

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 10-1838PL
)
VALERIE MCCOY SCHUBERT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 6, 2010, in St. Cloud, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Emily Moore, Esquire
Florida Education Association
300 East Park Avenue
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether it is appropriate for Petitioner to discipline Respondent's Florida educator's certificate for acts alleged in Petitioner's Administrative Complaint dated November 19, 2009.

PRELIMINARY STATEMENT

On November 19, 2009, Petitioner, Dr. Eric J. Smith, Commissioner of Education, filed an Administrative Complaint, advising Respondent, Valerie McCoy Schubert, that he was seeking disciplinary sanctions against her Florida educator's certificate.

On December 4, 2009, Respondent requested an administrative hearing, if a settlement was not reached. On April 7, 2010, Petitioner forwarded the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

On the same day, April 7, 2010, an Initial Order was sent to both parties requesting, inter alia, mutually-convenient dates for the final hearing. Based on the response of the parties, on April 20, 2010, the case was scheduled for final hearing on July 16, 2010, in St. Cloud, Florida. On June 10, 2010, Petitioner requested a continuance, and, on June 11, 2010, the case was re-scheduled for August 6, 2010. On August 2, 2010, Petitioner requested a second continuance based on the lack of availability of two witnesses. By Order dated August 3, 2010, the continuance was denied with the caveat that the witnesses could be presented by deposition or at a later hearing.

The hearing took place as scheduled on August 6, 2010. Petitioner presented three witnesses; all were students, two

were 11 years old, and the third was 10 years old. At the time of the alleged incident, the students would have been approximately two years younger. Petitioner's Composite Exhibit 1 (5 parts--A through E) was admitted into evidence. Respondent testified in her own behalf and presented the testimony of Dr. Wayne Kennedy, who had served as a school principal in Osceola County for 31 years before retiring. Respondent also had four exhibits (the first containing several documents), which were admitted into evidence as Respondent's Exhibits 1 through 4. Respondent's Exhibits 3 and 4 are letters from Eileen Webster and Brenda McNeal.

On August 10, 2010, Respondent requested that two letters be admitted into evidence (Respondent's Exhibits 3 and 4) that had inadvertently been omitted during the hearing. The motion was unopposed. These letters were admitted by Order dated August 11, 2010.

The Transcript of Proceedings was filed on August 24, 2010. Both parties timely submitted Proposed Recommended Orders.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following Findings of Fact are made:

1. Petitioner is the head of the state agency responsible for certifying and regulating public school teachers in Florida.

2. Respondent holds Florida Professional Educator's Certificate No. 931173, covering the area of Elementary Education, which is valid through June 30, 2013. At the time of the incident alleged in the Administrative Complaint, she was employed at Poinciana Elementary School, in Osceola County, Florida, where she had taught for six years.

3. Respondent has taught for approximately ten years. She started teaching at Poinciana Elementary School in 2002. Dr. Wayne Kennedy (Dr. Kennedy), the principal at Poinciana Elementary School, gave Respondent excellent evaluations. He reported that Respondent did a very good job of teaching students and that the students did well on academic tests. She had good classroom control and management. She was stern and authoritarian with students, she expected them to do what they could, and got good results. He did not recall any complaints during his six years of supervision of Respondent.

4. Dr. Kennedy retired during the 2006-2007 school year. He was replaced by Ms. Sherri Turchi (Ms. Turchi). Ms. Turchi gave Respondent the lowest performance evaluation she had while teaching at Poinciana Elementary School. Ms. Turchi assigned Respondent to teach a fourth-grade class even though Respondent had taught first and second grade and had requested that assignment.

5. Recognizing that Ms. Turchi harbored personal animosity for her, Respondent requested a transfer after the 2007-2008 school year. Her request for transfer was denied.

6. Respondent began teaching the fourth grade in August 2008. In September 2008, Ms. Turchi reassigned Respondent to teaching a Mathematics Block. Unlike a normal elementary school classroom situation, students are rotated through block classes. From September 10, 2008, through November 5, 2008, the date of the alleged incident, Respondent only saw the students involved approximately six times.

7. The national election wherein President Barack Obama was elected occurred on November 4, 2008. As a result of the election, students, not unlike other Americans, were excited. Recognizing this as an educational opportunity, a discussion about the election occurred in Respondent's classroom.

8. Responding to questions and statements from students, Respondent recalls advising them that she voted for John McCain, whom she respected for his character and integrity; that she was neither a Democrat nor Republican; and that voting should not be made based on a candidate's physical appearance. Respondent specifically denied having made statements or used the language referred to in the Administrative Complaint. Respondent's testimony regarding the essential facts and tenor of the

classroom discussion about the presidential election is credible.

9. After leaving Respondent's classroom, several students authored statements wherein they reported elements of the discussion that had occurred in Respondent's classroom. It is suggested that the students did this spontaneously or that the exercise was an effort to allow the students to express concern regarding their confusion about the political discussion. The statements were done under the supervision of a second teacher and were the genesis of the allegations in the Administrative Complaint.

10. Petitioner's only witnesses were three students who had participated in the post-election discussion and had authored the referenced statements. Their testimony reflects little specific recollection of the "inappropriate and embarrassing comments" referred to in the Administrative Complaint. Not surprisingly, given their age, lack of recollection, and the passage of time, their testimony and their statements are not accorded significant credibility by the undersigned.

11. On November 6, 2008, Respondent was removed from the classroom and reassigned to the Administration Building. She essentially had no responsibility, but her employment continued. On March 4, 2009, Respondent met with Osceola County School

Board officials. She requested transfer to another school where she knew there was an opening for a second-grade teacher. She was advised that transfer was not an option and that she was to return to Poinciana Elementary School. Respondent resigned from her teaching position the following day.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57, Fla. Stat. (2010); Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

13. Section 1012.795, Florida Statutes (2009),¹ reads, in pertinent part, as follows:

(1) The 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 a 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 ten 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:

* * *

(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 the State Board of Education rules.

14. Florida Administrative Code Rule 6B-1.006 states, in pertinent part, as follows:

(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.

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

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

15. Because Respondent's Florida educator's certificate is at risk of being sanctioned, Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The definition of clear and convincing evidence is found in the case of Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

16. Because the statute and rules providing grounds for disciplining Respondent's Florida educator's certificate are penal in nature, they must be construed in favor of Respondent. Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977).

17. Petitioner has failed to prove by "clear and convincing evidence" that Respondent violated any of the enumerated Principles of Professional Conduct for the Education Profession or that, "[u]pon investigation, has been found guilty

of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board." § 1012.795(1)(g), Fla. Stat. In fact, the evidence is scant as it relates to the allegations in the Administrative Complaint. The credible evidence suggests that Respondent was an effective elementary school teacher who had a personality conflict with a new principal and suffered as a result.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that Respondent, Valerie McCoy Schubert, is not guilty of the violations alleged in the Administrative Complaint and that no disciplinary action be taken.

DONE AND ENTERED this 8th day of December, 2010, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of December, 2010.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2009),
unless otherwise noted.

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.