

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GERARD ROBINSON, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 12-1501PL
)
JANA MARIE LANTZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on August 13 and 14, 2012, by video teleconferencing between sites in Tallahassee and Lauderdale Lakes, Florida, before Administrative Law Judge (ALJ) Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Charles T. Whitelock, Esquire
Whitelock and Associates, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

For Respondent: Jana Marie Lantz, pro se
Post Office Box 813853
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STATEMENT OF THE ISSUES

Whether Jana Marie Lantz (Respondent) committed the violations alleged in the Amended Administrative Complaint filed by Gerard Robinson, as Commissioner of Education (the

Commissioner) on April 24, 2012, and, if so, the discipline that should be imposed by the Education Practices Commission (EPC) against Respondent's educator certificate.

PRELIMINARY STATEMENT

Petitioner filed an Administrative Complaint against Respondent that contained certain factual allegations and, based on those factual allegations, alleged that Respondent had violated certain statutory and rule provisions. By the Administrative Complaint, Petitioner asserted that Respondent's teacher's certificate should be disciplined. Respondent timely requested a formal administrative hearing, the matter was referred to DOAH, and this proceeding followed.

Shortly after the matter was referred to DOAH, Petitioner moved for leave to amend the Administrative Complaint and attached an Amended Administrative Complaint to its motion. Thereafter, the motion to amend the administrative complaint was granted and the Amended Administrative Complaint attached to the motion was deemed filed as of April 24, 2012.

The Amended Administrative Complaint contained certain factual allegations and, based on those factual allegations, charged Respondent with the following violations in six consecutively numbered counts. The first three counts alleged that Respondent violated certain statutory provisions. The last

three counts alleged that Respondent violated certain rules set forth in the Florida Administrative Code.¹

Count 1 alleged that Respondent was guilty of gross immorality or an act involving moral turpitude in violation of section 1012.795(1)(d), Florida Statutes.

Count 2 alleged that Respondent was guilty of personal conduct which seriously reduced her effectiveness as an employee of the school board in violation of section 1012.795(1)(g).

Count 3 alleged that Respondent violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules in violation section 1012.795(1)(j).

Count 4 alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(4)(a).

Count 5 alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(5)(d).

Count 6 alleged that Respondent violated Florida Administrative Code Rule 6B-1.006(5)(e).

With the exception of the guardian of two students (the guardian), all witnesses who testified at the formal hearing were School Board employees who, at the times relevant to this proceeding, were assigned to Thomas Jefferson Middle School (TJMS) in the capacity indicated in parentheses. The Commissioner presented the following witnesses: Nancy Louise

Weiner (teacher), Cheryl Kushi (assistant principal), Alexandra Martillo (assistant principal), Luis Chiles (guidance counselor), Chanel Lindsey (teacher), Patrick LaCouty (assistant principal), Bobbie Barnwell (special education teacher), Danielle Eugene (teacher), and Maria Fernandez (principal). In rebuttal, the Commissioner presented the testimony of Janice Hoover (physical education teacher). The Commissioner offered nine consecutively-numbered exhibits, each of which was admitted into evidence. In addition, the Commissioner offered Composite Exhibit 10, consisting of written statements from the Commissioner's witnesses taken during the course of the investigation of the allegations against Respondent.

Respondent testified on her own behalf, and presented the additional testimony of Arthur Leichner (a teacher on special assignment and First Vice President of the United Teachers of Dade), Mercita Wimberly (a physical education teacher and former media specialist), Dawn Houston (special education teacher), the guardian, and Barry Singleton (teacher). Respondent's pre-marked Exhibits 1-7, 21-23, 26, and 33-35 were admitted into evidence. Respondent's pre-marked Exhibits 8, 16-20, 24, 25, and 27-32 were offered, but were ruled inadmissible for the reasons reflected in the Transcript.

The Transcript, consisting of three volumes, was filed September 6, 2012.

The parties timely filed their respective Proposed Recommended Orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent holds Florida Educator Certificate 725822, covering the areas of Athletic Coaching, Biology, Earth-Space Science, Physical Education, and Social Science. Respondent's Certificate is valid through June 30, 2013.

2. The Commissioner is the head of the state agency responsible for certifying and regulating public school teachers in the State of Florida.

3. At all times relevant to this proceeding, Respondent was employed as a Science Teacher at TJMS, which is a public school in the Miami-Dade County School District (the District).

4. At all times relevant to this proceeding, Respondent served as a steward at TJMS for United Teachers of Dade (UTD).

5. On January 4, 2011, a "parent conference" was scheduled for early morning with the guardian of two students enrolled in TJMS. Ms. Kushi (an assistant principal) scheduled the meeting. Eight teachers were scheduled to attend the meeting. Respondent taught one of the students and, consequently, attended the meeting.

6. Respondent briefly met with the guardian in the hallway before the door to the meeting room was unlocked. The guardian,

Respondent, and several other teachers entered the meeting room after Ms. Kushi unlocked the door to the meeting room.

Ms. Kushi then left the meeting room to remind the teachers who were not present to come to the meeting.

7. As Respondent was reviewing her student's progress with the guardian, Ms. Weiner (a teacher) interrupted and began speaking with the guardian. Ms. Kushi returned to the meeting room at that time and also interrupted by commenting on make-up work for one of the students.

8. Respondent became very angry. Respondent commented that she had been interrupted and that the meeting was a waste of her time. Ms. Kushi directed Respondent to sit down. Respondent refused, gathered her papers, and angrily left the meeting room.

9. What happened next is in dispute. There is no dispute that the door to the meeting room had been propped open by a chair. Respondent testified that as she was leaving the meeting room, she tripped on the chair, fell to the floor, and hurt herself. She further testified that she pulled herself up and stood the chair up in the middle of the hallway. Respondent's version of the events is contrary to the clear and convincing evidence presented by Petitioner and is, consequently, rejected.

10. Petitioner established, by clear and convincing evidence that Respondent picked up the chair and threw it down the hallway.²

11. Mr. Chiles (guidance counselor) and Mr. LaCouty (assistant principal) were in the hallway walking in a direction that had their backs to Respondent when Respondent entered the hallway. Upon hearing a noise, they turned around and saw Respondent standing in the hallway and the chair sliding away from her. Mr. LaCouty asked Respondent, "What was that?" Respondent walked toward the exit and responded, "It's what you think." Mr. LaCouty stated, "Ms. Lantz, you threw a chair down the hallway." Respondent replied, "Please," and left the building.

12. Mr. LaCouty informed Ms. Fernandez (principal) of the incident. Later that day, Ms. Fernandez and Mr. LaCouty met with Respondent to discuss the incident. Ms. Fernandez asked Respondent why she had thrown the chair down the hall. Respondent responded that it was "better than hitting her upside her head." The reference to "her" was to Ms. Kushi.

13. During this meeting, Respondent became angry. Respondent told Ms. Fernandez that she did not want Mr. LaCouty to be present at the meeting because she "didn't trust him to throw out my trash." Respondent at one point jumped to her feet and made an aggressive move toward Mr. LaCouty. Respondent made

derogatory and insulting comments directed towards Ms. Fernandez and Mr. LaCouty. Respondent likened Ms. Fernandez to "Castro," and asked if this is a "communist country." Ms. Fernandez, a Cuban-American, was insulted by Respondent's comments.

14. Respondent's conduct on January 4, 2011, as described above, constituted misconduct that impaired her effectiveness as a school board employee.

15. On November 2, 2011, Respondent, Ms. Martillo (assistant principal) and Ms. Fernandez met to discuss Respondent's use of e-mail for UTD business. During that meeting, Respondent became very angry and called Ms. Fernandez a "racist pig." As she exited the office, Respondent angrily yelled "I am tired of dealing with you three pigs," referring to three administrators in the office. Respondent's comments were rude, insulting, and unprofessional.

16. On November 4, 2011, Mr. LaCouty asked Respondent to leave a Leadership Team Meeting because Respondent was not a member of the team. In response, Respondent shouted to Mr. LaCouty: "I will not rest until I have you arrested."

17. On November 15, 2011, Respondent disrupted a meeting being led by Mr. LaCouty to name the TJMS Teacher of the Year and Rookie Teacher of the Year. Respondent called Mr. LaCouty a bully, and asserted that she was his superior (because of her position in UTD).

18. Respondent's repeated name-calling of administrators as described above, constituted misconduct that impaired her effectiveness as a school board employee.

19. Ms. Fernandez has reprimanded Respondent for her misconduct on at least two occasions.

CONCLUSIONS OF LAW

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

21. In this proceeding the Commissioner seeks to discipline Respondent's Florida Educator Certificate. Consequently, the Commissioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

22. Section 1012.795(1) provides, in relevant part, as follows:

(1) 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.

23. Florida Administrative Code Rule 6B-1.006(4) (b)

provides, in relevant part, as follows:

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

* * *

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

24. Florida Administrative Code Rule 6B-1.006(5) provides, in relevant part, as follows:

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

(a) Shall maintain honesty in all professional dealings.

* * *

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

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

* * *

(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.

25. Count 2 of the Amended Administrative Complaint alleged that Respondent is "in violation of section 1012.795(1)(d) in that Respondent has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education."

26. No rule defines the term "gross immorality." However, Florida Administrative Code Rule 6B-4.009(2) contains the following definition of the term immorality:

(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.

27. "Gross immorality" has been defined to mean an act of misconduct that is serious, rather than minor in nature; it is a flagrant disregard of proper moral standards. See Educ. Practices Comm'n v. Knox, 3 FALR 1373-A (Fla. Dept. of Educ. 1981) and Frank T. Brogan v. Eston Mansfield, Case No. 96-0286 (Fla. DOAH Aug. 1, 1996; Fla. Educ. Practices Comm'n Oct. 18, 1996).

28. Florida Administrative Code Rule 6B-4.0009(4) provides as follows:

(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.

29. The Commissioner failed to prove by clear and convincing evidence that Respondent's actions rose to the level

of gross immorality or moral turpitude within the meaning of section 1012.795(1) (d).

30. The Commissioner proved by clear and convincing evidence that Respondent was guilty of misconduct that impaired her effectiveness as a school board employee as alleged in Count 2.

31. Florida Administrative Code Rule 6B-4.0009(3) provides 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.

32. The rule requires a two-pronged analysis. First was there a violation of the Code of Ethics or the Principles of Professional Conduct. If so, the second prong is whether the violation is so serious as to impair the individual's effectiveness in the school system. The first prong was established.

33. As to the second prong there was clear and convincing evidence that Respondent's effectiveness as a school employee had been reduced. Even without that evidence, the Commissioner correctly argues that Respondent's reduced effectiveness may be inferred from the nature and seriousness of the conduct, citing,

Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2 DCA 2000) and Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000).

34. Respondent denies many of the factual allegations that underpin this proceeding, but defends others, including comments to administrators, based on her role in the UTD. While a UTD steward does have certain authority, that authority does not extend to the right to throw chairs and insult administrators. Respondent's conduct should not be tolerated in a public school.

35. Count 3 alleged that Respondent violated one or more principles of professional conduct for the educational profession prescribed by the State Board of Education Rules in violation of section 1012.795(1)(k).

36. Counts 4, 5, and 6 alleged that Respondent violated, respectively, Florida Administrative Code Rule 6B-1.006(4)(a), (5)(d), and (5)(e).

37. Florida Administrative Code Rule 6B-1.006 provides, in relevant part, as follows:

(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.

* * *

(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.

* * *

(5) 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.

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

38. Petitioner failed to prove by clear and convincing evidence that Respondent violated the provisions of Florida Administrative Code Rule 6B-1.006(4) (a) as alleged in Count 4. While it is clear that Respondent's conduct has not been reasonable, she has expressed no personal views that are inconsistent with those of TJMS.

39. Petitioner proved by clear and convincing evidence that Respondent's conduct towards Mr. LaCouty and Ms. Fernandez violated the provisions of Florida Administrative Code Rule 6B-

1.006(5) (d) and (e) as alleged in Counts 4 and 5, thereby violating the provisions of section 1012.795(1) (k), as alleged in Count 3. Respondent repeatedly used offensive slurs in addressing these administrators which created a hostile, intimidating, abusive, offensive, or oppressive environment, thereby violating Florida Administrative Code Rule 6B-1.006(5) (d). Moreover, Respondent falsely accused Mr. LaCouty of bullying her, thereby violating Florida Administrative Code Rule 6B-1.006(5) (e).

40. In making the recommendation that follows, the undersigned has considered the Disciplinary Guidelines set forth in Florida Administrative Code Rule 6B-11.007 and the respective arguments of the Commissioner and Respondent.

41. The Commissioner recommends in his Recommended Order that "Respondent's educator certificate be suspended for a period of five (5) years. Prior to re-employment, in an educational setting, Respondent shall be required to undergo a RNP evaluation to insure that she is safe around children, followed by three (3) years of probation with conditions set by the Education Practices Commission ("EPC)." The undersigned understands the reference to "RNP" to be to the Recovery Network Program. The undersigned considers the Commissioner's recommendation to be reasonable under the circumstances, with the exception of the recommendation that Respondent's

certificate be suspended for five years. That length suspension is not warranted by the facts of this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Educational Practices Commission enter a final order finding Respondent guilty of the violations alleged in Counts 1, 2, 3, 5, and 6 of the Amended Administrative Complaint. It is further recommended that the final order suspend Respondent's Florida Educator's Certificate for a period of one year to be followed by a three-year period of probation, with both the suspension and the probation to be subject to terms and conditions imposed by the Commission. It is further recommended that Respondent be required to pass a fitness for duty evaluation prior to reemployment in a position that requires an educator's certificate.

DONE AND ENTERED this 7th day of November, 2012, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of November, 2012.

ENDNOTES

¹ Each statutory reference is to Florida Statutes (2012), and each reference to a rule is to the rule published in Florida Administrative Code as of the date of this Recommended Order.

² Petitioner's exhibit 7 is a video of the hallway taken by the school's security cameras. The video captures the scene in the hallway at the relevant time. Respondent contends that the video was staged and is unreliable. For the reasons reflected in the Transcript, the undersigned admitted the video over Respondent's objection. It should be noted for the record that the undersigned has relied on the testimony presented at the formal hearing, and not the video, in making the findings set forth in this Recommended Order because of the video's lack of clarity.

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.