

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 12-0884TTS
)
LESLIE RAINER,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference between Lauderdale Lakes and Tallahassee, Florida, on August 30, 2012, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Carmen Rodriguez, Esquire
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For Respondent: Robert F. McKee, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent committed the acts alleged in the Administrative Complaint dated February 27, 2012, and filed with

DOAH on March 14, and, if so, the discipline that should be imposed against Respondent's employment.

PRELIMINARY STATEMENT

Respondent is a high school teacher employed by Petitioner. Based on allegations as to her conduct with a certain student, the School Board voted on March 6, 2012, to suspend Respondent's employment without pay for ten days and to require her to undergo diversity training. Respondent timely challenged the proposed action, the matter was referred to DOAH, and this proceeding followed.

At the final hearing, Petitioner presented the testimony of Phil St. Jean (former student) and Karlton Johnson (high school principal). Petitioner's pre-marked Exhibits 1, 2, and 19 were admitted into evidence. Petitioner's Exhibit 19 is a video that was admitted into evidence over the Respondent's objection.

Respondent testified on her own behalf and presented the additional testimony of Layla Santiago (former student). Respondent's Exhibits 1, 3, 4, and 5 were admitted into evidence. Respondent's exhibits include depositions from two other former students.

A Transcript of the proceedings, consisting of one-volume, was filed on September 25, 2012. Each party filed a Proposed

Recommended Order, and both have been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, each reference to a statute is to Florida Statutes (2012), and each reference to a rule is to the rule as published in Florida Administrative Code as of the date of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Broward County, Florida.

2. At all times relevant to this proceeding, Respondent has been employed as a classroom teacher at Blanche Ely High School (the school), which is a public school in Broward County.

3. In 2008, Karlton Johnson became the principal of the school and was the principal at all times relevant to this proceeding.

4. On or shortly before December 3, 2008, three of Respondent's students submitted a written statement to Sabrina Elsinger, who was an assistant principal at the school. The written statement accused Respondent of making racially inappropriate statements to the students, who were of Haitian descent.

5. In response to the written statement, Ms. Elsinger met with Respondent and prepared a "Meeting Summary" which included the following:

On 12/04/2008 at 2:45 pm we met to discuss students allegations of unfair treatment and "bullying" by you within your classroom. During this meeting, I shared with you the following student allegations:
You said "I wish they would put you in a boat and send you back where you came from."

Students are told to shut up when speaking out of turn.

A student was told to stand in a corner near the garbage can because "that's where he belongs."

Students feel bullied by you.

You allow students from other origins to [sic] bully them.

I also shared with you the following expectations:

You will speak to the students with kindness and professionalism.

You will call for security for student removal when a student is unruly.

Students will feel equity within the diverse population of your classroom.

6. No disciplinary action was taken against Respondent for these alleged statements. Petitioner did not present competent evidence that Respondent made the statements attributed to her.

7. In a separate incident, Respondent was accused of

engaging in an inappropriate discussion with another teacher about religion in front of a classroom of students. Respondent received a Record of Counseling for that alleged incident, but no discipline was imposed against her.¹

8. Respondent and Mr. Johnson are African-Americans. Phil St. Jean's mother is African-American and his father is of Caribbean descent. Mr. St. Jean, who is of a dark complexion, was 18 years old at the time of the formal hearing and had graduated from the school.

9. During the 2010-2011 school year, Mr. St. Jean was in a remedial class taught by Respondent for students who had not passed the FCAT.

10. Respondent frequently had Mr. St. Jean removed from the class for his alleged misconduct, primarily talking too much. Respondent believed that she was justified in removing him from her class. Mr. St. Jean believed that Respondent was picking on him, treated him unfairly, and blamed him for things he had not done. Mr. St. Jean decided to record a video of Respondent as proof of Respondent's unfair treatment of him. Mr. St. Jean did not think the administration would believe that Respondent was mistreating him without the video.

11. On May 6, 2011, Mr. St. Jean walked into Respondent's classroom just before class was to start. He had an iPod concealed in his hands that recorded Respondent without her

knowledge or permission. Several other students were present in the classroom, including Kevin Eason and Laila Santiago.

12. After he entered the classroom, Respondent went up to Mr. St. Jean, pointed a pointer at him and stated "You've got one time, chocolate." That scene was captured on video. The other students in the classroom laughed when Respondent made the comments to Mr. St. Jean.

13. Respondent testified that she was engaging in banter with Mr. St. Jean and that she did not intend her statement to be a racial slur. In her defense, Respondent points out that there were no white students present when she made the comments. That testimony lacks credibility and is rejected. The video and the testimony of Mr. St. Jean establish that Respondent's comments were made in a threatening manner and were intended to be a warning to Mr. St. Jean to behave. Respondent's use of the term "chocolate" was a reference to Mr. St. Jean's complexion and is properly viewed as being a racial slur.

14. After he caught Respondent's comments on video, Mr. St. Jean inadvertently stopped recording. Respondent thereafter called Mr. St. Jean a "little chocolate boy" and described him as being "the dark chocolate nobody likes to eat."

15. Respondent's comments to Mr. St. Jean caused the other students in the classroom to laugh at Mr. St. Jean. Respondent made Mr. St. Jean the butt of the joke. While he did not react

to Respondent's comments, Mr. St. Jean testified, credibly, that he was humiliated, embarrassed, and deeply hurt by them.²

16. Mr. St. Jean showed his mother the video recording of Respondent later that night.

17. The next school day, Mr. St. Jean's mother went to the school to address her concerns about her son's behavior and academic performance in Respondent's classroom and the inappropriate comments discussed above. Assistant Principal Heidi Jones called Mr. Johnson to join the meeting with Mr. St. Jean and his mother. Mr. Johnson had not previously been aware of any problems between Mr. St. Jean and the Respondent, and he did not know the nature of the meeting beforehand.

18. Mr. Johnson brought Respondent to join the meeting. Respondent did not have any documentation of Mr. St. Jean's disciplinary issues, had not followed the discipline matrix, and had never contacted his mother regarding any issue with his behavior or performance in her classroom.

19. After discussing disciplinary issues with her son, Mr. St. Jean's mother asked Respondent directly whether she had called her son a name. At that point, unaware that there was a video recording, Respondent denied calling Mr. St. Jean a name and left the meeting. Mr. St. Jean and his mother then showed

Mr. Johnson the video recording and downloaded it onto Mr. Johnson's work computer.

20. Respondent's conduct impaired her effectiveness in the school system.

CONCLUSIONS OF LAW

21. DOAH has jurisdiction over the subject matter of and the parties to this case pursuant to sections 120.569 and 120.57(1).

22. Because Petitioner seeks to suspend Respondent's employment without pay for ten days, which does not involve the loss of a license or certification, Petitioner has the burden of proving the allegations in its Administrative Complaint by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

23. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000)(relying on American

Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

24. Section 1012.33(1)(a), Florida Statutes, sets forth "just cause" for disciplining Respondent's employment, including the following: "incompetency," "immorality," and "misconduct in office" as those terms are defined by rule of the State Board of Education.

25. The following definitions are set forth in Florida Administrative Code Rule 6B-4.009(1), (2), and (3):

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity . . .

(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 . . .

(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.

(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.

26. Subsections (1) and (2) of the Code of Ethics of the Education Profession in Florida (Florida Administrative Code Rule 6B-1.001) provide as follows:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

27. The Principles of Professional Conduct for the Education Profession in Florida are set forth in Florida Administrative Code Rule 6B-1.006. Subsection (2) of the rule provides as follows:

(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.

28. Florida Administrative Code Rule 6B-1.006(3) sets forth the obligations a teacher has to a student, and includes the following:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's physical health and/or safety.

* * *

(e) Shall not intentionally expose a student unnecessary embarrassment or disparagement.

(f) Shall not violate or deny a student's legal rights.

29. Respondent's conduct does not rise to the level of "immorality" as that term is defined by Florida Administrative Code Rule 6B-4.009(2). While racial slurs should not be tolerated, especially in an educational setting, Respondent's conduct was not "sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair [Respondents'] service in the community" as required by the rule.

30. Petitioner failed to prove that Respondent was guilty of "incompetence" within the meaning of Florida Administrative Code Rule 6B-4.009(1). There was no evidence that Respondent repeatedly failed to perform duties prescribed by law within the meaning of the rule. Likewise, there was no evidence that Respondent repeatedly failed to communicate or relate to students "to such extent that pupils are deprived of a minimum education experience."

31. Petitioner proved that Respondent engaged in "misconduct" within the meaning of Florida Administrative Rule 6B-4.009(3). The definition of "misconduct" requires that the conduct is so serious "as to impair the [Respondent's] effectiveness in the school system." Respondent demeaned Mr. St. Jean in front of other students. That action violated the Principles of Professional Conduct for the Education Profession in Florida found at Florida Administrative Code Rule 6B-1.006(3)(a), (e), and (g) and in 6B-1.006(5). Mr. Johnson viewed the conduct as totally inappropriate and as grounds to terminate Respondent's employment. Impaired effectiveness in the school system can be found based on the conduct alone if the conduct is sufficiently serious. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000). Respondent's conduct as found in this Recommended Order is sufficient without other proof to establish that Respondent's effectiveness in the school system has been impaired.

32. In its Proposed Recommended Order, the School Board seeks to suspend Respondent's employment without pay for a total of ten school days. That recommendation is based, in part, on its allegations as to Respondent's prior disciplinary history. As reflected by the findings of fact, Petitioner did not prove that aspect of its Administrative Complaint. Consequently, the

undersigned recommends that the ten-day suspension be reduced to a five-day suspension.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the School Board of Broward County, Florida, enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order find Leslie Rainer guilty of misconduct in office and that it suspend her employment without pay for a period of five school days. It is further recommended that the final order require Leslie Rainer undergo diversity training to be determined by the School Board within 60 days of the entry of the Order. It is further recommended that Leslie Rainer's fringe benefits (such as health insurance) not be disturbed during the period of suspension.

DONE AND ENTERED this 22nd day of October, 2012, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of October, 2012.

ENDNOTES

¹ A Record of Counseling is not considered to be discipline.

² In making this finding, the undersigned has considered the deposition testimony of Kevin Eason and the live testimony of Layla Santiago, both of whom viewed the comments less seriously than did Mr. St. Jean.

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 must be filed with the agency that will issue the final order in this case.