

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 10-1527
)
 AMBER SCHMEIDER,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on June 11, 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 (2009)¹.

APPEARANCES

For Petitioner: Vicki L. Evans-Pare, Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

For Respondent: Matthew E. Haynes, Esquire
Johnson and Haynes, P.A.
The Barrister's Building
1615 Forum Place, Suite 500
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

The issue in this case is whether there is just cause to terminate Amber Schmeider's employment with the Palm Beach County School Board.

PRELIMINARY STATEMENT

By letter dated February 12, 2010, Amber Schmeider ("Respondent" or "Schmeider") was notified that Superintendent Arthur C. Johnson would recommend to the Palm Beach County School Board ("Petitioner" or "School Board") at its meeting on March 3, 2010, that Respondent be suspended without pay pending termination of her employment. At the meeting, the School Board voted and approved the recommendation and terminated Respondent effective March 4, 2010.

Respondent elected to dispute the reasons for the suspension and termination 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 March 22, 2010, in which it charged Schmeider with violation of the Code of Ethics, Florida Administrative Rules 6B-1.001(2) and(3); the Principles of Professional Conduct for the Education Profession in Florida, Florida Administrative Rule 6B-1.001 (3)(a); Immorality, Florida Administrative Rule 6B-4.009(2); and Misconduct in Office, Florida Administrative Rule 6B-4.009(3).

At hearing, Petitioner presented the testimony of three witnesses: Amber Schneider; Ann Wark, Principal; and Sonia E. Hill-Howard, Director of Employee Relations. Petitioner's Exhibits numbered 1 through 15 were admitted into evidence. Respondent presented the testimony of Detective Vinny Mintus. Respondent's composite exhibit 1 was 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 Transcript of the final hearing was filed with DOAH on July 6, 2010. The due date for the proposed recommended orders was originally August 5, 2010. On July 6, 2010, Petitioner and Respondent filed an Agreed Order to File Proposed Recommended Orders no later than July 12, 2010. 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. Schmeider started her employment with Petitioner in August 2005. She was employed pursuant to a professional services contract.

3. During the 2008-2009 school year, Respondent was assigned to H.L. Watkins Middle School ("Watkins") as a math teacher. She was a departmental instructional team leader and taught students at all achievement levels.

4. Teachers employed by the Petitioner were expected to serve as "role models" for the students.

5. Ann Wark (Wark) was the principal at Watkins. The students who attended Watkins ranged in age from 11 to 15 years and were at an "extremely impressionable" age.

6. Heath Miller ("Miller"), the Watkins' band teacher, developed a friendship with Respondent when she broke up with her boyfriend. Respondent was trying to decide whether to relocate and felt that she was at a low point in her life because of the break-up. She also had family issues taking place at the same time. Miller showed Respondent concern and attention.

7. From approximately January 2008 to October 2008, Respondent was involved in a consensual sexual relationship with her co-worker, Miller.²

8. During the relationship, Respondent had consensual sex with Miller in the Watkins' band room during the afternoon while school was in session on two occasions.

9. The first sexual encounter at school was in August 2008. Miller initiated sex with Respondent by asking if she wanted to go into the room and have sex. After first responding no, Respondent went ahead and had sex with Miller. Respondent testified, "I felt like I needed to out of guilt more so than anything else. I did it and I had sex with him. He didn't force me and hold me down or anything, but it was more of a talking in a coercion than it was me saying, oh, let's go do it."

10. The second campus sexual activity between Respondent and Miller at school occurred around the end of August or in September 2008.

11. Respondent admitted at hearing that when Respondent and Miller had sex on Watkins' campus, they locked the door to the band room as a precaution to make sure that they were not caught.

12. Respondent also testified that at the time she was having sex at work she knew it was unprofessional and wrong conduct.

13. In 2009, Wark recommended Respondent for Teacher of the Year for the North Area of Palm Beach County. Wark was not aware of Respondent's sexual acts in the band room when she recommended her.

14. At Watkins, Detective Mintus ("Mintus") was assigned to investigate a report that Miller was engaged in some sexually inappropriate behavior with students. During the course of the investigation, it was discovered that Miller had a sexual relationship with Respondent.

15. Mintus became aware of Respondent after learning that Miller gave her his keys to the school to return after he had been relieved of his teaching duties.

16. On or about April 27, 2009, Mintus interviewed Respondent. During the interview, Respondent was forthright with Mintus and admitted to having a relationship with Miller and engaging in sexual misconduct with Miller on Watkins' campus during the normal working hours while students were on campus.

17. Respondent answered Mintus' questions truthfully and told Mintus that, . . . we have had a consensual relationship outside of school. She also admitted that most of the sex took place outside of school but two sexual incidents took place in

the band uniform room, and she wasn't forced or raped, because it was consensual.

18. During the investigation, Mintus also discovered that Miller asked Respondent to remove Miller's cellular telephone SIM card from his desk at Watkins' campus after Miller was escorted off school property. Schmeider removed the card as instructed.

19. Respondent provided the SIM card to Mintus. The card had sexually explicit images Miller had taken including naked pictures of Respondent. Mintus found the SIM card to be a vital piece of information for his investigation detailing Miller's phone calls, text messages, and images.

20. Mintus found Respondent's cooperation during the investigation to be helpful for the criminal case against Miller.³ Miller was arrested and was still incarcerated at the time of the hearing.

21. Eventually, the relationship between Respondent and Miller became public knowledge among the faculty, staff, students, and parents.

22. A considerable amount of local press was devoted to Miller's criminal accusations and some of it focused on the relationship between Respondent and Miller. However, Respondent's name was not mentioned on television.

23. Wart testified that when the information came out "it brought the campus to a standstill."

24. It was near the end of the year when Wark learned of Respondent's behavior. Wark asked Schmeider not to participate in school activities with the students. She specifically instructed Respondent not to attend the eighth grade moving-up ceremony.

25. Wark characterized Respondent's behavior as a "slap in the face to the students." She testified,

. . . [the students] look up to us. They look for us to lead them, to show them right from wrong, and we're their role models, and when we take on the profession of education we need to live by that. You know, what people do on their own time is their business, but when they're doing things on the campus and the school where those students are sitting in a classroom, it's just--it's giving a terrible message. I wanted our kids to be able to walk away at least with some dignity that the teachers that they loved had let them down, but everyone else was still there for them.

26. The matter ultimately was brought to the attention of the School Superintendent, who by letter dated February 12, 2010, advised Respondent that a determination had been made that there was "sufficient evidence to warrant [her] termination from [her] position as Teacher," and that he therefore would "recommend her suspension without pay and termination at the March 3, 2010, School Board Special Meeting." The School Board

followed the School Superintendent's recommendation and terminated Respondent effective March 4, 2010.

CONCLUSIONS OF LAW

27. 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.

28. 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. Pursuant to Section 1021.33(6)(a), Florida Statutes, 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.

29. The Petitioner has the burden of proving that it has "just cause" to terminate the Respondent's employment as a teacher. "Just Cause" is defined to include immorality and misconduct in office by Section 1012.33(1)(a), Florida Statutes.

30. The State Board of Education has defined the term "immorality" by Florida Administrative Code Rule 6B-4.009(2), which provides in pertinent part:

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.

31. The State Board of Education has defined the term "Misconduct in office," Florida Administrative Code Rule 6B-4.009(3), provides in pertinent part:

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. Florida Administrative Code Rule 6B-1.001 is entitled, "Code of Ethics of the Education Profession in Florida," and it provides in relevant part:

* * *

(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) Awareness 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.

33. Florida Administrative Code Rule 6B-1.006(3)(a) is entitled, the "Principles of Professional Conduct for the Education Profession in Florida," and it requires a teacher, as part of the teacher's "obligation to the student," to "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."

34. In the instant case, the School Board, alleged that it had "just cause" to terminate Respondent because while she was teaching at HLWMS, she engaged in consensual sexual activities twice with Miller on school grounds during the school day. According to the allegations made by the School Board, as a result of having engaged in this conduct, Respondent was guilty of "immorality," as defined in Florida Administrative Code Rule 6B-4.009(2), and "misconduct in office," as defined in Florida Administrative Code Rule 6B-4.009(3).

35. It is undisputed that Respondent engaged in sexual activities with Miller in the band room during school hours twice. Respondent even concedes Petitioner met its burden of proving Schneider's sexual acts fall within the definition of "misconduct in office" and "immorality" in paragraphs 72 and 78 of Respondent's Proposed Recommended Order.

36. Therefore, the question remaining for the undersigned is the discipline Respondent should receive for her actions.

The CBA outlines the system for discipline. The CBA provides that teachers should receive progressive discipline.

37. Article II Section M of the CBA provides:

* * *

7. Except in cases that constitute a real immediate danger to the District or other actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations, progressive discipline shall be administered as follows:

a. Verbal Reprimand With A Written Notation-Such written notation shall not be placed in the employee's personnel file and shall not be used to the further detriment of the employee after twelve (12) months of the action/inaction of the employee which led to the notation.

b. Written Reprimand-A written reprimand may be issued to an employee when appropriate in keeping with provisions of this Section. Such written reprimand shall be dated and signed by the giver and the receiver of the reprimand and shall be filed in the affected employee's personnel file in keeping with provisions of Article II, Section B of this Agreement.

c. Suspension Without Pay- A suspension without pay may be issued to an employee, when appropriate, in keeping with provisions of this Section, including just cause and applicable laws. The length of the suspension also shall be determined by just cause as set forth in this Section. The notice and specifics of the suspension without pay shall be placed in writing, dated and signed by the giver and the receiver of the suspension. The specific days of suspension will be clearly set forth in the written suspension notice which shall

be filed in the affected employee's personnel file in keeping with provisions of Article II, Section B of this Agreement.

d. Dismissal - An employee may be dismissed (employment contract terminated or non-renewed when appropriate in keeping with provisions of this Section, including just cause and applicable laws.

38. The record lacks evidence of the Respondent being previously disciplined. Therefore, Petitioner must demonstrate by clear and convincing evidence an exception to Article II Section M(7) of the CBA by showing Respondent either "clearly represents a real and immediate danger to students" or that the "actions/inactions of the [Respondent] constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations" that Respondent can be terminated.

39. The evidence taken as a whole demonstrates Respondent's actions were clearly flagrant and purposeful violations of the school rules for "misconduct in office" and "immorality." From Respondent's testimony, she admitted to being a willing participant in a nine-month relationship with Miller and to sexual activity taking place mostly off campus but twice on campus during school hours in the band room.

40. Respondent also testified that Miller neither forced her, raped her, or held her down, and she repeatedly testified at hearing that the sexual encounters were consensual, which was

identical to the consensual admission Respondent provided Mintus in April 2009 when she was interviewed.

41. The evidence that the doors were locked for both sexual acts in the band room as a precaution to ensure that Respondent and Miller were not caught further demonstrates a purposeful action in violation of school rules. Such actions are obviously inconsistent with what is right or proper for a teacher at school.

42. Therefore, Petitioner met its burden to demonstrate Respondent's egregious behaviors constitute flagrant violations of reasonable rules that are so serious in nature that the step-by-step progression of discipline should be by-passed. The appropriate discipline for Respondent is immediate suspension and termination.

43. In view of the foregoing, the School Board has sustained its charges against Respondent.

RECOMMENDATION

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

RECOMMENDED that Petitioner enter a final order upholding Schmeider's suspension and termination.

DONE AND ENTERED this 23rd day of August, 2010, in
Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day August, 2010.

ENDNOTES

^{1/} References herein to the Florida Statutes shall be to the 2009 edition unless otherwise indicated.

^{2/} Respondent's assertion that Miller manipulated her is rejected in that she was in a nine-month long willing relationship with Miller, and the record lacks persuasive evidence that Miller had control over Respondent. Instead, the record demonstrates that the sexual activity was consensual by Respondent's own admissions.

^{3/} Respondent asserts that her cooperation in the investigation protected the children of Watkins. Even so, the undersigned finds that such actions neither relieve Respondent of following the rules at the school nor redeem the Respondent for her consensual sexual activities on the school campus during school hours.

COPIES FURNISHED

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Dr. Eric J. Smith
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Vicki L. Evans-Pare, Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

Matthew E. Haynes, Esquire
Johnson and Haynes, P.A.
The Barrister's Building
1615 Forum Place, Suite 500
West Palm Beach, Florida 33401

Jeffrey Scott Sirmons, Esquire
Johnson, Haynes, and Miller
510 Vonderburg Drive, Suite 305
Brandon, Florida 33511

Dr. Arthur C. Johnson, Superintendent
Palm Beach County School District
3340 Forest Hill Boulevard, C316
West Palm Beach, Florida 33406-5869

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.