

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                                    )  
  )  
vs.    )     Case No. 09-6216  
  )  
MELISSA GRAVES,                                    )  
  )  
          Respondent.                                 )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Administrative Law Judge Eleanor M. Hunter of the Division of Administrative Hearings conducted the final hearing by video teleconference at sites in Sarasota and Tallahassee, Florida, on February 10, 2010.

APPEARANCES

For Petitioner: Erin G. Jackson, Esquire  
Thompson, Sizemore, Gonzalez  
& Hearing, P.A.  
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Tampa, Florida 33602

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

The issue is whether Petitioner has just cause to suspend Respondent from her employment as a teacher for three days without pay.

PRELIMINARY STATEMENT

In an Administrative Complaint dated October 23, 2009, the Superintendent of Schools for Manatee County notified Respondent of his recommendation that the School Board suspend her without pay for 3 days for violating school board policies. In response, Counsel for Respondent filed a Request for Evidentiary Hearing dated October 26, 2009. On November 12, 2009, the documents were forwarded to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct the hearing. Initially assigned to Judge Carolyn S. Holifield, the case was transferred to the undersigned to conduct the hearing. The final hearing was held, as previously scheduled, on February 10, 2010.

At the hearing, Petitioner presented the testimony of Katherine Hayes, Joy Bauknight, and Debra Horne. Petitioner's Exhibits 1, 1A, 1C, 1D, 1F, 1G, 1H, 2, 5, 7, 8, and 10 were received in evidence.

In addition to her own testimony, Respondent presented the testimony of Michelle Laurent, Mallorie Ray, Lynn Kessler, and Katherine Hayes. Respondent's Exhibits 1, 2, 4, 7, 11, and 14 were received in evidence. The two-volume Transcript was received at the Division of Administrative Hearings on March 15, 2010. Proposed Recommended Orders were timely filed on April 12 and 13, 2010.

FINDINGS OF FACT

1. Petitioner, the School Board of Manatee County, Florida, ("Petitioner" or "School Board") is responsible for providing public education in Manatee County, Florida.

2. Melissa Graves has been employed with the School District of Manatee County ("District") since August 8, 2000.

3. During the 2008-2009 school year, Ms. Graves was a kindergarten teacher at Gullett Elementary School ("Gullett"). The last day for students that year was June 4, 2009, and the last day for teachers was June 5, 2009.

4. Katherine Hayes was the principal at Gullett. At the end of the school year, Ms. Hayes required all teachers to complete an "End of Year Checklist" ("checklist") and a "Room Prep Check List for Summer Cleaning" ("room prep list").

5. On May 27, 2009, Ms. Hayes emailed the checklist to all teachers. The list includes such tasks as: taking textbook inventories, returning media center materials, completing end of year report cards, making a final check of cumulative folders, stripping hallway bulletin boards, and completing a room prep list. The checklist was to have been checked off by the responsible person, for example, Ms. Hayes when she received the report cards, and the head custodian when tasks on the room prep list were completed. The deadline was June 5, 2009.

6. On June 1, 2009, Ms. Hayes sent a second email to all teachers with the room prep list attached to give specific instructions on how to prepare classrooms for summer cleaning.

7. In May 2009, Ms. Hayes informed Ms. Graves that she was being reassigned from kindergarten to second grade. Ms. Graves was unhappy about the reassignment and, near the end of the month, the teacher's union filed four grievances against Ms. Hayes on behalf of Ms. Graves. The grievances were dismissed by the Superintendent. Ms. Graves' allegation that her reassignment was in retaliation for the filing of the grievances is not supported by the testimony regarding the dates of the two events.

8. On June 3, 2009, Ms. Hayes sent an email to teachers confirming that thirteen teachers, including Ms. Graves, would be assigned to new grades and, therefore, moving to different classrooms for the 2009-2010 school year. She requested that they coordinate their efforts with teachers who were moving in/out, and told them to contact the head custodian to schedule assistance. On June 5, 2009, Ms. Hayes sent another reminder for teachers to complete the checklist and return it to her before leaving that day for the summer.

9. At the end of the day on June 5, 2009, Ms. Graves and one other teacher, Kim McAfee, who had additional duties checking off teachers' technology checklists, had not completed their own checklists and room prep lists. Both teachers were to return and

complete the tasks on January 8, 2009. Ms. McAfee did, but Ms. Graves did not.

10. Ms. Graves testified that, rather than prepare her room on June 5, 2009, she chose to work with Ms. McAfee on an I-Movie project, an end of the year gift she gave to her students' parents that apparently had some defects in the sound. She was also transferring files from one laptop to another. Ms. Graves' technology projects took longer than expected because Ms. McAfee, who was assisting her, was being interrupted by teachers who needed her to verify that they had completed the technology portions of their checklist.

11. Ms. Graves noted that, in an email on May 20, 2009, Ms. Hayes instructed teachers not to "dismantle" their classrooms to avoid disrupting students, but to begin separating personal items from school materials, so that they could take their personal items home. Ms. Graves never "dismantled" her room before the last day; nevertheless, Ms. Graves knew that she did not need to wait until the last day to begin the task. She had been able to prepare her room for the summer in one day for the previous nine years.

12. Ms. Graves also testified that three teacher's aides who came to assist her on the morning of June 5th made a bigger mess and mixed her personal items with school property while she was out of the room. She gave the aides essentially no

instructions except to take everything off the walls and pack them. She then returned to her project in Ms. McAfee's room.

13. On June 8, 2009, Ms. Graves, who was teaching summer school classes at another elementary school, assured Ms. Hayes that she would get the room prep task done during the three weeks of summer school by returning each day after summer classes ended, at 1:15 p.m., and working until Gullett closed at 3:15 p.m. Ms. Graves came some but not every day during the three weeks.

14. Ms. Hayes returned from a vacation on June 16 or 17, 2009, and the head custodian informed her that all classrooms were prepared for summer cleaning except Ms. Graves'. Ms. Graves blamed her failure to complete the tasks on rainy weather, her parents' having turned in their rented truck, and car troubles.

15. On July 30, 2009, Ms. Hayes sent Ms. Graves a letter telling her that the classroom had to be prepared for summer cleaning no later than August 6, 2009.

16. Ms. Graves testified that she did not receive the letter until August 5, 2009, and that day she sent Ms. Hayes an email stating that she had just received the letter, but was unable to comply with the deadline because she would be out-of-town until the following week.

17. On August 11, 2009, Ms. Hayes and two custodians packed and cleared Ms. Graves' classroom, and placed her personal items in storage in an empty classroom. They also cleared various items,

including toys and books from desks, tables, and the floor, and emptied shelves and unplugged electronic devices.

18. On August 19, 2009, Ms. Hayes sent Ms. Graves a letter instructing her to remove her personal items from storage by the end of the day on August 21, 2009, and she did.

#### ULTIMATE FINDING OF FACT

19. Ms. Graves repeatedly failed to follow the directive of her supervisor, Ms. Hayes. The School Board established that Ms. Graves has no reasonable explanation for her failure to prepare her classroom for summer cleaning, and that Ms. Graves' conduct constituted gross insubordination.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceedings, pursuant to Section 120.569 and Subsections 120.57(1) and 1012.33(6)(a), Florida Statutes (2007).

21. Petitioner is an "agency" under the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (APA). §§ 120.52(1)(b) and (6), Fla. Stat. e.g. Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

22. Respondent is a teacher, as defined by Subsection 1012.33(1)(a), Florida Statutes, and is employed by Petitioner under an annual contract, for the school year 2008-2009.

23. Section 1012.27(5), Florida Statutes (2009), gives the Superintendent the authority to recommend to that the School Board suspend an employee; and Section 1012.22(1)(f), Florida Statutes (2009), gives the School Board the authority to suspend school personnel without pay and benefits.

24. Petitioner has adopted a Policy and Procedures Manual, which includes the district work rules. Section 6.11(1) of the Policies and Procedures Manual provides that:

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 Policies 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.

25. The burden of proof in this case is on the Petitioner to establish by a preponderance of evidence that Respondent has committed the violations alleged 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. 3rd DCA 1990). A "preponderance of the evidence" is the "greater weight of the evidence," or evidence that more likely than



not tends to prove a certain proposition. Gross v. Lyons. 763 So. 2d 276 (Fla. 2000).

26. Florida Administrative Code Rule 6B-4.009(4) defines gross insubordination or willful neglect of duties as a "constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority."

27. In this case, a preponderance of the evidence showed that Ms. Graves willfully failed to comply with direct orders from her supervisor and that her conduct constituted gross insubordination.

28. Gross insubordination is just cause for the suspension of Respondent for three days without pay pursuant to Chapter 6.11 of the Policies and Procedures Manual of the School Board.

#### CONCLUSION

Based on the foregoing proposed Findings of Fact and Conclusions of Law, it is Recommended that the School Board of Manatee County enter a final order suspending Respondent, Melissa Graves, from employment for three days without pay.

DONE AND ENTERED this 26th day of April, 2010, in  
Tallahassee, Leon County, Florida.



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ELEANOR M. HUNTER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th of April, 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.