

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 10-10514PL
)
AMIE DUNN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 21, 2011, by video teleconference in Tallahassee, Florida, and St. Petersburg, Florida, before Thomas P. Crapps, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bruce P. Taylor, Esquire
204 37th Avenue, Suite 190
St. Petersburg, Florida 33704

For Respondent: Amie B. Dunn, pro se
8580 Kumquat Avenue, North
Seminole, Florida 33777

STATEMENT OF THE ISSUES

Whether Respondent violated sections 1012.795(1)(d),
1012.795(1)(g), and 1012.795(1)(j), Florida Statutes (2008),^{1/}

and Florida Administrative Code Rules 6B-1.006(3)(a) and 6B-1.006(5)(a), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On July 21, 2010, Petitioner, Dr. Eric J. Smith, as Commissioner of Education, filed a five-count Administrative Complaint against Respondent, Amie Dunn (Ms. Dunn), alleging that she violated sections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j) and rules 6B-1.006(3)(a) and 6B-1.006(5)(a). Ms. Dunn requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on December 6, 2010.

At the final hearing, Petitioner called the following witnesses: Randi Latzke, Laura Hallenbeck, Margaret "Peg" Miller, Pamela Johansen, Katherine Wickett, Lisa Bahr, Amy Stabile, Deborah Joseph, Phillip Wirth, Erin Savage, Mary Melissa Athanson, James Berrell, Piper Prichard, Mitchell Disney, James Lott, and Walter Weller. Petitioner's Exhibits 1 through 30, 32 through 35, and 37 through 40 were admitted into evidence. Ms. Dunn testified on her own behalf. Respondent's Exhibits 1 through 5 were admitted into evidence.

A Transcript of the final hearing was filed on March 14, 2011. Petitioner filed a Proposed Recommended Orders on March 24, 2011. As of the date of this Recommended Order, Ms. Dunn has not filed any post-hearing submittals.

FINDINGS OF FACT

1. Ms. Dunn holds Florida Educator's Certificate 930668, covering the area of exceptional student education, which is valid through June 30, 2012.

2. At all times pertinent to this case, Ms. Dunn was employed as a varying exceptionalities teacher at Seminole High School in the Pinellas County School District (School District).

3. Deborah Joseph (Ms. Joseph), the director of School Partnerships for St. Petersburg College, hired Ms. Dunn for the Spring Semester of 2009 to supervise 12 student interns, teaching in various Pinellas County elementary schools.

4. Ms. Joseph credibly testified that she asked Ms. Dunn what Ms. Dunn would do with her current employment as a Pinellas County teacher, if offered a job. Ms. Dunn stated that she would resign as a teacher.

5. On January 30, 2009, during school hours, Ms. Dunn left the Seminole High School campus without permission from the school administration. When the school's assistant principal, Phillip Wirth (Mr. Wirth), questioned Ms. Dunn about her whereabouts, Ms. Dunn alternately claimed that she had been given permission by another principal to leave the campus and that she had been meeting with another teacher. Neither of Ms. Dunn's explanations was supported by the assistant principal

or the teacher. Consequently, on March 9, 2009, Mr. Wirth gave Ms. Dunn a written reprimand for her conduct.

6. The evidence clearly and convincingly shows that Ms. Dunn continued her employment as a teacher at Seminole High School while at the same time working a second job for St. Petersburg College, supervising student interns working in elementary schools. Unfortunately, Ms. Dunn's work hours at Seminole High School coincided with the student interns' work hours at the elementary schools. In order to work both jobs, the record shows that Ms. Dunn was routinely untruthful in her use of sick leave time and left the Seminole High School campus during school hours without permission. For example, the record shows that she requested sick leave on February 26, 2009; March 4, 2009; March 6, 2009; and March 17, 2009. On those very same dates, Ms. Dunn signed in to supervise interns at Pinellas Central Elementary School, Sandy Lake Elementary School, Plumb Elementary School, and McMullen Booth Elementary. Again, on one date, April 23, 2009, Ms. Dunn wrote in her leave request that "family and kids touch [of] flu" and that she was signing out for a doctor's appointment beginning at 9:30 a.m. The record shows on that same day Ms. Dunn miraculously recovered from the illness and was able to eat lunch at her husband's nearby restaurant at 11:50 a.m., and then supervise an intern at Pinellas Central Elementary School at 1:33 p.m.

7. In addition to misusing sick leave, the record clearly showed that Ms. Dunn would leave the Seminole High School campus without permission or signing out and would falsify school records. For example, the record clearly showed that, on April 16, 2009, Ms. Dunn left the school campus without permission. The record shows that she signed out for lunch at 1:00 p.m. and that she returned at 1:30 p.m. However, the records also show at 1:45 p.m., that same day, Ms. Dunn signed into High Point Elementary in order to supervise an intern. Again, on April 22, 2009, Ms. Dunn left Seminole High School without permission or signing out at 9:46 a.m.

8. Walter Weller (Mr. Weller), the principal of Seminole High School, credibly testified that co-teachers, like Ms. Dunn, are placed in exceptional student education classes in order to assist with the students' individual education plans and to help the students succeed. Further, he credibly testified that it was important that teachers remain on campus to keep classrooms covered, and it is a safety issue for the students.

9. James Lott (Mr. Lott), an administrator in the Office of Professional Standards for the School District, credibly testified that the School District felt that progressive discipline was not appropriate in Ms. Dunn's case, because her actions amounted to stealing time and outright falsification of records.

10. Ms. Dunn testified that she did not dispute that she had the second job and claimed that the collective bargaining agreement allowed her to work a second job. Ms. Dunn testified that she never used time off with pay and that the School District should have used a progressive discipline against her, rather than terminating her employment. Further, Ms. Dunn claimed that she and the School District had reached an agreement concerning her claim for unemployment compensation that the School District "would not go after my certificate." Ms. Dunn showed no remorse or acknowledgement of her many untruthful statements or wrongdoing.

CONCLUSIONS OF LAW

11. 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).

12. 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).

13. Petitioner has alleged that Ms. Dunn violated sections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j) and rules 6B-1.006(3)(a) and 6B-1.006(5)(a). Specifically, Petitioner has charged Ms. Dunn with acts that constituted "gross immorality or act involving moral turpitude[,]" "personal

conduct that seriously reduces [Ms. Dunn's] effectiveness as an employee of the district school board[,] and "violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules." The two Florida Administrative Code Rules that Ms. Dunn is charged with violating require that a teacher "shall make reasonable efforts to protect students from conditions harmful to learning and/or to student's mental and/or physical health and/or safety" and "maintain honesty in all professional dealings."

14. The terms "gross immorality" and "moral turpitude" are not defined in the context of section 1012.795, but guidance may be found in Florida Administrative Code Rule 6B-4.009, which provides the basis for charges upon which disciplinary action by the school districts against instructional personnel may be taken. Rule 6B-4.009 provides:

(2) 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.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing

of the act itself and not its prohibition by statute fixes the moral turpitude.

15. "Moral turpitude" has also been defined by the Florida Supreme Court as follows: "Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though, it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." State ex rel. Tullidge v. Hollingsworth, 146 So. 660, 661 (Fla. 1933)(citation omitted).

16. Applying the law to the facts in this case, the undersigned finds that Petitioner has established by clear and convincing evidence that Ms. Dunn violated sections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j) and rules 6B-1.006(3)(a) and 6B-1.006(5)(a).

17. The facts here clearly and convincingly show that Ms. Dunn engaged in gross immorality by her theft of time from the School District, her dishonest and deceptive practices, and her "short-changing" the students that she was charged with educating.

18. The facts clearly and convincingly showed that Ms. Dunn engaged in dishonest conduct in order to work a second

job. Although working a second job is not immoral, Ms. Dunn used deceptive and false means to work for St. Petersburg College at the same time that she has been contracted to work as a teacher. The record shows that, during the time that she should have been teaching at Seminole High School, Ms. Dunn was monitoring student interns for St. Petersburg College. She accomplished this task by abusing sick leave and leaving the school campus without permission. Moreover, her conduct "short-changed" students under her charge by not doing her job.

19. Mr. Weller, the Seminole High School principal, credibly testified that Ms. Dunn was hired as a teacher for exceptional student education. He explained that in exceptional student education classes co-teachers are placed in the classroom to provide additional assistance. Further, Mr. Weller credibly explained that students in exceptional student education classes often need help with their individual education plans and that the co-teachers help provide the necessary assistance for the students to be successful. Similarly, Mitchell Disney testified that Ms. Dunn, as his co-teacher, worked with students that "had a lot of issues" and required modifications in order to be successful. Ms. Dunn's actions cheated those students, because she was not in the classroom to do her job and assist them. In sum, Ms. Dunn's

actions here are immoral, because they were dishonest, resulted in theft of time, and harmed her students' ability to learn.

20. Next, the record clearly supports the finding that Ms. Dunn's personal conduct seriously reduced her effectiveness as a teacher. A teacher cannot be effective if the teacher is not present in the classroom. Furthermore, as Mr. Lott testified it is important for teachers to maintain honesty. He explained that teachers are to model high moral standards, and honesty is important for the teacher's credibility in dealing with other teachers, administrators, and the students' parents. Here, as discussed earlier, Ms. Dunn's conduct falls short and has reduced her effectiveness as a teacher.

21. Finally, the record clearly shows that Ms. Dunn violated the Principles of Professional Conduct for the Education Profession as set out by her violations of rules 6B-1.006(3)(a) and 6B-1.006(5)(a). The record clearly and convincingly showed that Ms. Dunn's actions failed to take reasonable efforts to protect students from conditions harmful to learning and the students' physical health and safety. Although the evidence did not show that any student was physically harmed, Mr. Weller testified that it was important for teachers to get permission before leaving the school campus because of school safety issues. Mr. Weller explained that the school safety is involved because classes need to be covered.

The evidence showed that, on occasion, Ms. Dunn would leave the school campus without signing out or without permission. Finally, as stated earlier, Ms. Dunn taught students in the exceptional student education program and those students often required additional attention. By being absent from the classroom, Ms. Dunn's action was harming the ability of those students to learn and created an environment where the students' safety was at risk. Thus, she violated rule 6B-1.006(3)(a). In addition, the record clearly and convincingly shows that Ms. Dunn's conduct violated rule 6B-1.006(5)(a), because she failed to maintain honesty in all her professional dealings.

22. The disciplinary guidelines set forth in Florida Administrative Code Rule 6B-11.007 for the violations which were established here range from probation to revocation. In determining the appropriate discipline, rule 6B-11.007(3) provides a list of aggravating and mitigating factors that may be considered in taking disciplinary action.

23. Turning to the facts here, the record shows as aggravating circumstances that Ms. Dunn has failed to accept responsibility for her actions or show any remorse. Rather than accept responsibility, Ms. Dunn repeatedly indicated that she took unpaid leave from the school for her second job and that she was not counseled about her job performance or given an appropriate progressive discipline. Neither of Ms. Dunn's

explanations shows any insight into her conduct. Moreover, Ms. Dunn claimed that the School District had promised not to "go after my [teaching] certificate" as resolution of her unemployment compensation claims. Again, Ms. Dunn's claim is without merit. The Decision of Appeals Referee exhibit filed by Ms. Dunn does not contain any statement supporting her contention that there was an agreement concerning her teaching certificate. Moreover, Petitioner could not be bound by an agreement in which he was not a party. Unfortunately, Ms. Dunn fails to accept responsibility for her wrongdoing.

24. The record did bring forward facts that support mitigation. Although not fully developed by Ms. Dunn, the testimony suggests that she attempted to work two jobs because of financial difficulties at home. Moreover, the record shows that her misconduct occurred over a period from February 2009 until early May 2009. There was no evidence that she had any prior discipline.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Ms. Dunn violated sections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j) and rules 6B-1.006(3)(a) and 6B-1.006(5)(a), and suspending her educator's certificate for two years followed by a period of three years' probation during which she shall be

required, along with standard conditions utilized by the Education Practices Commission, to complete a three-hour college level course in ethics during the first year of her probation.

DONE AND ENTERED this 27th day of April, 2011, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2011.

ENDNOTE

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

COPIES FURNISHED:

Bruce P. Taylor, Esquire
204 37th Avenue, Suite 190
St. Petersburg, Florida 33704

Amie B. Dunn
8580 Kumquat Avenue, North
Seminole, Florida 33777

Kathleen M. Richards, Executive Director
Education Practices Commission
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400

Lois Tepper, Acting General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Marian Lambeth, Bureau Chief
Bureau of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida, 32399-0400

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.