

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 10-1854PL
)
DEBORAH JANE SCHAD,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 28, 2010, in Naples, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
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Clearwater, Florida 33761

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent committed the offenses set forth in the Administrative Complaint issued on October 19, 2009, and, if so, what action should be taken.

PRELIMINARY STATEMENT

On October 19, 2009, Dr. Eric J. Smith, as Commissioner of Education (COE), issued a one-count Administrative Complaint (AC) against Deborah Schad. The COE charged Ms. Schad with violating Section 1012.795(1)(c), Florida Statutes, alleging that Ms. Schad has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school. Ms. Schad challenged the material allegations in the AC and requested a hearing. On April 9, 2010, this matter was referred to the Division of Administrative Hearings.

Prior to hearing, the parties filed a Joint Pre-hearing Stipulation. At hearing, Ms. Schad admitted paragraphs numbered 1 through 3 of the AC.¹ Further, at hearing, the COE presented the testimony of four witnesses and entered 23 exhibits (Petitioner's Exhibits numbered 1 through 23)² into evidence. Ms. Schad testified in her own behalf, presented the testimony of two witnesses and entered eight exhibits (Respondent's Exhibits numbered 1 through 5, 8, 9, and 10) into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on June 17, 2010. The parties filed a joint motion to extend the time for

the filing of their post-hearing submissions, which was granted. The COE timely filed its post-hearing submission. Ms. Schad was one day late in filing her post-hearing submission, but the COE did not object to the late-filing. Ms. Schad's post-hearing submission is accepted as filed. The parties' post-hearing submissions have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Schad holds Florida Educator's Certificate (Certificate) No. 407935, covering the areas of Early Childhood Education, Elementary Education, English to Speakers of Other Languages (ESOL), Mathematics and Reading. Her Certificate is valid through June 30, 2013.

2. Ms. Schad began teaching in 1978. She has taught in both the Lee County School District and Collier County School District.

3. At all times material hereto, Ms. Schad was employed as a Reading and Math Specialist at Village Oaks Elementary School (Village Oaks) in the Collier County School District (School District). She began at Village Oaks for the 2003-2004 school year.

4. Ms. Schad's duties and responsibilities at Village Oaks included providing extra assistance to students who were not proficient in reading and math. Classroom teachers chose which

students would receive the extra assistance from her.

Typically, Ms. Schad met with the students she assisted in pull-out/break-out sessions in small groups of five students at a time and provided 30 minutes of assistance to each group of students. Some of the students to whom she provided the extra assistance spoke English as a second language (ESOL students).

5. The principal at Village Oaks was Dorcas Howard. She has been employed with the School District for 50 years and has been a principal with the School District for over 21 years.

6. The Collective Bargaining Agreement between the Collier County Education Association and the District School Board of Collier County (Collective Bargaining Agreement) controls the assessment of teachers. The Collective Bargaining Agreement requires the evaluation of teachers in the School District based on an evaluation system known as the Collier Teacher Assessment System (CTAS). The CTAS consists of 12 educator accomplished practices (EAPs)—Assessment, Communication, Continuous Improvement, Critical Thinking, Diversity, Ethics, Human Development and Learning, Knowledge of Subject Matter, Learning Environments, Planning, Role of the Teacher, and Technology—that are evaluated as Inadequate, Developing, and Professional/Accomplished. Also, the overall evaluation is Meets Expectation or Does Not Meet Expectation. If a professional service contract or continuing contract teacher

fails to be rated at the Professional/Accomplished level in three or more EAPs or is rated at the Inadequate level in one EAP, the Collective Bargaining Agreement requires certain procedures and processes to be taken to assist the teacher.

7. At all times material hereto, Ms. Schad was a professional service contract teacher.

8. In order to perform an assessment pursuant to CTAS, one must be trained in CTAS. At all times material hereto, Ms. Howard was trained in CTAS.

9. Ms. Schad's 2004 Annual Performance Evaluation for the 2003-2004 school year was performed by Ms. Howard. Ms. Schad was rated overall as Meets Expectations, with two EAPs rated as Developing—Knowledge of Subject Matter and Technology. Ms. Schad was considered deficient in the two EAPs.

10. Ms. Schad's 2005 Annual Performance Evaluation for the 2004-2005 school year was performed by Ms. Howard. Ms. Schad was rated overall as Meets Expectations, with one EAP rated as Developing—Technology. Ms. Schad was considered deficient in the one EAP.

11. Ms. Schad's 2006 Annual Performance Evaluation for the 2005-2006 school year was performed by Ms. Howard. Ms. Schad was rated overall as Meets Expectations, with no EAPs rated as Inadequate or Developing. Ms. Schad was not considered deficient in any EAP.

12. Ms. Schad's 2007 Annual Performance Evaluation for the 2006-2007 school year was performed by Ms. Howard. Ms. Schad was rated overall as Meets Expectations, with no EAP rated as Inadequate or Developing. Again, Ms. Schad was not considered deficient in any EAP.

13. On or about May 12, 2008, Ms. Schad received her 2008 Annual Performance Evaluation for the 2007-2008 school year from Ms. Howard. Ms. Schad's overall rating was Does Not Meet Expectations (unsatisfactory), with four EAPs rated as Developing—Assessment, Communication, Learning Environments, and Planning. Ms. Schad was considered deficient in the four EAPs.

14. As a professional service contract employee, pursuant to the Collective Bargaining Agreement, for the 2008-2009 school year, Ms. Schad was required to be assigned to Strand III, which is a probationary 90-calendar-day period to correct the deficiencies.

15. On or about August 11, 2008, Ms. Schad was placed on a Strand III, 90-Day Improvement Plan to address the areas of deficiency.

16. Pursuant to the Collective Bargaining Agreement, a professional assistance team (PAT) at Village Oaks was organized to assist Ms. Schad to correct the deficiencies. The PAT consisted of Ms. Schad, Ms. Howard, and two teachers—one teacher

chosen by Ms. Howard, as a mentor to Ms. Schad, and one teacher chosen by Ms. Schad, as a peer teacher.

17. The PAT met on several occasions. The first meeting was on August 27, 2008. Essentially, the discussion consisted of what was expected of Ms. Schad and what would occur at the end of the probationary period—a recommendation would be submitted to the Superintendent of the School District in 90 days. The expectations were that Ms. Schad would: provide documentation of absence in order to be paid, which should include date, time, and service; attend all planning sessions for third grade to determine the standards, targets and strategies, and activities that were to be taught; give a copy of her plans for next week to the team leader and the principal by 3:00 p.m. each Friday; follow the schedule to pick-up and drop-off students and have materials on hand and ready to begin lessons; meet each third-grade teacher to discuss progress or lack of progress; and work with five students per session and document (weekly/quarterly) their assessment results.

18. Another PAT meeting was held on September 3, 2008. Pursuant to the Collective Bargaining Agreement, a Professional Assistance Plan (PAP) was developed and was reviewed at the meeting. The PAP contained major areas, with detailed strategies, which were Attendance, Planning, Assessment, Communication, and Role of Teacher; all were reviewed.

Additionally, another area contained in the PAP was Observation, in which it was indicated that the Ms. Howard would complete at least four observations with written feedback; this too was reviewed. Implementation of the PAP occurred after the meeting.

19. PAT meetings were subsequently held on September 24, October 15, and October 30, 2008. Other major areas of concern were discussed at the meetings, including Student Participation Progress; and Focus/Follow-Up. At each meeting, the focus of the discussions was on what Ms. Schad was not doing; what she was doing, but not doing correctly; what assistance could and would be provided. As a result of each meeting, assistance was being continuously provided to Ms. Schad by the PAT members to assist her in improving and correcting her deficiencies.

20. At each meeting, Ms. Howard determined that Ms. Schad was not correcting deficiencies even though she (Ms. Schad) was being provided assistance to correct deficiencies.

21. At the meeting held on September 24, 2008, the noted deficiencies included the areas of Planning and Student Participation Progress.

22. At the meeting held on October 14, 2008, the noted deficiencies included the areas of Focus/Follow-Up, Planning, Student Participation Progress, and Assessment.

23. At the meeting held on October 30, 2008, the noted deficiencies included the areas of Focus/Follow-Up, Planning, Student Participation Progress, and Assessment/Differentiation.

24. Furthermore, Ms. Howard was conducting observations of Ms. Schad during the Probationary period. The observations revealed continued deficiencies in spite of assistance being provided by the PAT.

25. On or about November 7, 2008, about 64 days from the development and implementation of the PAP, Ms. Schad received a performance evaluation from Ms. Howard. Ms. Schad was rated overall as Does Not Meet Expectations (unsatisfactory), with four EAPs rated as Inadequate—Assessment, Communication, Planning, and Role of the Teacher—and three EAPs rated as Developing—Continuous Improvement, Knowledge of Subject Matter, and Learning Environments. The EAPs were areas of deficiency.

26. The EAPs in which Ms. Howard found Ms. Schad to be deficient in the 2008 Annual Performance Evaluation that were not corrected within the Probationary period were Assessment, Communication, Learning Environments, and Planning—with Assessment, Communication, and Planning rated Inadequate; and Learning Environments rated Developing. Additional EAPs were found to be deficient at the end of the Probationary period, which were Continuous Improvement, Knowledge of Subject Matter, and Role of the Teacher—with Knowledge of Subject Matter and

Continuous Improvement rated Developing; and Role of the Teacher rated Inadequate.

27. The School District considered Ms. Schad as not competent to teach in the School District.

28. On or about January 15, 2009, Ms. Schad was terminated from her teaching position with the School District. She has appealed her termination.³

29. The evidence demonstrates that Ms. Schad failed to meet the minimum standards required by the School District for teachers and was, therefore, not competent to teach according to the standards of the School District.

CONCLUSIONS OF LAW

30. 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).

31. The ultimate burden of proof is on the COE to establish by clear and convincing evidence that Ms. Schad committed the violation as set forth in the AC dated October 19, 2009. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); McKinney v. Castor, 667 So. 2d 387, 388 (Fla. 1st DCA 1995); § 120.57(1)(j), Fla. Stat.

32. Section 1012.795, Florida Statutes (2008), provides in pertinent part:

(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 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:

* * *

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

33. Florida Administrative Code Rule 6B-4.009 provides guidance in the instant case and provides in pertinent part:

(1) Incompetency is defined as inability or lack of fitness to discharge the required

duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

34. The evidence is clear and convincing that Ms. Schad failed to meet the minimum standards required by the School District for teachers to teach; that Ms. Schad was placed on a plan, with strategies, to assist her in correcting her deficiencies and meeting the minimum standards; that, through the plan, Ms. Schad was continuously provided assistance to assist her in correcting her deficiencies and meeting the

minimum standards; that, even though she was provided with continuous assistance, Ms. Schad failed to correct her deficiencies; and that Ms. Schad again failed to meet the minimum standards required by the School District for teachers to teach.

35. Hence, the evidence demonstrates that Ms. Schad violated Section 1012.795(1)(c), Florida Statutes (2008).

36. As to penalty, Section 1012.796(7), Florida Statutes (2008), provides in pertinent part:

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

* * *

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$ 2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon

employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

37. The COE suggests a one-year suspension and a five-year probation of Ms. Schad's certificate.

38. Considering the totality of the circumstances, a more appropriate penalty is a six-month suspension and a two-year probation.

RECOMMENDATION

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

RECOMMENDED that Dr. Eric J. Smith, as Commissioner of Education, enter a final order:

1. Finding that Deborah Jane Schad violated Section 1012.795(1)(c), Florida Statutes (2008).
2. Suspending Ms. Schad's Certificate for six months and placing her on probation for two years under the terms and conditions deemed appropriate.

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

Errol H. Powell

ERROL H. POWELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of July, 2010.

ENDNOTES

^{1/} The AC contains only three numbered paragraphs. Paragraphs numbered 1 and 2 are under the heading of "Jurisdiction"; and paragraph numbered 3 is under the heading of "Material Allegations."

^{2/} The COE offered only 23 exhibits into evidence even though it stated that it was offering 24 exhibits; all were entered into evidence without objection.

^{3/} The School District issued a Final Order terminating Ms. Schad's employment with it. Ms. Schad has appealed the School District's Final Order.

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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.