

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 10-9921PL
)
MARY DWYER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 11, 2011, by video teleconference with sites in Tampa and Tallahassee, Florida, before Susan B. Harrell, a 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: Mary Kathleen Dwyer
603 Highview Terrace, North
Brandon, Florida 33510-2446

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated sections 1012.795(1)(g) and 1012.795(1)(j), Florida Statutes

(2008),^{1/} and Florida Administrative Code Rule 6B-1.006(3)(a), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On October 19, 2009, Petitioner, Eric J. Smith, as Commissioner of Education, filed an Administrative Complaint against Respondent, Mary Dwyer (Ms. Dwyer), alleging that she violated sections 1012.795(1)(g) and 1012.795(1)(j) and rule 6B-1.006(3)(a). Ms. Dwyer requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on October 27, 2010, for assignment of an Administrative Law Judge to conduct the final hearing.

The final hearing was originally scheduled for January 11, 2011. Petitioner filed a Motion to Continue Formal Hearing, which was granted by Order dated January 6, 2011. The final hearing was rescheduled for February 11, 2011.

At the final hearing, Petitioner made an ore tenus motion to amend the Administrative Complaint in paragraph two to change the date from June 18, 2008, to May 9, 2008, and to strike paragraph five. The motion was granted.

At the final hearing, Petitioner called the following witnesses: P.J., Dewitt Jones, and J.D. Petitioner's Exhibit 1 was admitted in evidence. At the final hearing, Ms. Dwyer testified on her own behalf. Respondent's Exhibits 1 through 3

and 5 were admitted in evidence. Respondent's Exhibit 4 was not accepted in evidence.

The one-volume Transcript was filed on February 24, 2011. The parties agreed to file their Proposed Recommended Orders within ten days of the filing of the Transcript. The parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Dwyer held a Temporary Educator Certificate No. 798892, covering the areas of English to Speakers of Other Languages (ESOL) and Family and Consumer Services, which was valid through June 30, 2008. Ms. Dwyer has not sought to renew her teaching certificate.

2. At all times material to the Amended Administrative Complaint, Ms. Dwyer was employed as an ESOL resource teacher at Dowdell Middle School (Dowdell), located in the Hillsborough County School District.

3. On May 9, 2008, a multi-cultural festival was being held at Dowdell. Ms. Dwyer was heading up the festival.

4. On May 9, 2008, P.J. was a student at Dowdell, and he was assigned to take pictures for the school yearbook by his teacher, Ms. Bedford. The assignment was to take pictures of Ms. Belin's class. When he arrived at Ms. Belin's classroom, she was not present, and he returned to Ms. Bedford's classroom.

He was told to go to the festival, where Ms. Belin probably had gone, and to take pictures of the festival and Ms. Belin's class.

5. Ms. Bedford gave P.J. a pass, and he had the camera with him. He headed to the festival, which was being conducted in the auditorium. There were two sets of double doors located on one side of the auditorium with a wall dividing the sets of double doors.

6. When P.J. arrived at the double doors, Ms. Dwyer was at the doors on the inside of the auditorium. P.J. asked Ms. Dwyer to let him in because he had a pass and he was supposed to take pictures of the festival. Ms. Dwyer told him that he could not come in, but he countered that he had a pass. Ms. Dwyer told him that if he did not move that she was going to slam his hand in the door. He did not go away and told her that she better not shut the door on his hand. Ms. Dwyer shut the door on his left hand. P.J. quickly pulled his hand out.

7. Mr. Dewitt Jones, Jr., is a seventh-grade teacher at Dowdell. He witnessed part of the incident between Ms. Dwyer and P.J. He saw P.J. reach for the door and tell Ms. Dwyer not to close the door on his hand. Mr. Jones also saw Ms. Dwyer close the door on P.J.'s hand and then observed P.J. holding his hand. Mr. Jones could tell that P.J. was in pain and told him

to go to the office so that the nurse could check his hand and to report the incident.

8. Another witness, J.D., observed Ms. Dwyer yelling at P.J. and then closing the door on P.J.'s hand. He also saw P.J. grab his hand after the door closed on it.

9. P.J. went back to Ms. Bedford's class and told her what had happened. She advised him to go to the office and file a report and then to go to the nurse to have his hand examined.

10. The police were called as a result of the incident. A police officer interviewed P.J., and P.J. advised the police officer that his left hand was the hand that was caught in the door. The police officer took pictures of P.J.'s left hand and a picture showing both left and right hands.

11. Two or three days after the incident, P.J. went to his physician. An X-Ray was taken of his hand, but the X-Ray did not reveal any broken bones. The physician prescribed some pain medication for P.J.

12. After the incident, there was a fair amount of coverage in the media about the incident. Ms. Dwyer was removed from the classroom and given administrative work to do.

13. Because Ms. Dwyer did not renew her teaching certificate, she was not allowed to return to teach in the Hillsborough County School District for the 2008-2009 school year.

CONCLUSIONS OF LAW

14. 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. (2010).

15. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Petitioner alleges that Ms. Dwyer violated sections 1012.795(1)(g) and 1012.795(1)(j) and rule 6B-1.006(3)(a).

16. Sections 1012.795(1)(g) and 1012.795(1)(j) provide:

(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:

* * *

(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.

17. Rule 6B-1.006 provides:

(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.

18. Petitioner has established by clear and convincing evidence that Ms. Dwyer closed the door on P.J.'s hand after he had advised her that he had a pass and was assigned to take pictures at the festival for the yearbook. Her statement that

she was going to slam the door on P.J.'s hand if he did not move lends credence to the conclusion that shutting the door while P.J.'s hand was in the door was intentional.

19. The incident received coverage in the media, and Ms. Dwyer was removed from the classroom as a result of the incident. Her conduct seriously reduced her effectiveness as employee of the Hillsborough County School District. Petitioner has established that Ms. Dwyer violated section 1012.795(1)(g).

20. Petitioner has established by clear and convincing evidence that Ms. Dwyer violated rule 6B-1.006(3)(a) by failing to protect P.J. from physical harm. She should not have closed the door on his hand. By violating rule 6B-1.006(3)(a), Ms. Dwyer has violated section 1012.795(1)(j).

21. Petitioner has recommended that Ms. Dwyer be placed on probation for two years during which time she must complete a class on adolescent development; be given a written reprimand to be placed in her file; and be required to pay a fine of \$500.00. This recommendation is reasonable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mary Dwyer violated sections 1012.795(1)(g) and 1012.795(1)(j) and rule 6B-1.006(3)(a); placing her on probation for two years with the condition that she complete a class on

adolescent development; giving her a written reprimand, which is to be placed in her file; and imposing a fine of \$500.00.

DONE AND ENTERED this 11th day of April, 2011, in Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of April, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2008 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.