thereafter, on August 21, 2009, the School Board filed its Notice of Specific Charges.

At the final hearing, which took place on October 23, 2009, Petitioner called the following witnesses: A. L., A. W., R. S., and E. S., who are students; Vivian Rodriguez-Tabio, Assistant Principal, Riverside Elementary School; Sharon López, Principal, Riverside Elementary School; Investigator Terri Chester; and Joyce Castro, District Director, Office of Professional Standards. Petitioner's Exhibits 1 through 25 were received in evidence. Ms. Dolz testified on her own behalf and called Noemi Artega and Sarah Powell, both of whom are teachers, as

witnesses. Respondent's Exhibits 1 through 40 were admitted into evidence.

The final hearing transcript was filed on November 23, 2009. Each party timely filed a Proposed Recommended Order before the established deadline of December 10, 2008.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2008 Florida Statutes.

FINDINGS OF FACT

1. The Miami-Dade County School Board ("School Board"), Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Miami-Dade County Public School System.

2. As of the final hearing, Respondent Walkyria Dolz ("Dolz") had been a teacher for more than 40 years. Having begun her career in Cuba, Dolz emigrated in 1974 from her native country to the United States, where she continued to teach in New York City and Miami. An employee of the Miami-Dade County Public School System for the preceding 15 years, Dolz worked as a music teacher at Riverside Elementary School during the 2008-09 school year, which is the period relevant to this case.

3. Dolz did not have a classroom of her own at Riverside. Rather, she traveled from room to room, using a cart to transport books and musical instruments. Dolz visited each class to which she was assigned once per week for one hour. In

this way, in a given year, she taught hundreds of Riverside students in grades one through five.

4. In her long career, Dolz had never been the subject of a disciplinary proceeding until this matter began. Indeed, she had been (and as of the hearing continued to be) a respected member of Riverside's teaching staff. Much evidence supports this finding, but the following statement, which was written on May 21, 2009, by Riverside's principal, Sharon López, is instructive:

Ms. Dolz has been under my supervision as school principal since December 12, 2002. She has always exhibited professional behavior as a classroom teacher and properly represented Riverside Elementary in all school functions off-campus. Ms. Dolz has met standards for classroom observations since her employment as a music teacher at Riverside Elementary in 1998.

The allegations [at issue here] are out of character for Ms. Walkyria Dolz.

5. The alleged misconduct primarily giving rise to this case allegedly occurred in November 2008, in a fifth-grade classroom. Based on the stories of several students, the School Board avers that Dolz: (a) attempted to kick a student in the face; (b) waived a sandal in (or at) another student's face; (c) dropped a book to quiet the students; and (d) called the students "tonto," a Spanish word the School Board contends means

"stupid." Dolz consistently has denied having done any of these things and testified to that effect at hearing.

6. The young children who testified against Dolz did not impress the undersigned as being accurate and reliable witnesses. The account of R. S.—who claimed that Dolz silently had approached his desk, removed her sandal (while balancing on one foot), and swung the footwear at his face as he sat there in fear, all without saying a single word during the entire event, which lasted at least three minutes (according to R. S.)—was incredible on its face. While it is not inconceivable that Dolz (or any teacher) could snap in the face of some provocation or incitement, the undersigned can neither believe nor find (on this evidence at any rate) that a veteran teacher with a clean disciplinary record suddenly became a bizarre, zombie-like creature for several minutes out of an otherwise ordinary workday and wordlessly set upon a well-behaved student for no reason.

7. Similarly implausible was A. L.'s testimony about the foregoing alleged incident and another where Dolz supposedly nearly kicked a student named L. J. in the face with her foot, while standing on one leg, because L. J. was not playing his instrument properly. A. L.'s testimony in this regard is rejected not only because Dolz, 67, appeared to be physically incapable of kickboxing a child, but also because the

undersigned is skeptical that a teacher who has taught for decades without incident—and who has always behaved professionally except, allegedly, in this one instance—would lose control of herself to such a degree merely because of a student's poor musical performance.¹

8. A third student, A. W., testified that Dolz hit R. S. and L. J. on their arms. The School Board itself did not accept this testimony as credible, and neither does the undersigned. A. W.'s lack of credibility on this significant matter undermined his credibility in general.

9. On balance, Dolz was a more credible witness than R. S., A. L., or A. W. The undersigned accepts her denial of wrongdoing as truthful and finds that, more likely than not, Dolz did not attempt to kick or strike any student.

10. The remaining charges are much less serious. Several children testified that, when the students were talkative or inattentive, Dolz threw a textbook on the floor or a table to make a loud noise, which would get the class's attention. Dolz denies ever having done this. The undersigned finds that the evidence is insufficient to prove that Dolz used a textbook to threaten, embarrass, or humiliate a student, or otherwise in a manner that was objectively unseemly, untoward, or unreasonable under the circumstances.

11. Some children testified that Dolz referred to her students as "tonto," an allegation which she denies. There is conflicting evidence concerning the meaning of the word "tonto" in Spanish. While the word can mean "stupid," as the School Board maintains, it also means "silly," as Dolz points out, and, depending on the context, can be used to suggest that someone is acting like a clown or fooling around. Based solely on the evidence presented, the undersigned cannot find that the Spanish term "tonto" is insulting *per se*, and the absence of any proof regarding the context in which Dolz allegedly uttered the word precludes a finding that she used it in a hurtful manner, *if* she used it at all.

Determinations of Ultimate Fact

12. The greater weight of the evidence fails to establish that Dolz is guilty of the offense of misconduct in office as defined in Florida Administrative Code Rule 6B-4.009(3).²

13. The greater weight of the evidence fails to establish that Dolz is guilty of the offense of unseemly conduct, which is prohibited under School Board Rule 6Gx13-4A-1.21.³

14. The greater weight of the evidence fails to establish that Dolz is guilty of violating the School Board's Code of Ethics, which is set forth in School Board Rule 6Gx13-4A-1.213.⁴

CONCLUSIONS OF LAW

15. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to Sections 1012.33(6)(a)2., 120.569, and 120.57(1), Florida Statutes(2009).

16. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. School Board of Dade County, 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J. concurring).

17. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Luskin v. Agency for Health Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Department of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Department of Business and Professional Regulation, 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Department of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Department of Professional Regulation,

Board of Medicine, 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

18. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). See McNeill v. Pinellas County School Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter County School Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); MacMillan v. Nassau County School Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

19. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

20. In its Notice of Specific Charges filed on August 21, 2009, the School Board advanced three theories for suspending Dolz: Misconduct in Office (Count I); Unseemly Conduct in Violation of School Board Policy (Count II); Violation of School Board Policy Establishing a Code of Ethics (Count III).

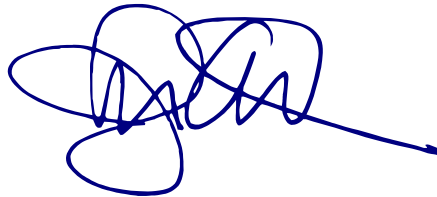
21. Each of the School Board's several counts depends on allegations that, in November 2008, Dolz "call[ed] her students "tonto" or stupid, threw music books to the ground and forced students to pick them up, and put her feet and shoes in the

students' faces." The School Board, however, failed to prove these essential allegations by a preponderance of the evidence. Thus, all of the charges against Dolz necessarily fail, as a matter of fact. Due to this dispositive failure of proof, it is not necessary to render additional conclusions of law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order exonerating Dolz of all charges brought against her in this proceeding and awarding her the back pay, plus benefits if any, which accrued while she served the previously imposed suspension of 10 workdays.

DONE AND ENTERED this 8th day of January, 2010, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of January, 2010.

ENDNOTES

^{1/} To be sure, the School Board was not required to prove, as an element of its case, a motive for Dolz's alleged misbehavior. But given that Dolz, a respected teacher of many years' service, has been accused by a few young children (out of the hundreds she teaches each year) of engaging in physically aggressive behavior one day in the classroom, which accusation Dolz flatly denies, and given as well that the alleged misbehavior is out of character for Dolz, some persuasive evidence concerning *why* Dolz allegedly lashed out might have added weight to A. L.'s testimony. The absence of such evidence, while not necessarily fatal to the School Board's case, makes A. L.'s testimony harder to believe.

^{2/} Florida Administrative Code Rule 6B-4.009, which prescribes the "criteria for suspension and dismissal of instructional personnel," provides, in pertinent part, as follows:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

The Code of Ethics of the Education Profession (adopted in Florida Administrative Code Rule 6B-1.001) and the Principles of Professional Conduct for the Education Profession in Florida (adopted in Florida Administrative Code Rule 6B-1.006), which are incorporated in the definition of "misconduct in office," provide in pertinent part as follows:

6B-1.001 Code of Ethics of the Education Profession in Florida.

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) 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.

(3) 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.

* * *

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

(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.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

^{3/} School Board Rule 6Gx13-4A-1.21, which provides as follows:

All persons employed by the School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected

to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

^{4/} Like Fla. Admin. Code R. 6B-1.006(3), School Board Rule 6Gx13-4A-1.213 requires that a teacher "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" and prohibits a teacher from "intentionally expos[ing] a student to unnecessary embarrassment or disparagement."

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.