

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

JOSEPH BURKE, Ed.D.,)
Superintendent,)
)
)
Petitioner,) Case No. 12-0007
) DOAH Case No. 12-2017
v.)
)
ELAINE PARTENHEIMER,)
)
)
Respondent.)

FINAL ORDER

THIS CAUSE came to be heard on this the 4th day of December, 2012, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Elaine Partenheimer ("Respondent") is employed by the School Board as a teacher. Respondent is an "instructional employee," as defined by §1012.01(2)(a), Florida Statutes, and is governed by the collective bargaining agreement between the School Board and the Teachers Association of Lee County ("TALC"). The standard for the discipline of instructional personnel is "just cause" pursuant to §1012.33, Florida Statutes. The Superintendent has authority to recommend dismissal of Respondent, and the School Board has authority to dismiss Respondent from her employment. §§1012.27(5) and 1012.22(1), Florida Statutes.

2. On November 15, 2011, while teaching at Manatee Elementary School, the Respondent was provided a written reprimand for violating The Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

3. Specifically, the Respondent failed to take reasonable efforts to protect students from conditions harmful to learning and/or to the students' mental and/or physical health and/or safety.

4. The Respondent also made inappropriate comments to students which exposed the students to unnecessary embarrassment or disparagement.

5. The Respondent was advised in the reprimand that further conduct of that nature would result in discipline up to and including termination.

6. In addition to the foregoing discipline, the Respondent was transferred to Pinewoods Elementary.

7. Within two or three days of the commencement of Respondent's employment at Pinewoods Elementary the Principal began to receive complaints.

8. The complaints were about Respondent's verbal abuse of students and her rude demeanor.

9. In addition, Respondent failed to provide consistent classroom instruction and classroom management.

10. As a result of the allegations, the District's Department of Professional Standards and Equity conducted an investigation.

11. On April 3, 2012, a Pre-Determination Conference was conducted providing the Respondent an opportunity to explain her conduct. The Respondent attended the Conference with her union representative, Donna Mutzenard.

12. On April 20, 2012, the Respondent was notified via certified letter that she was being recommended for termination and suspended without pay effective April 23, 2012.

13. The final hearing in this matter took place on August 20 and 21, 2012, before DOAH Administrative Law Judge R. Bruce McKibben.

14. The ALJ issued his Recommended Order on October 19, 2012.

15. The ALJ found in his Recommended Order that the School Board established by a preponderance of the evidence that Respondent's classroom teaching skills were far below the standard for educators at Pinewoods. The level of complaints issued by parents, coupled with the administrators' eye witness evaluations, was sufficient to substantiate incompetence and neglect of duties for the time Respondent was employed. The

foregoing constitutes "just cause" to terminate Respondent's employment.

16. On the basis of these findings, the ALJ recommended that the School Board enter a final order upholding the termination of Respondent's employment with the Lee County School District.

17. Respondent, through her attorney, has filed exceptions to the Recommended Order.

18. The Board rejects Exception No. 1 as the finding of fact was based upon competent substantial evidence and the proceedings on which the findings were based complied with the essential requirements of law. The Administrative Law Judge relied upon competent substantial evidence for this finding of fact. Principal Louzao testified at the hearing. She testified to the fact that Respondent's less than satisfactory evaluation was changed after being pressured by the union to change it. The reliance on Principal Louzao's testimony for the finding of fact outlined in paragraph 3 of the Recommended Order was based upon competent substantial evidence.

19. The Board rejects Exception No. 2 as the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law.

Although Respondent is correct regarding the grade level Respondent taught during the 2010-2011 school year, this mistake by the ALJ is harmless error and is not determinative of the finding included in paragraph 4, that students were transferred out of Respondent's class as a result of parental requests throughout the school year. This finding of fact was based upon competent substantial evidence.

20. The Board rejects Exception No. 3 as the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law. Principal Louzao testified at the hearing that she would have given a less than satisfactory evaluation but she didn't have the documentation. The ALJ found this testimony credible. This testimony was not contradicted by Respondent. As such the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law.

21. The Board rejects Exception No. 4 as the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law. The comments referred to by Respondent were not the critical element of this finding of fact. The critical element is that Principal Louzao contacted the Department of Professional Standards and

Equity as a result of Respondent's conduct. Principal Louzao testified that she contacted Professional Standards and Equity, this was not hearsay. As a result of Professional Standards and Equity's investigation Respondent was disciplined. The ALJ's finding of fact at paragraph 6 was based upon competent substantial evidence.

22. The Board rejects Exception No. 5 as the finding of fact was based upon competent substantial evidence and the proceeding complied with the essential requirements of law. The finding of fact at paragraph 24 is based on the observations of the four parents that testified in this case and is not hearsay. The parents' observations of their own children and testimony describing such observations were not contradicted by Respondent and the finding of fact was based upon competent substantial evidence.

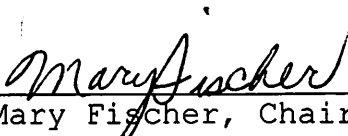
ACCORDINGLY, the Board rejects Respondent's Exceptions 1 through 5 and adopts the ALJ's findings of fact, conclusions of law and the recommended penalty and incorporates them into this Final Order by reference.

It is ORDERED as follows:

Respondent's employment with the School District of Lee County is terminated effective end of the day December 4, 2012.

This Order may be appealed to the District Court of Appeal of Florida, Second District, P.O. Box 327, 1005 E. Memorial Boulevard, Lakeland, Florida 33802, telephone number (863) 499-2290. The appeal must be filed within thirty (30) days of the date of this Order by filing a Notice of Appeal with the School Board and a second copy with the District Court of Appeals. For further information, contact Robert Dodig, Jr., Staff Attorney, 2855 Colonial Boulevard, Fort Myers, Florida 33966, telephone number (239) 335-1447.

ENTERED on this the 4th day of December, 2012.



Mary Fischer, Chairman

Copies to:

Robert Dodig, Jr., Staff Attorney
Robert J. Coleman, Attorney for Respondent
Division of Administrative Hearings
Personnel File