

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 09-5271
	)	
PEGGY A. HILL,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

On April 7, 2010, a formal administrative hearing was conducted in Bradenton, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Brian C. Ussery, Esquire  
Erin G. Jackson, Esquire  
Thompson, Sizemore, Gonzalez &  
Hearing, P.A.  
201 North Franklin Street, Suite 1600  
Tampa, Florida 33601

For Respondent: Melissa C. Mihok, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the Manatee County School Board (Petitioner) has just cause to terminate the employment of Peggy A. Hill (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated September 9, 2009, the Petitioner alleged that on May 4, 2009, the Respondent slapped a male student in the face with sufficient force to leave a red mark. The Respondent denied the allegations and requested a formal administrative hearing. On September 25, 2009, the Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled the hearing to commence on November 10, 2009, in accordance with suggested dates of availability provided by the parties.

On October 22, 2009, the Respondent filed an Unopposed Motion to Continue Hearing, which was granted, and the hearing was rescheduled for December 9, 2009.

On November 24, 2009, the Petitioner filed a Motion to Amend the Administrative Complaint to include an allegation that the Respondent pulled a chair out from under a male student, causing him to fall to the floor. The Respondent did not oppose the motion to amend, but on December 2, 2009, filed a Joint Motion to Continue Hearing to provide an opportunity to conduct discovery related to the new allegation. The Joint Motion to Continue Hearing was granted, and the hearing was rescheduled to commence on April 7, 2010.

At the hearing, the Petitioner presented the live testimony of 12 witnesses, one additional witness by deposition, and had

Exhibits 1 through 3 admitted into evidence. The Respondent testified on her own behalf, presented the testimony of three witnesses by deposition, and had Exhibits 1, 2, and 5 admitted into evidence.

A Transcript of the hearing was filed on April 26, 2009. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Petitioner has employed the Respondent as a teacher since October 1997. As a member of the Petitioner's instructional staff, the Respondent's employment can be suspended or terminated only for just cause.

2. During the 2008-2009 school year, the Respondent was assigned to teach at Palmetto High School.

3. On May 4, 2009, the Respondent overheard a male student entering her fourth period science class and using profanity while talking with his classmates.

4. The Respondent asked the student to refrain from the conversation. When he failed to comply with her request, the Petitioner slapped the student on the left side of his face with the open palm of her right hand. A red mark appeared on the student's face at the location of the physical contact.

5. The Respondent's assertion that the physical contact with the student was minimal was not supported by the greater weight of the evidence and has been rejected.

6. The Petitioner prohibits corporal punishment. Teachers who violate the Petitioner's prohibition against corporal punishment have typically been terminated from employment.

7. In compliance with the Petitioner's prohibition, the Palmetto High School student disciplinary policy did not authorize corporal punishment as a penalty for classroom profanity.

8. According to school policy, the punishment for a first incident of profanity in the classroom was a one-day time out for the student, and a second incident of classroom profanity was punishable by a two-day time out.

9. On May 8, 2009, the Respondent was placed on paid administrative leave pending the outcome of an internal investigation conducted by Debra Horne, a specialist in the Petitioner's Office of Professional Standards.

10. Upon completion of Ms. Horne's investigation, school officials and school board personnel recommended to Superintendent Timothy McGonegal that the Respondent's employment be terminated.

11. After discussions with the president of the teacher's union, Superintendent McGonegal attempted to resolve the matter without terminating the Respondent's employment.

12. Superintendent McGonegal recommended that the Respondent be suspended without pay for a period of 20 days, that she participate in anger management training, and that she return to an annual contract.

13. The Respondent rejected the superintendent's disciplinary recommendation and requested a formal hearing. The request was forwarded to the Division of Administrative Hearings, and the hearing was scheduled.

14. Prior to the hearing, the Respondent was transferred to Braden River Middle School for the 2009-2010 school year.

15. On or about October 20, 2009, the Respondent was attempting to teach the students in her third period science class. One student was behaving in a disruptive manner while the Respondent was teaching and was leaning forward in his chair with the rear legs of the chair off the floor.

16. The Respondent approached the misbehaving student from behind and put her hands on the back of his chair.

17. The student fell from the chair and onto the floor. The student testified that he was embarrassed when he fell, but the evidence established that he was laughing at the time of the event, as were some of his classmates.

18. The Petitioner has alleged that the Respondent pulled the chair out from underneath the student, thereby causing him to fall to the floor. The Respondent testified that she did not pull the chair out from underneath the student.

19. At least one student present at the time testified that the Respondent grasped the back of the student's chair and pulled it away from the student.

20. At least one student saw the Respondent with her hands on the chair, but did not see her pull the chair from underneath the student.

21. The Respondent testified that students routinely fell from the chairs onto the floor because the chairs slipped on the tiled classroom floors. There was no credible evidence that students routinely fell from the chairs onto the floors. There was no evidence that the Respondent reported any safety concern to school officials related to the allegedly slipping chairs.

22. The Respondent testified that she was concerned the chair was going to slide out from underneath the student and that she placed her hands on the back of the chair in an effort to have the student sit properly and to prevent the chair from slipping. There was no credible evidence that the Respondent directed the student to sit properly prior to placing her hands on his chair, and her testimony on this point has been rejected.

23. The evidence presented at the hearing was insufficient to establish whether the Respondent pushed or pulled the chair once she placed her hands on the chair back. However, it was clear that the Respondent's actions precipitated the student's fall from the chair to the floor, because the fall occurred immediately after the Petitioner placed her hands on the back of the chair.

24. Other students in the class reported the incident to another Braden River Middle School teacher who forwarded the information to appropriate school personnel.

25. On October 22, 2009, the Respondent was placed on paid administrative leave pending the outcome of another internal investigation conducted by Ms. Horne.

26. After the conclusion of Ms. Horne's investigation, school officials and board authorities recommended to Superintendent McGonegal that the Respondent's employment be terminated. Superintendent McGonegal agreed with the recommendation.

#### CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

28. The Petitioner has the burden of proving, by a preponderance of the evidence, the allegations underlying the

proposed termination of the Respondent's employment as set forth in the Administrative Complaint. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). As set forth herein, the burden has been met.

29. At all times material to this case, the Respondent was employed by the Petitioner as a member of the instructional staff. Subsection 1012.33(1)(a), Florida Statutes (2009), states that persons so employed may be dismissed during the term of the contract only for just cause and provides as follows:

Just cause includes, but is not limited to, the following instances, as defined by rule 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, any crime involving moral turpitude.

30. Section 6.11(1) of the Policies and Procedures Manual of the School Board of Manatee County provides as follows:

Suspension or Termination of Employees:

Any employee of the School Board may be temporarily suspended, with or without pay, or permanently terminated from employment, for just cause including, but not limited to, immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policy and Procedures Manual of the School District of Manatee County, violation of any applicable Florida

statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

31. The Amended Administrative Complaint asserts that the Respondent's action constitute immorality and misconduct in office. Florida Administrative Code Rule 6B-4.009 provides the following relevant definitions:

(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.

(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.

32. The incidents established by a preponderance of the evidence presented in this case do not constitute immorality. The evidence fails to establish that the Respondent's conduct was "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." It should be noted that this alleged violation was not included within the first Administrative Complaint, but was incorporated when the

Administrative Complaint was amended to set forth the allegation that the Respondent intentionally pulled the chair from under the misbehaving student, an allegation that was not proven at the hearing.

33. As to misconduct in office, the Code of Ethics of the Education Profession in Florida, set forth at Florida Administrative Code Rule 6B-1.001, provides 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.

34. The Principles of Professional Conduct for the Education Profession in Florida are set forth at Florida

Administrative Code Rule 6B-1.006 and provide, in relevant part, as follows:

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.

35. The evidence establishes that the Respondent committed misconduct in office, violating the Principles of Professional Conduct for the Education Profession in Florida, by slapping a high school student and by causing a middle school student to fall from a chair onto the floor. The Respondent failed to make reasonable efforts to protect the students from conditions harmful to learning and the students' health and exposed the students to unnecessary embarrassment or disparagement. The

evidence establishes that the misconduct was sufficiently serious to impair the Respondent's effectiveness as a teacher in the school system.

36. Additionally, the Respondent violated the Petitioner's policy prohibiting corporal punishment when she slapped the Palmetto High School student. Although Superintendent McGonegal initially attempted to resolve the incident through disciplinary action short of employment termination, the policy violation is sufficient under Section 6.11(1) of the Policies and Procedures Manual of the School Board of Manatee County to warrant termination of employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Manatee County School Board enter a final order terminating the employment of Peggy A. Hill.

DONE AND ENTERED this 25th day of May, 2010, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of May, 2010.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.