

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-0371  
 )  
 PAULA PRUDENTE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on November 2, 2010, and November 3, 2010, at video teleconferencing sites in West Palm Beach and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes.

APPEARANCES

For Petitioner: Corey M. Smith, Esquire  
Elizabeth McBride, Esquire  
Palm Beach County School Board  
Post Office Box 19239  
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For Respondent: Jeffrey Sirmons, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether there is just cause for a ten-day suspension of Paula Prudente's employment with the Palm Beach County School Board.

PRELIMINARY STATEMENT

By letter Paula Prudente ("Respondent" or "Prudente") was notified that Superintendent Arthur C. Johnson would recommend to the Palm Beach County School Board at its meeting on November 3, 2010, that Respondent be suspended without pay for ten days. At a special meeting on December 2, 2009, the School Board voted and approved the recommendation.

Respondent elected to dispute the reasons for the suspension and requested a hearing. Because she requested a formal proceeding, the matter was referred to the Division of Administrative Hearings (DOAH).

The School Board filed a Petition with DOAH on January 25, 2010, in which it charged Prudente with violating School District Policies 1.013(Responsibilities of School District Personnel), 3.27(Suspension and Dismissal of Employees), 2.59 (Political Activities on School Board Property), and 3.29 (Employee Use of Technology), as well as Florida Administrative Rules 6B-1.001 (Code of Ethics of the Education Profession in Florida); and 6B-4.009(4) (Criteria for Suspension and Dismissal).

At hearing, Petitioner presented the testimony of nine witnesses: Reginald Myers, principal of Park Vista Community High School; Terry Costa, principal of John I. Leonard Community High School; Diane Howard, assistant principal of John I Leonard High School; Tracey Robertson Sims, vice principal of South Olive Elementary School; Jane Kirkland, teacher; April Leach, teacher; Retha Palmer, teacher; Elizabeth Boutet, Learning Team Facilitator at Palm Beach Lakes Community High School; and Sonia E. Hill-Howard, Director of Employee Relations.

Petitioner's Exhibits numbered 1 through 5, 7, 9 through 11, 14, 17, 19, 21, 22, 24 through 26, 28, 31, 35, 41 through 50, 54, 56 through 64, 66 and 67 were admitted into evidence. Respondent testified on her own behalf. Respondent's composite Exhibit 1 and Exhibit 2 were admitted into the record.

At the close of the hearing, the parties stipulated that the proposed recommended orders would be due 30 days after the filing of the transcript. The proceedings were transcribed, and the parties availed themselves of the right to submit proposed recommended orders after the filing of the transcript. The three-volume Transcript of the final hearing was filed with DOAH on December 3, 2010. The due date for the proposed recommended orders was January 3, 2011. Both parties filed timely Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within Palm Beach County Florida. Article IX, Florida Constitution; § 1001.32, Fla. Stat. Specifically, the School Board has the authority to discipline employees.

§ 1012.22(1)(f), Fla. Stat.

2. Prudente started her employment with Petitioner in 1978. She was employed pursuant to a professional services contract.

3. Respondent is currently a reading teacher at John I. Leonard Community High School.

4. Terry Costa ("Principal Costa" or "Costa") is the principal at John I. Leonard and has been since 2005. She serves as Prudente's supervisor.

5. During Prudente's employment, Costa received complaints regarding Respondent's email use. Teachers complained to Costa that Respondent did not use the email system according to the School District guidelines.

6. On or about September 27, 2007, Costa gave Prudente a directive to refrain from communicating with the chair of the Reading Department in a negative manner through email and to direct concerns to Assistant Principal Howard or Costa.<sup>1</sup>

7. Prudente failed to adhere to the directive.

Consequently, Costa issued Prudente a verbal reprimand with written notation for failure to follow administrative directives regarding the proper use of email on January 8, 2008.

8. The January 8, 2008, verbal reprimand with written notation for failure to follow the administrative directive regarding the proper use of email during the school day stated:

Specifically, you were given directives on September 27, 2007, to refrain from communicating with the chair person of the Reading Department via email, in a negative manner, regarding Reading Department concerns. You were further directed to email any and all department concerns to Terry Costa or Diane Howard.

You are directed to cease such conduct immediately. Further, you are to desist from engaging in the same or similar conduct in the future. Failure to do so will result in further disciplinary action up to and including a recommendation for termination.

Prudente signed the verbal reprimand on January 9, 2008.

9. On October 1, 2008, Respondent emailed the faculty using "1361" without prior approval.<sup>2</sup> Prudente's actions were contrary to the February 6, 2007, prior directive Principal Costa had given her to get permission before sending school-wide emails.

10. On October 8, 2008, a Pre-Disciplinary Meeting was held. During the meeting, Principal Costa reminded Prudente that she had been directed not to email the faculty without

going through Administration. Respondent's January 8, 2008, verbal reprimand for improper emails during the school day was discussed.

11. At hearing, Prudente admitted that she had been told not to email the faculty by "1361" without going through administration, but she emailed anyway because the CTA Office had called her to help get teachers to vote. She said, "I know, I wasn't suppose to email the whole faculty, but it was for voting, contract voting I remember."

12. Prudente was reprimanded on October 14, 2008, for violating the directive by Principal Costa. The written reprimand, which Prudente signed, stated:

You failed to follow the administrative directive by continuing to use the school district email in a negative manner. You continued to email the faculty using the 1361 mail without an administrator's permission. You are directed to cease such conduct immediately. Further, you are to desist from engaging in the same or similar conduct in the future. Failure to do so will be considered gross insubordination and will result in further disciplinary action, up to and including a recommendation for termination.

13. On November 4, 2008, Respondent sent some co-workers emails with cartoons depicting President-elect Barack Obama in a negative fashion. The politically charged emails offended several of the recipient staff members, who reported the offensive emails to Principal Costa.

14. Retha Palmer, a math teacher, was one of the recipients of the November 4, 2008, email. She was offended by the content of the email. She responded to the email by saying, "I was wondering why would you send this to me? I thought we were friends. Are you confused? These cartoons seem to be very insulting to me, especially when I have a much different belief of Senator Obama. . . . If you can't or won't stop then maybe you should simply seek other environments for this type of harassment."

15. Principal Costa provided the information about Prudente's email use to the Director of Employee Relations. Subsequently, District Police Officer Ezra Dilbert ("Dilbert") was assigned to investigate the allegations against the Respondent. Numerous other emails unrelated to work that Prudente sent were discovered but the School Board's Petition fails to include adequate charges of all the emails. Dilbert's report concluded that Prudente violated the School Board's policies regarding Employee Use of Technology and Political Activities on School Board Property.

16. The matter ultimately was brought to the attention of the School Superintendent, who by letter advised Respondent that a determination had been made that there was "sufficient evidence to warrant [her] suspension without pay," and that he therefore would recommend such to the School Board. The School

Board followed the School Superintendent's recommendation, and Prudente timely requested an appeal of the disciplinary action.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010).

18. In this proceeding, the Collective Bargaining Agreement ("CBA") sets the parameters for Respondent's employment. Article II Section M(1) of the CBA dictates that the School Board must establish its disciplinary action with clear and convincing evidence. Section M(6) provides for suspension without pay of an employee where "just cause warrants such disciplinary action."

19. Section 1012.33(6)(a), Florida Statutes, provides that the teacher "may be suspended or dismissed at any time during the term of the contract," but only "for just cause" as provided in paragraph (1)(a) of the statute.

Section 1012.33 provides:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall



contain provisions for dismissal during the term of the contract only for just cause. 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.

Section 1012.33(4) (c), further provides:

(4) (c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any school principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. 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 salary shall be paid. In cases of suspension by the district school board or by the district school superintendent, the district school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the district school board and

the employee is discharged, his or her contract of employment shall be canceled. Any decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided the appeal is filed within 30 days after the decision of the district school board.

20. The School Board has charged Respondent with gross insubordination in this matter for sending the political emails of November 4, 2008. The State Board of Education has defined the term "gross insubordination" by Florida Administrative Code Rule 6B-4.009(4), which provides in pertinent part:

(4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

21. Based on the findings of fact herein, the School Board has failed to prove by clear and convincing evidence that Respondent committed the acts alleged in the Petition as the factual basis justifying her suspension without pay. Even though the School Board demonstrated that Respondent was provided both an oral and written reprimand regarding email usage, the record shows that Prudente's email directives were specifically to refrain from communicating with the Chairperson of the Reading Department, cease from using the "1361" mail, and "same or similar conduct."

22. Prudente's political emails are not "same or similar conduct." And, her directives never delineated political emails

as being inappropriate or wrong. The record is void of evidence that Costa either discussed political emails with Respondent or that she was ever told not to send political emails. Further, the political emails she sent on November 4, 2008, did not go through the "1361," so Prudente was not violating the prohibition against using "1361." The record also lacks evidence that the political emails were sent during school hours. Therefore, no evidence was presented to demonstrate Prudente willfully refused to obey the email usage orders when she sent the political emails of November 4, 2008, and Petitioner has failed to demonstrate gross insubordination.

23. Petitioner also asserts in its Proposed Recommended Order that the numerous other emails that Prudente sent, including Exhibits 3, 4, 5, 7, 9, 10, 11, 14, 17, 19, 21, 22, 28, 66, and 67, demonstrate Prudente's misuse of the email system and also prove insubordination. Despite overwhelming evidence, the School Board failed to either charge Prudente in the Petition or amend the Petition prior to hearing with facts specifying each alleged act. Paragraph 16 of the Petition states generally, "Respondent sent several other emails via the School District's email account during school hours in direct contravention of the reasonable directives of the District's Administration." Such language is not adequate in that disciplinary action may only be based upon those offenses

specifically alleged in the Petition. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

24. The School Board also charged Prudente as follows in paragraphs 18 and 19 of the Petition:

18. Respondent's actions violated the District's policies on email use, including but not limited to School Board Policies 2.59 (Political Activities on School Board Property) and 3.29 (Employee Use of Technology).

19. Respondent's actions also violated School Board Policies 1.013 (Responsibilities of School District Personnel and Staff) and 3.27 (Suspension and Dismissal), as well as Florida Administrative Code, Department of Education 6B-1.001 (Code of Ethics of the Education Profession in Florida), 6B-1.006 (Principles of Professional Conduct for the Education Profession in Florida), and 6B-4.009 (Criteria for Suspension and Dismissal).

Of the paragraphs quoted above, neither alleges specific conduct by the Respondent. For the undersigned to find a violation when no facts were alleged would be a violation of due process. Wood v. Dep't of Trans. 325 So. 2d. 25 (Fla. 4th DCA 1976). Given the deficiencies in the Petition and the proof presented at hearing, dismissal is required.

#### RECOMMENDATION

Upon consideration of the Findings of Fact and the Conclusions of Law reached, it is

RECOMMENDED that Petitioner enter a final order rescinding the ten-day suspension with back pay.

DONE AND ENTERED this 24th day of January, 2011, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day January, 2011.

ENDNOTES

<sup>1/</sup> The School Board presented evidence of Principal Meyers, Prudente's supervisor prior to Costa, reprimands and others not charged in the Petition. Those were not considered by the undersigned in this matter.

<sup>2/</sup> "1361" is the school-wide email address that allows emails to be sent to every individual at the school with a School Board account.

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.