

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 12-1184TTS
)
 ALEXANDRO MADRUGA,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes,^{1/} before Jessica E. Varn, a duly-designated administrative law judge of the Division of Administrative Hearings (DOAH). The hearing was held on October 25, 2012, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Arianne B. Suarez, Esquire
Miami-Dade County School Board
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For Respondent: Maria del Carmen Calzon, Esquire
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STATEMENT OF THE ISSUE

Whether there exists just cause to suspend Respondent without pay for fifteen work days.

PRELIMINARY STATEMENT

On March 7, 2012, Miami-Dade County School Board (School Board) notified Mr. Madruga of its intent to suspend him without pay for fifteen work days. Mr. Madruga timely requested an administrative hearing, and the School Board referred the matter to DOAH on April 2, 2012. The hearing was originally scheduled for June 4 through 6, 2012. Based upon requests from the parties, the hearing was rescheduled for September 4 and 5, 2012.

On August 1, 2012, the School Board sought leave to file an Amended Administrative Complaint, which was granted without objection. The hearing was once again rescheduled for October 25 and 26, 2012. The Amended Administrative Complaint charged Mr. Madruga with violations of Florida Administrative Code Rule 6B-4.009(3), alleging that Mr. Madruga's acts constitute misconduct in office; rule 6B-4.009(4), alleging that Mr. Madruga's actions constitute gross insubordination; and School Board policies 3210 and 3210.01.

At the hearing, the School Board presented the testimony of Mr. Madruga; C.P.,^{2/} a parent; and Principal Jacques Bentolila. Petitioner Exhibits 1-4, and 10-23 were admitted into evidence

pursuant to stipulation of the parties. Respondent testified on his own behalf, and introduced no exhibits into evidence.

The one-volume Transcript was filed with DOAH on November 15, 2012. Both parties filed timely Proposed Recommended Orders, which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Madruga has been employed as an English, Stagecraft, and Theater Arts teacher at Ronald Reagan/Doral Senior High School since 2006.

2. During the 2011-2012 school year, Mr. Madruga taught Stagecraft and Theater Arts. In his Stagecraft class, the students learned how to create the overall visual aspect of the high school productions. The students create costumes, construct set pieces, apply make-up, design the lighting scheme, and control the sound of the production.

3. Mr. Madruga seems to thoroughly enjoy teaching these subjects; his passion for teaching was evident during his testimony.

4. In July 2011, a complaint was filed against Mr. Madruga regarding communication he had with a student via Facebook. He received a letter of reprimand, which included the following directives: refrain from participating in any kind of communication with students through Facebook, cellular phone, or

email unless it was regarding school business; refrain from using inappropriate language in conversation of any type (written or verbal) with students when addressing them; adhere to all School Board rules and regulations at all times; and conduct himself, both in his employment and in the community, in a manner that would reflect credit upon himself and the Miami-Dade public schools.

5. On September 29, 2011, on a teacher planning day, Mr. Madruga and the Band Director were, with the help of student volunteers, building a set for a marching band production. Mr. Madruga was present that day to help the band students build the stage. He recognized most of the band students, but did not know them well.

6. The school had received grant money from the City of Miami-Dade, and the money was being partially used for the construction of the set. The school was responsible for creating a report which documented the use of the grant money.

7. E.P., a student, was assigned the task of photographing the construction of the set for use in the report. E.P.'s mother, C.P., was also helping that day.

8. C.P., the Band Director, and Mr. Madruga went to Home Depot to buy all the materials needed for construction of the stage. During that trip, Mr. Madruga made some comments that C.P. interpreted to be sexual in nature.

9. While the students were building the frame of the stage, they used metal braces at the junctures. Those supports are screwed into the wood frame using approximately 8-10 screws. Two students worked together during this process; one held the metal support piece in place, and the other used a power tool to drill the screws in place.

10. While two students worked on installing one of these metal braces, E.P. photographed them. One photograph captures the two students on the floor with the framing; one is kneeling while using the power drill, the other is sitting on the ground while holding the metal brace in place. Mr. Madruga is standing beside the student who is using the power drill, holding screws in his left hand. His hand is lowered to his knee level, which is also at the level of the kneeling student's head.

11. Mr. Madruga explained that, at the time the photo was taken, he was standing next to the student using the power drill because it is quite easy to get injured using it. As he was holding the screws, the photograph captured him handing a screw to the student using the power drill.

12. C.P. filed a complaint with the school, alleging that Mr. Madruga had extended his middle finger in the photograph intentionally, and then laughed about having done so. She also alleged that while the student using the power drill was kneeling and bending at the waist over the framing, Mr. Madruga commented

that he was familiar with that position. C.P. considered the comment to be sexual in nature, and thought that extending his middle finger in the photograph was inappropriate.

13. Students present during this construction event were interviewed during the investigation of C.P.'s complaint, and none, with the exception of C.P.'s son, corroborated C.P.'s allegations.

14. The student kneeling in the photograph refused to provide a statement. The student sitting down holding the metal brace had no knowledge of these allegations, and never heard Mr. Madruga make the alleged comment.

15. The greater weight of the evidence supports Mr. Madruga's testimony; the photograph captures Mr. Madruga handing the student screws as he described, and if Mr. Madruga had made sexually charged comments while in close proximity to students, the undersigned believes the students--in particular the student to whom the comment was allegedly directed--would have heard it.

16. The greater weight of the evidence established that Mr. Madruga is not guilty of misconduct in office, gross insubordination, or of violating any School Board policies.

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to chapter 120.

18. District school boards have the authority to operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law. § 1001.32(2).

19. Such authority extends to personnel matters and includes the power to suspend and dismiss employees. See §§ 1001.42(5), 1012.22(1)(f), and 1012.23(1).

20. At all times material to the instant case, the School Boards had the right, under section 1012.33(6)(a), to suspend or dismiss, for "just cause," classroom teachers and other instructional personnel having professional service contracts.

21. "Just cause" has been defined to include, but not be limited to, 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. § 1012.33(1)(a).

22. "Misconduct in office" has been defined in Florida Administrative Code Rule 6B-4.009(3)) as follows:

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.

23. "Gross insubordination" has been defined in Florida Administrative Code Rule 6B-4.009(4) as follows:

A constant or continuing intentional refusal to obey an order, reasonable in nature, and given with proper authority.

24. The Code of Ethics of the Education Profession is set forth in Florida Administrative Code Rule 6B-1.001, and provides:

(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, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

25. Florida Administrative Code Rule 6B-1.006, which contains the Principles of Professional Conduct for the Education Profession in Florida, 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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

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

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

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

(h) Shall not exploit a relationship with a student for personal gain or advantage.

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

(4) Obligation to the public requires that the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

(c) Shall not use institutional privileges for personal gain or advantage.

(d) Shall accept no gratuity, gift, or favor that might influence professional judgment.

(e) Shall offer no gratuity, gift, or favor to obtain special advantages.

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

(b) Shall not on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition if otherwise qualified, or social and family background deny to a colleague professional benefits or advantages or participation in any professional organization.

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(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.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

(g) Shall not misrepresent one's own professional qualifications.

(h) Shall not submit fraudulent information on any document in connection with professional activities.

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

(j) Shall not withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

(k) Shall provide upon the request of the certificated individual a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

(l) Shall not assist entry into or continuance in the profession of any person known to be unqualified in accordance with these Principles of Professional Conduct for

the Education Profession in Florida and other applicable Florida Statutes and State Board of Education Rules.

(m) Shall self-report within forty-eight (48) hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contend[er]e for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

(n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(o) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(p) Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

(q) Shall, as the supervising administrator, cooperate with the Education Practices

Commission in monitoring the probation of a subordinate.

26. School Board policy 3210 requires that employees shall conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

27. School Board policy 3210.01 provides the Code of Ethics that employees must adhere to.

28. Petitioner has the burden of proving the material allegations by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990).

29. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000); see also Williams v. Eau Claire Pub. Sch., 397 F.3d 441, 446 (6th Cir. 2005) (holding trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and produces . . . [a] belief that what is sought to be proved is more likely true than not true").

30. As detailed in the findings of fact above, the School Board failed to meet its burden of proof. The greater weight of the evidence fails to prove that Mr. Madruga has violated any School Board policy, that he is guilty of misconduct in office, or that he is guilty of gross insubordination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board dismiss the Administrative Complaint against Mr. Madruga.

DONE AND ENTERED this 21st day of December, 2012, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of December, 2012.

ENDNOTES

^{1/} All citations to the Florida Statutes are to the 2012 version.

^{2/} The Transcript incorrectly identifies the parent as having the initials "F.P.," rather than by her proper initials, which are "C.P."

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.