

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-6987PL
)
PATRICIA ANN MACKROY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on, February 25, 2010, in Lake Wales, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward T. Bauer, Esquire
Brooks, LeBoeuf, Bennett,
Foster & Gwartney, P.A.
909 East Park Avenue
Tallahassee, Florida 32301

For Respondent: (No appearance)

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes (2007),¹ and Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(d), 6B-1.006(3)(e), 6B-1.006(3)(f),

6B-1.006(4)(b), 6B-1.006(5)(a), 6B-1.006(5)(d), and
6B-1.006(5)(f), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On May 28, 2009, Dr. Eric J. Smith, as Commissioner of Education, hereinafter referenced as Petitioner, filed an Administrative Complaint against Respondent, Patricia Ann Mackroy (Ms. Mackroy), alleging that she had violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(d), 6B-1.006(3)(e), 6B-1.006(3)(f), 6B-1.006(4)(b), 6B-1.006(5)(a), 6B-1.006(5)(d), and 6B-1.006(5)(f).

Ms. Mackroy requested an administrative hearing, and the case was transmitted to the Division of Administrative Hearings on December 23, 2009. A Notice of Hearing was issued on January 6, 2010, scheduling the hearing for February 25, 2010. On February 11, 2010, an Amended Notice of Hearing was issued, requiring the parties to check at the administration desk at the location of the hearing for a room assignment. Both notices were sent to Ms. Mackroy.

The final hearing was scheduled to commence at 9:00 a.m. Neither Ms. Mackroy nor a representative of Ms. Mackroy appeared at 9:00 a.m. The commencement of the final hearing was delayed until 9:26 a.m. to give Ms. Mackroy an opportunity to appear.

Neither she nor a representative appeared, and no communication was made to the Division of Administrative Hearings why there was no appearance.

At the final hearing, Petitioner called the following witnesses: Tiffany Holden, Janette Bell, Jennifer Leeks, Rodney Fowler, Terry Benton, and Manny Rodriguez. Petitioner's Exhibits 1 through 12 were admitted in evidence.

The Transcript was filed on March 10, 2010. Proposed recommended orders were to be filed within 20 days of the filing of the Transcript. On March 23, 2010, Petitioner filed its Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. As of the date of this Recommended Order, Respondent had filed no post-hearing submittal.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for certifying and regulating public school teachers in Florida. Ms. Mackroy is licensed to teach in the fields of emotionally handicapped and sociology pursuant to Florida Educator's Certificate No. 385206, which is valid through June 30, 2011.

2. At all times pertinent to the Administrative Complaint, Ms. Mackroy was employed as the lead teacher at the Exceptional Student Education Countywide McLaughlin Center (McLaughlin Center) in the Polk County School District.

3. On September 6, 2007, Officer Tiffany Holden, a school resource officer employed with the Lake Wales Police Department, was dispatched to McLaughlin Center to investigate a report of a disruptive student, A.H.

4. When Officer Holden arrived at McLaughlin Center, she observed A.H. sitting quietly in a chair with his arms inside his shirt, looking as if he was napping. Officer Holden also observed that the front office area was in disarray, with papers and a doughnut box on the floor and several chairs that had been overturned.

5. Ms. Mackroy told Officer Holden that A.H. had been disruptive and was responsible for overturning the chairs and throwing the papers and doughnut box on the floor. Ms. Mackroy told Officer Holden to arrest A.H. because the school staff could do nothing with him.

6. Based on Ms. Mackroy's statement that A.H. was responsible for the trashing of the front office, Officer Holden handcuffed and arrested A.H., who began to cry. A.H. was transported to the police station. He told Officer Holden that he did not throw the items on the floor and did not overturn the chairs. A.H. stated that, while he was seated outside the office door, he had observed Ms. Mackroy throw the papers on the floor and overturn the chairs.

7. Because of the conflicting evidence, Officer Holden did not charge A.H. with disorderly conduct, but took A.H. home and spoke to his mother.

8. On October 25, 2007, during an unrelated, subsequent investigation, Officer Rodney Fowler interviewed Terry Benton (Ms. Benton), who at that time was a teacher at McLaughlin Center. Ms. Benton had witnessed the incident involving A.H. and advised Officer Fowler that A.H. had not put the front office in disarray, but Ms. Mackroy had knocked over the chairs and put the papers and other items on the floor. She knew that Ms. Mackroy had falsely accused A.H., but she was intimidated by Ms. Mackroy and was afraid that Ms. Mackroy would lie in order to get her fired. Ms. Benton was told by Ms. Mackroy that she had contacts with the police department and would know if Ms. Benton said anything against her.

9. The information received from Ms. Benton concerning A.H. was relayed to Officer Holden, who filed a complaint affidavit with the State Attorney's Office charging Ms. Mackroy with filing a false police report.

10. Officer Fowler had been dispatched to McLaughlin Center on October 25, 2007, to investigate allegations that Ms. Mackroy had hit D.C., a student, on the head. During the investigation, he learned that, approximately two or three weeks before the investigation, D.C. had gotten upset during class.

Ms. Mackroy came into the classroom and took D.C. out of the classroom and told him to go to the end of the hallway. D.C. got to the end of the hallway and got on the floor, lying on his stomach. While D.C. was lying on the floor, Ms. Mackroy bent down and hit him on his head with her hand. D.C. was not trying to harm Ms. Mackroy at the time of the incident; he was crying and asking her to stop hitting him.

11. As a result of Officer Fowler's investigation, he charged Ms. Mackroy with simple battery.

12. The Polk County School District began an investigation into the incidents involving Ms. Mackroy and the two students, A.H. and D.C. At the conclusion of the investigation, it was recommended that Ms. Mackroy be terminated from her position with the Polk County School District. Ms. Mackroy resigned in lieu of termination on December 19, 2007.

CONCLUSIONS OF LAW

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

14. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

15. Petitioner has alleged that Ms. Mackroy violated the following subsections of Subsection 1012.795(1), Florida Statutes:

(1) Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

* * *

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

* * *

(g) Upon investigation, has been found guilty of personal conduct that seriously

reduces that person's effectiveness as an employee of the district school board.

* * *

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

16. Florida Administrative Code Rule 6B-1.006 constitutes the Principles of Professional Conduct for the Education Profession in Florida. Petitioner has alleged that Ms. Mackroy violated the following sections of Florida Administrative Code Rule 6B-1.006:

(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.

(f) Shall not intentionally violate or deny a student's legal rights.

* * *

(4) Obligation to the public requires that the individual:

* * *

(b) Shall not intentionally distort or misrepresent facts concerning an educational

matter in direct or indirect public expression.

* * *

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

* * *

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

* * *

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

17. The terms "gross immorality" and "moral turpitude" are not defined in the context of Section 1012.795, Florida Statutes, but guidance may be found in Florida Administrative Code Rule 6B-4.009, which provides the basis for charges upon which dismissal action by the school districts against instructional personnel may be taken. Florida Administrative Code Rule 6B-4.009 provides:

(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.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

18. "Moral turpitude" has also been defined by the Florida Supreme Court as follows:

Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though, it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated.

State ex rel. Tullidge v. Hollingsworth, 146 So. 660, 661

(Fla. 1933).

19. Petitioner has demonstrated by clear and convincing evidence that Ms. Mackroy is guilty of moral turpitude. She hit a defenseless student, and she intentionally made a false claim to law enforcement officials for the purpose of having a student arrested and removed from McLaughlin Center. Petitioner has

failed to demonstrate that Ms. Mackroy is guilty of gross immorality. There was no evidence that Ms. Mackroy's actions impaired her service in the community. Thus, Petitioner has established that Ms. Mackroy violated Subsection 1012.795(1), Florida Statutes.

20. Petitioner has established by clear and convincing evidence that Ms. Mackroy is guilty of personal conduct which seriously reduces her effectiveness as an employee of the district school board in violation of Subsection 1012.785(1)(g), Florida Statutes. A teacher who hits students without provocation and lies to get a student arrested is not an effective teacher. Her behavior intimidated other teachers.

21. Petitioner has established that Ms. Mackroy violated Florida Administrative Code Rules 6B-1.006(3)(a) and 6B-1.006(3)(f) by clear and convincing evidence. Obviously, striking a student without provocation is not a reasonable effort to protect the physical safety of a student and is a violation of a student's legal rights.

22. Petitioner has established by clear and convincing evidence that by throwing items on the floor of the front office and then lying to law enforcement officers about who did it in order to have A.H. arrested is a violation of Florida Administrative Code Rules 6B-1.006(3)(d), 6B-1.006(3)(e), 6B-1.006(4)(b), 6B-1.006(5)(a), and 6B-1.006(5)(d).

23. Ms. Mackroy intimidated Ms. Benton to the extent that Ms. Benton was afraid to inform law officials that Ms. Mackroy had given the police false information about A.H. and that Ms. Benton was afraid that Ms. Mackroy would intentionally lie in order to get Ms. Benton fired.

24. Petitioner has established that by violating the above-referenced principles of professional conduct that Ms. Mackroy has violated Subsection 1012.795(1)(j), Florida Statutes.

25. Because of the seriousness of these offenses pursuant to the disciplinary guidelines contained in Florida Administrative Code Rule 6B-11.007, permanent revocation of Ms. Mackroy's educator certification is the appropriate penalty.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Ms. Mackroy violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes; finding that Ms. Mackroy violated Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(d), 6B-1.006(3)(e), 6B-1.006(3)(f), 6B-1.006(4)(b), 6B-1.006(5)(a), and 6B-1.006(5)(d); and permanently revoking Ms. Mackroy's educator certificate.

DONE AND ENTERED this 31st day of March, 2010, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2010.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida
Statutes are to the 2007 version.

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.