

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 11-1592PL
)
JANA MARIE LANTZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on June 21, 2011. The parties, attorney for Petitioner, witnesses, and court reporter participated by videoconference in Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Charles J. Whitelock
Charles J. Whitelock, P.A.
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316

For Respondent: Jana Marie Lantz, pro se
Post Office Box 813853
Hollywood, Florida 33081

STATEMENT OF THE ISSUE

The issue is whether Respondent's educator certificate should be disciplined for a confrontation, in the presence of students, that she had with a colleague and an administrator.

PRELIMINARY STATEMENT

By Administrative Complaint dated December 13, 2010, Petitioner alleged that, on March 11, 2010, Respondent displayed inappropriate conduct and acted unprofessionally toward a colleague and a school administrator. The Administrative Complaint alleges that, when a reading coach assigned to Respondent's classroom had rearranged the desks, Respondent became upset and, in the presence of students, yelled at the teacher in a menacing manner. Respondent allegedly stood in the other reading coach's face, pointed a finger at her, and yelled, "Go! Be gone! Go away! By the way, you don't do anything!" When an assistant principal appeared and told Respondent to refrain from further action in front of students, Respondent allegedly told him, "I will deal with you later."

The Administrative Complaint alleges that this behavior violates section 1012.795(1)(d), Florida Statutes, which prohibits gross immorality or an act of moral turpitude; section 1012.795(1)(g), which prohibits personal conduct that seriously reduces one's effectiveness as an employee of a school board; and section 1012.795(1)(j), which incorporates the Rules of

Professional Conduct--specifically, rule 6B-1.006(3) (a), Florida Administrative Code, which requires a reasonable effort to protect a student from conditions harmful to learning or a student's mental health, physical health, or safety; rule 6B-1.006(3) (e), which prohibits the intentional exposure of a student to unnecessary embarrassment or disparagement; and rule 6B-1.006(5) (d), which prohibits harassment or discriminatory conduct that unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or that creates a hostile, intimidating, abusive, offensive, or oppressive environment, and requires that a reasonable effort be made to assure that each individual is protected from such harassment or discrimination.

At the hearing, Petitioner called four witnesses and offered into evidence 23 exhibits: Petitioner Exhibits 1-23. Respondent called one witness, herself, and offered into evidence 27 exhibits. The exhibits were admitted, except for Petitioner Exhibits 6-11 and 18-23 and Respondent Exhibits 5.f., 5.g., 5.h., 5.i., 11, 12.a., 12.d., 12.e., 12.f., and 13-19. All exhibits not admitted were proffered. The Administrative Law Judge gave Petitioner until July 1, 2011, to file Petitioner Exhibits 22 and 23; Petitioner failed to do so, and they are deemed withdrawn. The Administrative Law Judge gave Respondent

until July 15, 2011, to file an errata sheet to her deposition transcript; she failed to do so.

The court reporter filed the Transcript on July 13, 2011. Each party filed a Proposed Recommended Order by August 16, 2011.

FINDINGS OF FACT

1. Respondent holds Florida educator certificate number 725822. She has been employed as a teacher with the Miami-Dade County School Board for 17 years. During the 2010-11 school year, Respondent taught sixth-grade science at Thomas Jefferson Middle School, which is operated by the Miami-Dade County School Board. At the time of the hearing, Respondent stood at 63 inches and weighed 145 pounds.

2. Marie Wallace is a reading coach. She has 11 years' experience in education, including seven years as a reading coach at Thomas Jefferson Middle School, where she also worked during the 2010-11 school year. At the time of the hearing, Ms. Wallace stood at 60 inches and weighed 140 pounds.

3. Patrick Lacouty is an assistant principal at Thomas Jefferson Middle School. He has been employed in various professional capacities by the Miami-Dade County School Board for 15 years. Given his limited role in the confrontation between Respondent and Ms. Wallace, described infra, Mr. Lacouty's size is irrelevant.

4. On March 11, 2010, FCAT testing was taking place at Thomas Jefferson Middle School. Respondent's science classes were scheduled for first, third, and fifth periods on that day. The fifth period class started around 2:00 pm.

5. The administration had selected Respondent's classroom as a location for FCAT testing. This testing proceeded without incident at all times that Respondent's classroom actually hosted testing. The confrontation between Respondent and Ms. Wallace arose after FCAT testing had been completed on March 11.

6. After being informed that her classroom would be used for FCAT testing during first and third periods on March 11, Respondent planned alternative locations for these classes. Respondent took her first-period class to the auditorium and her smaller second-period class to the science lab. Respondent was informed that her classroom would be available for her fifth-period class.

7. Third period immediately preceded lunch. Either during class or lunch, Respondent checked her classroom and found Ms. Wallace packing up her materials. Respondent asked her if she was done with the classroom, and Ms. Wallace replied that she was and that she would send some students to rearrange the desks and tables to their normal classroom configuration.

8. When Respondent returned to the classroom shortly prior to the start of fifth period, she was displeased to find that the desks and tables were not back in their normal places. Respondent instructed a few waiting students to move the furniture and told the rest to remain in the hallway.

9. Ms. Wallace returned to the classroom at this time, and Respondent complained loudly that Ms. Wallace had not rearranged the room, as she had promised and as she had found it. According to Ms. Wallace, her behavior at all times during this incident was exemplary. However, her testimony to this effect is not credited for the reasons set forth below.

10. Ms. Wallace testified that it was normal for a teacher not to rearrange a classroom, essentially admitting that she had not returned the classroom furniture to its original configuration. Ms. Wallace's testimony that it is normal for a teacher not to rearrange a classroom is not credited. Ms. Wallace appears to have an imperfect understanding as to customary practices concerning the temporary uses of classrooms. Ms. Wallace complained that Respondent had locked up some supplies, also contrary to custom, but Respondent explained persuasively that she had locked up those supplies because she had purchased them with her own money and, from time to time, they were removed without authorization by persons unknown to her.

11. Respondent and Ms. Wallace briefly disagreed over the location of the furniture in the classroom and whose job it was to restore the original configuration. The situation was exacerbated by a mutual feeling of disrespect that each employee had for the other.

12. In her statement, Ms. Wallace eagerly described incidents taking place at undetermined times prior to the incident. She clearly has determined that Respondent has behaved unprofessionally for a long time. As is obvious from what Respondent said to Ms. Wallace, discussed infra, it is equally plain that Respondent does not hold Ms. Wallace in high regard either.

13. Some tension may have developed between the two employees given Respondent's role as a steward in the teachers' union and Ms. Wallace's selection by the district office to serve as its professional liaison to the classroom teachers.

14. According to her statement and testimony, Ms. Wallace recounts only three things said by Respondent during the confrontation. The first was a directive to her students to remain outside the classroom. The second was directed at Ms. Wallace: "Go! Be gone, go away! By the way, you don't do anything. You don't have a clue." The third was an invitation from Respondent to Ms. Wallace to return the next morning so

Respondent could show her how to test students without moving any classroom furniture.

15. Around the time that Respondent told Ms. Wallace to leave the classroom, Mr. Lacouty appeared. He told Respondent not to misbehave in front of the students. Respondent held out her hands in front of her and said, "I will deal with you later," as she returned to her classroom to set it up for her waiting class. Mr. Lacouty instructed her students to go inside the classroom and left the area.

16. Ms. Wallace has characterized Respondent as "ranting and raving" and "deranged," but has only recounted the statements set forth supra as to the contents of Respondent's ranting. However, Respondent's directive to her students to remain outside the classroom and her demand for Ms. Wallace to leave the classroom so she could do what Ms. Wallace had agreed to do and get to work teaching her class were not irrational. A parenthetical observation followed by an invitation to return the following day do not suggest the ravings of someone deranged. Ms. Wallace's characterization of Respondent as "ranting and raving" and "deranged" is not credited.

17. Ms. Wallace's credibility also suffers in her description of her feelings during this confrontation. In her statement, Ms. Wallace reported, "I felt that my safety along with the safety of the student who witnesses this entire display

was threatened by [Respondent's] irrational behavior."

Ms. Wallace added: "In addition, as a larger built woman, I felt that she was using her size . . . to instigate a fight in the presence of the students." Questioning during the hearing clarified this statement to mean that Respondent, not Ms. Wallace, the reading coach, was the larger-built woman. But as noted supra, the women are of approximate equal size. Ms. Wallace's statement about her safety being threatened is entirely disingenuous. She testified at the hearing that she was unafraid of Respondent, who does not impress as a woman capable of inflicting physical injury on another adult.

18. The disingenuous statement of Ms. Wallace about her safety is linked with her statement about her fear for the students' safety. This statement is also disingenuous. At hearing, when asked about the reaction of the students to the exchange between the two employees, Ms. Wallace testified that she based her conclusory opinion that the students were "terrified" on the facts that she could see the faces of the students sitting along the outside wall of the classroom and that the students were seated "timidly."

19. But other facts speak more loudly than Ms. Wallace's conclusory testimony concerning the impact of this confrontation on the students. First, not a single student testified at the hearing. Second, as noted supra, Mr. Lacouty formed his own

opinion as to the safety of Respondent's students when, after witnessing the incident, he merely instructed them to return to Respondent's classroom. If Respondent had posed a risk to her students' safety, Mr. Lacouty would have relieved Respondent of her duties that afternoon and assigned another teacher to the class. At hearing, Mr. Lacouty failed to provide any details of students' reaction to whatever part of this relatively brief exchange they may have witnessed. Third, the principal testified that Ms. Wallace reported to her only that the students were staring, wondering what was going to happen. Fourth, Respondent testified that instruction proceeded in normal fashion for this class for the rest of the term. On these facts, there is no basis to find any impact to the students who may have witnessed all or part of a frustrated exchange between two teachers during the week of FCAT testing.

20. Just a few months later, the school principal assigned Respondent and Ms. Wallace to attend a summer workshop together in Orlando that summer. This decision suggests that the confrontation between the two employees was not as significant as Petitioner alleges.

21. Respondent and Ms. Wallace are examples of different kinds of nonresponsive witnesses. Repeatedly, Respondent would not answer simple questions; instead, she answered questions that she wanted to answer. She was evasive and stubborn.

22. Ms. Wallace was nonresponsive in a different way. Answering the question posed to her, she would then enthusiastically answer what she anticipated would be the next several questions. She was less a witness than a prosecutorial assistant, who seized the opportunity to obtain justice for years of what she perceived to be Respondent's unprofessional behavior.

23. The credibility of Respondent was further undermined by repeated inconsistencies in her testimony and statements. Not to be undone, though, Ms. Wallace's credibility, at least as to her claim that she never lost her composure, was undermined by her repeated losses of composure while testifying. Because Ms. Wallace became agitated in the controlled environment of an administrative hearing, it is very likely that she also become agitated during the confrontation itself, especially given her longstanding list of grievances concerning Respondent.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

25. Section 1012.795(1), Florida Statutes, provide in relevant part:

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:

* * *

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

* * *

(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.

26. Florida Administrative Code Rule 6B-1.006(3) (a)

and (e) provides:

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.

27. Florida Administrative Code Rule 6B-1.006(5) (d)

provides:

Obligation to the profession of education requires that the individual:

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

28. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

29. Petitioner has failed to prove that Respondent is guilty of gross immorality or an act of moral turpitude. This issue requires no discussion.

30. Petitioner has failed to prove that Respondent is guilty of personal conduct that seriously reduces her effectiveness as a school board employee. The incident was neither as intense as Ms. Wallace described it, nor was Ms. Wallace as free of responsibility for causing the incident, or escalating the exchange, as Ms. Wallace described it. Respondent's dismissive response to Mr. Lacouty's one-sided intervention was insubstantial. As noted supra, Mr. Lacouty did not observe anything that required immediate intervention by the administration. The insubstantiality of the incident is reinforced by the principal's assignment of both parties to a conference in Orlando just a few months later. Also, the fifth-grade class proceeded through the remainder of the class material without incident.

31. For largely the same reasons, Petitioner has failed to prove that whatever the students witnessed of the confrontation between Respondent and Ms. Wallace, or the dismissive treatment by Respondent of Mr. Lacouty, rose to the level of a condition harmful to learning or to the student's mental or physical health or safety, or that Respondent intentionally exposed her students to unnecessary embarrassment or disparagement.

Ms. Wallace candidly admitted to the principal, right after the incident, that the students were only staring, wondering what would happen next--a version of events far tamer than her later, embellished claim that the students were terrified.

32. Lastly, Petitioner failed to prove that Respondent harassed Ms. Wallace, so as to interfere unreasonably with her work or the orderly processes of education, or created a hostile, intimidating, abusive, offensive, or oppressive environment. The two employees had an unfortunate disagreement, more caused by Ms. Wallace than Respondent. Their brief exchange did not rise to the level of interfering with either employee's discharge of her professional responsibilities or creating a hostile, intimidating, abusive, offensive, or oppressive environment. This allegation does not appear to apply to Respondent's dismissive treatment of Mr. Lacouty, but, if it did, the facts would not support it.

RECOMMENDATION

It is

RECOMMENDED that Petitioner dismiss the Administrative Complaint against Respondent.

DONE AND ENTERED this 31st day of August, 2011, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
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 31st day of August, 2011.

COPIES FURNISHED:

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

Lois Tepper, Interim 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

Charles T. Whitelock
Charles T. Whitelock, P.A.
300 Southeast Thirteenth Street, Suite E
Fort Lauderdale, Florida 33316

Jana Lantz
Post Office Box 813853
Hollywood, Florida 33081

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.