

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ESCAMBIA COUNTY SCHOOL BOARD, )  
)  
Petitioner, )  
)  
vs. ) Case No. 09-3952  
)  
ERICA ADAMS-BROWN, )  
)  
Respondent. )  
\_\_\_\_\_)  
ESCAMBIA COUNTY SCHOOL BOARD, )  
)  
Petitioner, )  
)  
vs. ) Case Nos. 09-3953  
) 09-4998  
JOE NATHAN KING, )  
)  
Respondent. )  
\_\_\_\_\_)

RECOMMENDED ORDER

This cause came on for final hearing before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings, on October 5 and 6, 2009, in Pensacola, Florida.

APPEARANCES

For Petitioner: Joseph L. Hammons, Esquire  
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For Respondents: Christine C. Hardin, Esquire  
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## STATEMENT OF THE ISSUES

The consolidated cases present two issues for resolution. For both Respondents, Erica Adams-Brown and Joe Nathan King, the issue presented is whether they should remain suspended without pay pending the disposition of criminal charges that are disqualifying offenses under Section 1012.315, Florida Statutes. The second issue, relating only to Respondent Joe Nathan King, is whether there is just cause for his suspension without pay for five days based upon allegations of misconduct.

## PRELIMINARY STATEMENT

Both Respondents, Erica Adams-Brown and Joe Nathan King, are teachers employed by the Escambia County School Board (School Board) under contracts of instruction authorized under Section 1012.33, Florida Statutes. On March 24, 2009, Joe Nathan King was arrested and charged with the offense of battery on a minor, a violation of Subsection 784.03(1)(a), Florida Statutes. On April 30, 2009, Erica Adams-Brown was arrested and charged with the offense of battery on a minor in violation of Subsection 784.03(1)(a), Florida Statutes. The Florida Statutes provide, at Section 1012.315, that instructional personnel who are convicted of certain criminal offenses are ineligible for employment in any position that requires direct contact with students. Among the enumerated disqualifying offenses is the offense of battery when the victim of the offense is a minor.

Both Ms. Adams-Brown and Mr. King were charged by the Office of the State Attorney with battery on a minor. Both were suspended without pay by the School Board pending disposition of the criminal charges. Both were advised that if exonerated, they would be reinstated with back pay and benefits. Both filed petitions challenging the action of the School Board in suspending them without pay pending the disposition of criminal charges. Additionally, Respondent Joe Nathan King was disciplined for misconduct, involving striking a student on March 16, 2009. For that misconduct, the same conduct that caused his arrest, Mr. King was suspended without pay for five days. Both Respondents requested an administrative hearing to challenge the actions taken as set forth above. All actions and issues set forth in the petitions were consolidated for hearing. The hearing was conducted on October 5 and 6, 2009, in Pensacola, Florida.

At the consolidated hearing, Petitioner introduced into evidence Exhibits numbered 1 through 13, all of which were admitted without objection. Petitioner called as witnesses Marsha Higgins, Dr. Alan Scott, Krysta Wilcox, Whitney Meadows, Mary Catherine Coyle, and Denesia Reed. Respondents called as witnesses Larry Reid, Polly Rogers, Mabeline James, Jennifer Summerland, and Glaude Sharon Hall, Erica Adams-Brown, and Joe Nathan King. Respondents submitted no exhibits. The Transcript

of the hearing was filed on November 10, 2009. Petitioner and Respondents were directed to file proposed recommended orders no later than thirty days after the filing of the transcript. Petitioner's Proposed Recommended Order was timely filed on December 3, 2009. Respondents' Proposed Recommended Order was late filed on December 15, 2009, but will be accepted for purposes of writing this Recommended Order.

References to statutes are to Florida Statutes (2008) unless otherwise noted.

#### FINDINGS OF FACT

1. Petitioner, Escambia County School Board, is a duly-constituted school board charged with the duties of operating, controlling, and supervising all free public schools within the School District of Escambia County, Florida. Petitioner has the authority to discipline employees pursuant to Subsection 1012.22(1)(f), Florida Statutes.

2. Petitioner has implemented the Ethics in Education Act (the "Act"), as passed by the Florida Legislature effective July 1, 2008. Under the Act, multiple enumerated offenses constitute "disqualifying offenses" from employment in a position requiring contact with students. Among the disqualifying offenses is the offense of battery when the victim is a minor.

3. Petitioner has implemented the Act by suspending without pay, instructional personnel who are charged with disqualifying criminal offenses under Section 1012.315, Florida Statutes. While that provision does not disqualify a teacher unless convicted or found to have committed the criminal offense, Petitioner finds it appropriate to suspend teachers without pay pending the final disposition of disqualifying criminal charges.

4. Petitioner does not suspend teachers with pay pending the disposition of criminal charges because of the inability to recover compensation paid for services not provided in the event the teacher is convicted or found to have committed the offense. Petitioner does provide full restoration of back pay and benefits in the event teachers who are suspended without pay pending the disposition of criminal charges are exonerated of those charges.

5. When a teacher is accused of striking a student, both the Department of Children and Family Services, as well as the school resource officer are informed. If a criminal investigation is warranted, a school resource officer from another school conducts the investigation in order to avoid a conflict of interest.

6. Respondent Joe Nathan King has been employed as a teacher with Petitioner since 1974.

7. At all times material to this proceeding, Mr. King taught mathematics classes under a professional services contract at Woodham Middle School and coached basketball.

8. Mr. King was charged with striking a student and causing injuries. The Superintendent of Schools recommended to Petitioner that Mr. King be suspended without pay for five days.

9. Between sixth and seventh period classes on March 16, 2009, Mr. King was on hall-duty, as was usual. Based upon a surveillance camera (employing two frames per second intervals rather than continuous video) mounted in the hallway, a student, later identified as A.D. (the student's initials will be used to protect the student's identity) was seen to have struck Mr. King from behind, causing his eyeglasses to fall from his head and scatter down the hall by the lockers.

10. After being struck from behind by A.D., Mr. King testified that he reflexively reached back and grabbed A.D. to prevent further contact and to restrain him. Mr. King also appeared to push A.D. away from him. Once A.D. was restrained and the situation defused, Mr. King told A.D. to go to class. A.D. complied.

11. Four different teachers witnessed at least part of the confrontation between Mr. King and A.D. Ms. Christy Wilcox was in the hallway about 10-15 feet away from Mr. King. She described in a statement that she saw Mr. King strike A.D. about

the head and neck. She did not see the original altercation that led to Mr. King striking A.D.

12. Ms. Whitney Meadows, a teacher, also witnessed the March 16 event. She saw two boys run out of Ms. Read's room and run into Mr. King, knocking his glasses off. She then saw an altercation involving pushing and shoving.

13. Ms. Mary Catherine Coyle is another teacher who witnessed the March 16 event. She was standing at the doorway of Ms. Read's and Ms. Meadows' classroom. She witnessed a student striking Mr. King from behind. She saw Mr. King turn around and strike the student with his left hand.

14. Ms. Denisha Read, a teacher, also witnessed the events of March 16. She heard Mr. King make a comment about his glasses. She heard a student say words to the effect of "it was not me." She saw Mr. King strike the student near the shoulder area with a "closed fist." She described the student as being "very upset." She tried to calm the student who was crying. She reported the matter to the principal.

15. The video images from the camera that recorded the incident, are consistent with a composite version of the four teacher witnesses to the event. Mr. King appears to have been struck from behind by a young student, identified as A.D., knocking his eyeglasses to the floor. Mr. King then acted reflexively to defend himself and first pushed A.D. away, then

grabbed him by the arm and had words with him. A.D. then went into Ms. Read's classroom, his seventh period class.

16. After the incident, A.D. left Ms. Read's classroom and was seen standing alone in the video by the student lockers. Ms. Read took him a tissue because he was crying, then went to report the matter to the principal.

17. The video tape offered into evidence does not show Mr. King striking A.D. with either an open or a closed fist. Mr. King appears to be pushing A.D. away from him after the contact that knocked his glasses off his head.

18. Mr. King had been subject to a written reprimand in 1993 for slapping a student, which he denied at the time. No other evidence of disciplinary action taken by Petitioner against Mr. King during the course of his teaching career was offered at hearing.

19. Mr. King acknowledged that he was arrested on March 24, 2009, and charged with a criminal offense of battery on a minor pursuant to Subsection 784.03(1)(a), Florida Statutes, and that the charge remained pending at the time of the hearing on October 5 and 6, 2009. He did not have a date for its resolution at the time of the hearing.

20. Mr. King was suspended without pay on June 22, 2009. He was still under suspension without pay at the time of the hearing in October.



21. Mr. King testified that he got along reasonably well with the teachers who testified that he struck a student. He was not aware of any reason why the teachers would testify untruthfully regarding his actions on March 16, 2009.

22. At all times material to this proceeding, Respondent Erica Adams-Brown taught reading classes under a professional services contract at Woodham Middle School.

23. Ms. Adams-Brown was accused of striking student J.M. and causing injuries after her seventh period class on April 3, 2009, the day before the start of spring break.

24. On April 3, 2009, the principal of Woodham Middle School, Marsha Higgins, was called at home and notified of allegations that Ms. Adams-Brown had struck a student. Ms. Higgins returned to school and met with the parents of the child who was allegedly struck.

25. A pre-disciplinary meeting was held with Ms. Adams-Brown in attendance. Petitioner investigated the matter along with Ms. Higgins and concluded sufficient evidence did not exist to discipline Ms. Adams-Brown. She was authorized to return to the classroom with pay pending Petitioner's investigation on April 7, 2009. However, Ms. Adams-Brown was contacted at home during spring break and was informed she would not be allowed to return to her classroom to teach after the break, but would be reassigned with pay.

26. Ms. Adams-Brown was informed of a proposed disciplinary action by Petitioner on April 23, 2009. Petitioner concluded its investigation on April 29, 2009, and found the allegations of battery on a student to be unfounded.

27. On April 30, 2009, Ms. Adams-Brown was arrested and charged with battery on a minor pursuant to Subsection 784.03(1)(a), Florida Statutes. Ms. Higgins played no role in Ms. Adams-Brown being charged with a crime by the Office of the State Attorney. Ms. Adams-Brown was reassigned with pay on that date pending the outcome of the law enforcement investigation and criminal charges. Ms. Adams-Brown was suspended without pay pending disposition of the criminal charges on July 22, 2009.

28. Ms. Adams-Brown remained under suspension without pay as of the date of the hearing. She did not know when the criminal matter would be resolved.

29. Ms. Adams-Brown believed that Mr. King's and her suspensions were racially motivated. She and several other teachers, including a teachers' union representative met with Assistant School Superintendent Dr. Alan Scott on April 29, 2009, to discuss these allegations of racial discrimination.

30. The testimony at hearing concerning the substance of the April 29, 2009, meeting with School District officials did not support a claim of racial discrimination or disparate

treatment as the basis for Petitioner's role in the incidents involving Mr. King and Ms. Adams-Brown.

31. Petitioner has consistently implemented its policy of suspending teachers without pay pending the disposition of criminal charges. No exceptions have been made. Of the six teachers identified by Dr. Scott who were suspended by Petitioner since July 21, 2008, on the basis of pending criminal charges for disqualifying offenses, all were suspended without pay. Concerning the issue of race, three of those suspended were white and three were African-American.

32. Ms. Adams-Brown testified she was not aware of other teachers who were charged with disqualifying criminal offenses who were not suspended without pay pending the disposition of those charges.

#### CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

34. The Florida Ethics in Education Act, Chapter 2008-108, Laws of Florida, includes, among other things, a provision that instructional personnel are disqualified from any position that requires direct contact with students if those personnel are ineligible for employment under Section 1012.315, Florida Statutes. See § 1001.42(7), Fla. Stat.

35. Section 1012.315, entitled "Disqualification from Employment," provides that a person is ineligible for employment in any position that requires direct contact with students in a school district if the employee has been convicted of any of the enumerated offenses. The enumerated offenses include battery, a criminal offense pursuant to Section 784.03, if the victim of the offense is a minor. § 1012.315(2)(a), Fla. Stat.

36. Any member of the School District's instructional staff "may be suspended or dismissed at any time during the school year if the charges against the teacher include, among other things, misconduct in office or being found guilty of or entering a plea to a crime involving moral turpitude. Whenever such charges are made against an employee of the district school board, the district school board may suspend such person without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and, his or her back pay shall be paid." § 1012.33(6)(a), Fla. Stat.

37. Every person employed as a member of the instructional staff in any district school system is subject to dismissal during the term of the contract only for just cause. "Just cause includes, but is not limited to, the following instances defined by the Rules of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or

found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, a crime involving moral turpitude."

§ 1012.33(1)(a), Fla. Stat.

38. Petitioner suspended both Respondents without pay pending the disposition of criminal charges. Each of the Respondents is charged with battery on a minor, a criminal offense that would disqualify Respondents from further employment as teachers in the School District if they are found guilty or found to have committed the offense. The School Board has the lawful authority to suspend Respondents without pay, whenever such charges are made, pending the disposition of those charges. § 1012.33(6)(a), Fla. Stat. Respondents, through counsel, do not dispute the authority of the School Board to suspend them without pay pending the disposition of the disqualifying criminal charges; however, Respondents contend the School Board's authority has been implemented in a discriminatory manner because of the Respondents' race. Both Respondents are African-American. Respondents presented no direct evidence of discrimination but, instead, rely upon what Respondents contend is evidence of disparate treatment, specifically, that non-minority employees similarly situated are not treated in a similar manner.

39. In order to establish a prima facie case of disparate treatment based on racial discrimination, the employee must

prove that similarly situated non-minority employees were more favorably treated and, if the employer tenders a non-discriminatory explanation for such treatment, the employee must prove the explanation is pretextual. For purposes of establishing a prima facie case of employment discrimination, similarly situated employees are those who report to the same supervisor, have been the subject of the same standards governing performance, and must have engaged in conduct similar to plaintiff's, without such differentiating conduct that would distinguish their conduct from those who are claimed to be similarly situated. Valenzuela v. Globeground North America, LLC, 18 So. 3d 17, 22-23 (Fla. 3rd DCA 2009). While Petitioner, the School Board, generally has the burden of proving "just cause" for disciplinary action taken, Respondents have the burden of proving they are victims of discriminatory motivated actions. See Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."); Florida Department of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 414 (Fla. 4th DCA 1974) ("The burden of proof is on the party asserting the affirmative of an issue before an Administrative Tribunal.").

40. Both Ms. Adams-Brown and Mr. King were suspended without pay pending the disposition of criminal charges that would disqualify them from further employment were they found guilty or found to have committed the offenses charged. Petitioner has just cause to suspend Ms. Adams-Brown and Mr. King without pay pending the disposition of criminal charges. Having a teacher continue in a classroom student-contact position while facing criminal charges that could disqualify him or her from further employment not only creates potential for disruption of the learning environment, but the teacher may be further jeopardized by student accusations of additional similar misconduct. The actions taken by the School Board in suspending Mr. King and Ms. Adams-Brown without pay were consistent with the best interest of the School District, the students at large, as well as Mr. King and Ms. Adams-Brown. Both Respondents will be reinstated and reimbursed all back pay and benefits in the event they are exonerated of the criminal offenses.

41. Respondents both raised issues regarding the fairness of the process for reviewing the claims of battery against them. Specifically, they argue that Petitioner has not applied the same "just cause" standard for all school district employees. The claims of Respondents that they were singled out for disparate treatment because of their race, is not supported by

the evidence. The Respondents' attempts to point to other instances where disciplinary action was or was not taken based on reported misconduct by an instructor are inadequate to establish disparate treatment. Respondents identified no one similarly situated to them for which any comparison of discipline could be made. Importantly, the School District presented undisputed evidence that subsequent to the implementation of the Ethics in Education Act, the School District had consistently and without exception suspended every teacher without pay pending the disposition of criminal charges that would otherwise disqualify them from further employment under the authority of Section 1012.315, Florida Statutes. Of the six teachers who have been suspended without pay pending the disposition of criminal charges with the condition that they would be reinstated and reimbursed under the new Act, three were African-American and three were white. For these similarly situated teachers, the treatment was the same accorded Ms. Adams-Brown and Mr. King. There is no evidence of disparate treatment for Respondents and, more specifically, there is no evidence of disparate treatment predicated upon race.

42. While Petitioner concluded there was not sufficient evidence to take disciplinary action against Ms. Adams-Brown with respect to the allegations that she struck a student, Petitioner did conclude there was sufficient information to take



disciplinary action against Mr. King for striking a student. The School District does not permit corporal punishment. Specifically, the School District does not permit teachers to strike students. The evidence of record establishes that, on March 16, 2009, Joe Nathan King struck a student after an initial confrontation that was caused by the student. While there may be an element of provocation by the student which led Mr. King to defend himself, teachers are simply not permitted to strike students in response. Mr. King did so. Four separate teachers saw, to varying degrees, the events that involved Mr. King striking the student. The same conduct on the part of Mr. King was corroborated by the video that covered the activities of Mr. King at that time in the hallway at Woodham Middle School. Striking the student by Mr. King is just cause for the School District's action in suspending him without pay for five days.

43. In consideration of the above findings of fact and conclusions of law there is just cause for suspension without pay of Respondents, Erica Adams-Brown and Joe Nathan King, pending the disposition of disqualifying criminal offenses. Furthermore, there is just cause for the disciplinary suspension of Mr. King without pay for five days. In the event Ms. Adams-Brown and/or Mr. King are not found guilty and/or not found to have committed the criminal offenses, Petitioner has agreed they

will be reinstated to their instructional positions with back pay and benefits. In the event of Mr. King's reinstatement, the five-day suspension without pay may be imposed through a reduction in the back pay reimbursement of five days' pay.

RECOMMENDATION

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

RECOMMENDED that the Escambia County School Board enter a final order affirming the suspension without pay of Respondents pending the disposition of disqualifying criminal charges, and the suspension without pay of Respondent, Joe Nathan King, for five days for engaging in misconduct, including striking a student.

DONE AND ENTERED this 18th day of December, 2009, in Tallahassee, Leon County, Florida.



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ROBERT S. COHEN  
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Filed with the Clerk of the  
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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.