

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,                    )  
  )  
      Petitioner,                                )  
  )  
vs.    )     Case No. 11-3199TTS  
  )  
PATRICIA SLADE,                                )  
  )  
      Respondent.                              )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 1, 2011, by video teleconference in Tallahassee and Fort Myers, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire  
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For Respondent: Jeffrey Sirmons, Esquire  
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STATEMENT OF THE ISSUE

Whether Petitioner, Lee County School Board (School Board), has established "just cause" to terminate the Respondent, Patricia Slade (Ms. Slade), as a teacher.

PRELIMINARY STATEMENT

On May 13, 2011, Dr. Lawrence D. Tihen, superintendent of Lee County School District, filed a Petition for Termination against Ms. Slade. The Petition for Termination alleged that Ms. Slade, a teacher, had fallen asleep in her classroom during the school day and that during the 2010-2011 school year, Ms. Slade had left her students unattended. The Petition for Termination charged Ms. Slade with "misconduct in office," pursuant to section 1012.33(1)(a), Florida Statutes (2010),<sup>1/</sup> and Florida Administrative Code Rule 6B-4.009(3); that her actions constituted "inefficiency, the repeated failure to perform duties prescribed by law," violating section 1012.33(1)(a), and rule 6B-4.009(1)(a)(1). Finally, Ms. Slade was charged with violating Lee County School Board Policies 5.02, Ethical Standards and 5.29, Complaints Relating to Employees.

Ms. Slade requested an administrative hearing on the Petition for Termination of Employment.

On June 21, 2011, the School Board considered the Petition for Termination and suspended Ms. Slade without pay pending

receipt of a Recommended Order in the administrative hearing. That same date, the School Board forwarded the Petition for Termination to DOAH. Administrative Law Judge Thomas P. Crapps was assigned the case, and a final hearing was scheduled for September 1, 2011.

At the September 1, 2011, hearing, the School Board presented the testimony of five witnesses: Alex Dworzanski (Mr. Dworzanski), assistant principal of Lehigh Acres Elementary School; Amelia Sanchez (Ms. Sanchez), a school volunteer; Bernadette Hicks (Ms. Hicks), a former teacher; Jessica Serrano (Ms. Serrano) and Donna Kinney (Ms. Kinney), two teacher aides. The School Board introduced into evidence Exhibits 1 through 7, and 9 through 12.

Ms. Slade presented the testimony of Ranice Monroe (Ms. Monroe), director of professional standards and equity for the Lee County School District, and herself. Ms. Slade introduced into evidence Exhibits 1, 5, and 6.

A Transcript of the proceedings was filed with DOAH. The parties requested additional time to prepare recommended orders, which was granted. The parties filed their Proposed Recommended Orders on October 17, 2011, which the undersigned considered in preparing the Recommended Order.

## FINDINGS OF FACT

1. Ms. Slade is a teacher at Lehigh Acres Elementary School and has worked for the Lee County School District since August 19, 1997. As a teacher, Ms. Slade is an instructional employee and her employment is governed, in part, by the collective bargaining agreement between the School Board and the Teachers Association of Lee County (TALC).

2. The School Board is charged with the operation of the free public education in Lee County, Florida, and has the authority to terminate or suspend instructional employees. See § 1012.22(1)(f).

3. The record shows by preponderance of the evidence that Ms. Slade has fallen asleep in her classroom during the school day on several instances and on one occasion left her classroom unattended.

4. The record shows that for school year 2010-2011, Ms. Slade was a teacher for pre-kindergarten children, who are four-years-old. The School Board witnesses credibly testified that they had observed Ms. Slade asleep in the classroom on different dates. Ms. Sanchez, a grandmother of one of the students in Ms. Slade's classroom and school volunteer, credibly testified that she had observed Ms. Slade asleep three or four times during the school year. In one instance, Ms. Sanchez

observed Ms. Slade asleep during the children's naptime for a period of approximately 30 minutes.

5. Ms. Sanchez's testimony was corroborated by the credible testimony of Ms. Hicks, a former teacher and two teacher aides, Ms. Serrano and Ms. Kinney. Ms. Hicks credibly testified that she observed Ms. Slade on three occasions. Ms. Hicks described one of the occasions when she walked into Ms. Slade's classroom during the afternoon and found her asleep on the floor. Similarly, Ms. Serrano credibly testified that sometime in January 2011, during the students' naptime, Ms. Kinney had come to her classroom and asked Ms. Serrano to watch Ms. Slade's class while Ms. Kinney left to use the restroom. Upon entering Ms. Slade's classroom, Ms. Serrano found Ms. Slade asleep on the floor. Ms. Serrano credibly testified that she woke Ms. Slade up, because Ms. Serrano had to go back to her own classroom. Finally, Ms. Kinney, who was Ms. Slade's teacher aide, credibly testified that Ms. Slade had fallen asleep once before the winter break and more frequently after the winter break. In a written statement provided by Ms. Kinney to the school, Ms. Kinney indicated by February 2011, Ms. Slade was falling asleep in the classroom "once a week to every other week." During one of Ms. Slade's midday naps after the winter break, Ms. Kinney took a picture with a cell phone of Ms. Slade sleeping on the floor. The photograph, which was

admitted into evidence, clearly shows Ms. Slade asleep on the floor of the classroom with the students asleep on their mats around her.

6. The record also shows that on February 15, 2011, Ms. Slade fell asleep in the classroom. Mr. Dworzanski, assistant principal for the school, credibly testified that he went to Ms. Slade's classroom after being called by Ms. Kinney, because Ms. Slade was asleep. Mr. Dworzanski credibly testified that he found Ms. Slade "sitting underneath where the smart board was propped up against the wall and she was asleep." Mr. Dworzanski further testified that Ms. Slade was difficult to wake and that she was incoherent when she was finally aroused. Based on her incoherence, Ms. Slade was taken to the school nurse and paramedics were called. After this February 15, 2011, incident, Ms. Slade did not return to the class.

7. Ms. Slade offered that she had "passed out" on the February 15, 2011, incident as the result of acute bronchitis. While Ms. Slade testified that she had acute bronchitis, her testimony was not credible for showing that her diagnosis of acute bronchitis was the cause for her being asleep or in an unconscious state on February 15, 2011. Therefore, the undersigned finds that there was no competent evidence to explain why Ms. Slade slept during the school day.

8. Mr. Dworzanski credibly explained that a teacher is not permitted to sleep during the pre-kindergarten student's naptime, because the teacher must monitor the students and keep them safe. Apparently, not all four-year-old students sleep during naptime and the teacher needs to keep an eye on the students.

9. Next, the record supports the finding that on one instance Ms. Slade left her class unattended. Ms. Kinney credibly testified that on one occasion Ms. Kinney went to the cafeteria to retrieve the school lunches. Upon returning to the classroom, Ms. Kinney did not see Ms. Slade in the classroom. Further, there was no adult supervision in the classroom when Ms. Kinney entered the class with the lunches. When asked by Ms. Kinney, the students informed her that Ms. Slade had gone to the bathroom. Ms. Slade returned "several minutes" after Ms. Kinney had returned to the classroom.

10. Ms. Slade does not have any prior disciplinary record with the school, and was an effective teacher when she had been observed teaching.

#### CONCLUSIONS OF LAW

11. DOAH has contractual jurisdiction over the parties to and subject matter of the Petition to Terminate. §§ 120.65(7), 120.569, and 120.57, Fla. Stat. (2011).

12. The School Board has the authority to terminate and/or suspend instructional personnel without pay and benefits. §§ 1012.22(1)(f) and 1012.40(2)(c). The School Board has the burden of proving by a preponderance of the evidence the allegations underlying the proposed disciplinary action set forth in the Petition for Termination. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996).

13. Ms. Slade is an instructional employee of the School District; thus, she is subject to the collective bargaining agreement and section 1012.33. The standard for discipline of instructional personnel is "just cause" pursuant to section 6.024 of the TALC Collective Bargaining Agreement and section 1012.33(1)(a). Although the collective bargaining agreement does not define "just cause," the term is defined by section 1012.33. Section 1012.33 states that "just cause" "includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude."

14. The Petition for Termination charges Ms. Slade with "misconduct in office," pursuant to section 1012.33(1)(a), as defined by rule 6B-4.009(3); inefficiency, the repeated failure



to perform duties prescribed by law pursuant to section 1012.33(1)(a), as defined by rule 6B-4.009(1)(a)(1); and violating Lee County School Board Policies 5.02, requiring employees to adhere to the highest ethical conduct, and 5.29, requiring employees to exemplify conduct that is lawful and professional and contributing to a positive learning environment for students.

15. Rule 6B-4.009 sets out the criteria for suspension and dismissal for school instructional personnel. Rule 6B-4.009(3) provides the definition for "misconduct in office" as follows:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

16. Florida Administrative Code Rule 6B-1.001(3) provides that "[a]ware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct." Similarly, rule 6B-1.006(3)(a), entitled "Principles of Professional Conduct for the Education Profession in Florida," requires a teacher to "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." In addition to proving the rule violation, the School Board must demonstrate that the "misconduct" caused impairment of Ms. Slade's effectiveness in the school system. See MacMillian v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 229-230 (Fla. 1st DCA 1993) (holding that school seeking to dismiss a teacher on the basis of "misconduct in office" must establish each and every element of the charge).

17. "Misconduct in office" may be established, even in the absence of "specific" or "independent" evidence of impairment, where the conduct engaged in by the teacher is of such a nature that it "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. In such cases, proof that the teacher engaged in the conduct is also proof of impaired effectiveness. See Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492, 498 (Fla. 5th DCA 2000); Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128-29 (Fla. 2d DCA 2000); Summers v. Sch. Bd. of Marion Cnty., 666 So. 2d 175, 175-76 (Fla. 5th DCA 1995); Brevard County School Board v. Jones, Case No. 06-1033, 2006 Fla. Div. Adm. Hear. 002.LEXIS 287 \*17 (Fla. DOAH June 30, 2006) (Recommended Order) ("[T]he need to demonstrate 'impaired effectiveness' is not necessary in instances where the misconduct by a teacher speaks for itself, or it can be inferred from the conduct in question."); and Miami-Dade County School Board v. Lefkowitz, Case No. 03-0186,

2003 Fla. Div. Adm. Hear. LEXIS 675 \*23-24 (Fla. DOAH July 31, 2003) (Recommended Order) ("The School Board failed to prove by a preponderance of the direct evidence that Mr. Lefkowitz's actions were so serious that they impaired his effectiveness as a teacher. Nonetheless, based on the findings of fact herein, it may be inferred that Mr. Lefkowitz's conduct impaired his effectiveness as a teacher in the Miami-Dade County public school system.") (citation omitted).

18. In addition to the "misconduct in office" charge, the Petition for Termination charges Ms. Slade with "inefficiency, the repeated failure to perform duties prescribed by law pursuant to section 1012.33(1)(a), as defined by rule 6B-4.009(1)(a)(1), which constitutes 'just cause' for her termination." Rule 6B-4.009(1)(a)(1), defines incompetence as the "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); . . . ".<sup>2/</sup>

19. The School Board's Policies 5.02, and 5.29, provides that teachers are held to high ethical standards and are expected to exemplify conduct that contributes to a positive learning environment.

20. Applying the facts to the law here, the undersigned concludes that the School Board has shown by the preponderance of the evidence "just cause" to terminate Ms. Slade's employment.

21. As for the charge of "misconduct in the office," the record shows that on several different occasions Ms. Slade fell asleep for extended periods of time during the school day when she was in the classroom with pre-kindergarten students. Further, the evidence established one incident when Ms. Slade left her classroom unattended while she went to the restroom. Ms. Slade's conduct of sleeping during the children's naptime and leaving the classroom unattended violated rule 6B-1.006(3), by creating conditions harmful to the students' physical health and safety. Although these incidents occurred during the student's naptime, Ms. Slade's midday siestas were not permitted. As the record showed through Mr. Dworzanski's testimony, during this time the teachers were expected to be "monitoring the students, making sure the students are safe, because not all the time do students always sleep during that time." Although Mr. Dworzanski testified that "at times"

Ms. Slade "was very effective" when teaching, it is common sense that a teacher cannot be effective when she is asleep in the classroom or absences herself from the classroom without leaving adult supervision. Therefore, the record supports the conclusion that Ms. Slade was not effective as a teacher.

22. Next, the record establishes that Ms. Slade violated rule 1.006(1)(a)(1), by being incompetent based on the "inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity." Although the School Board did not bring forward any expert witness showing how Ms. Slade's conduct violated the now repealed section 231.09, the record did establish that Ms. Slade "failed to perform duties prescribed by rule of the district school board" in that she violated the School Board Policies 5.02, and 5.29. School Board Policies 5.02, and 5.29 require teachers to exemplify conduct that contributes to the learning environment. Sleeping during work hours does not contribute to the learning environment. Based on this repeated behavior, the undersigned finds that the School Board established that Ms. Slade was ineffective.

23. One area that concerned the undersigned was the repeated theme gathered from the school personnel as to why they did not report Ms. Slade's sleeping in the classroom earlier. The testimony showed that prior to the February 15, 2011,

incident Ms. Hicks, Ms. Serrano, and Ms. Kinney had all observed Ms. Slade asleep in the classroom. Further, the testimony showed that no one wanted to cause a disturbance or problem, yet all recognized that Ms. Slade's behavior endangered the students. Under the Principles of Professional Conduct for Educational Profession in Florida, these teaching professionals had an affirmative duty to report Ms. Slade's sleeping in the class to the school administrators.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lee County School Board enter a final order terminating the employment of Patricia Slade, as a teacher.

DONE AND ENTERED this 15th day of November, 2011, in Tallahassee, Leon County, Florida.



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THOMAS P. CRAPPS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of November, 2011.

## ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2010 version.

<sup>2/</sup> Prior to the repeal of chapter 231, Florida Statutes, by section 1058, chapter 2002-387, Laws of Florida, section 231.09, Florida Statutes (2001), set forth the duties of instructional personnel as follows:

(1) The primary duty of instructional personnel is to work diligently and faithfully to help students meet or exceed annual learning goals, to meet state and local achievement requirements, and to master the skills required to graduate from high school prepared for postsecondary education and work. This duty applies to instructional personnel whether they teach or function in a support role.

(2) Members of the instructional staff of the public schools shall perform duties prescribed by rules of the district school board. The rules shall include, but are not limited to, rules relating to a teacher's duty to help students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully, using prescribed materials and methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the district school board.

### 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.