

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GERARD ROBINSON, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 12-3648PL
)
JENNIFER MARIE LANGAN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On January 30, 2013, a final administrative hearing in this case was held by video teleconference in Tallahassee and Fort Myers, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: A. Dean Johnson, Esquire
Brooks, LeBoeuf, Bennett,
Foster and Gwartney, P.A.
909 East Park Avenue
Tallahassee, Florida 32301

For Respondent: Jennifer Langan, pro se
1201 Solana Road, No. 7
Naples, Florida 34103

STATEMENT OF THE ISSUE

The issue in this case is whether, and how, Respondent should be disciplined for failing to take appropriate action regarding a middle school student who brought a knife to school.

PRELIMINARY STATEMENT

On May 11, 2012, Petitioner filed an Administrative Complaint against Respondent for violating Florida Administrative Code Rule 6B-1.006(3)(a)^{1/} by failing 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." The matter initially was presented to a teacher panel of the Education Practices Commission, which identified a factual dispute and referred it to DOAH for a hearing.

At the hearing, Petitioner called three witnesses from Bonita Springs Middle School and had eleven exhibits admitted in evidence. Respondent testified in her own behalf and had one exhibit admitted in evidence. A Transcript of the hearing was filed, and the parties filed proposed recommended orders, which have been considered.

FINDINGS OF FACT

1. Respondent holds Florida Educator Certificate 1063574 and is licensed in the fields of English, English for Speakers of Other Languages (ESOL), Reading, and Exceptional Student Education. She began teaching at Bonita Springs Middle School in Lee County in September 2011, after the start of the 2011-2012 school year.

2. During instruction in her fourth period class on February 13, 2012, Respondent heard a student ask another

student, who was an Exceptional Student Education (ESE) student with emotional issues, "was that a knife?" The ESE student responded, "Drama!" When Respondent looked up, she saw the ESE student place something in her lap, out of Respondent's view. Respondent did not see what it was but saw a flash of silver or metal. The class started to "act up," and Respondent decided to diffuse the incident and quiet the class by telling the ESE student to "put it away." The ESE student then put the object in her backpack.

3. When the class ended, Respondent approached the ESE student and asked if she had a knife. The student denied it. Respondent told the student, if she had a knife, that would be unacceptable, but Respondent did not pursue the matter any further at the time and allowed the student to leave for her next class.

4. During Respondent's eighth period class, the last period of the day, Respondent asked her student-aide, who also was a student in her fourth period class, about the incident during fourth period. The student-aide told Respondent that it was a knife, like a small steak knife, and that the ESE student had been licking it.

5. After speaking with her student-aide, Respondent sent the school's ESE director, who also was the ESE student's caseworker, an electronic message simply asking to discuss the

student with her when she had a moment. No details about the incident were included in the message out of Respondent's concern that it would be a public record. Respondent did not receive a response by the end of the school day. The ESE director received the message after hours.

6. The next morning, Respondent saw the ESE director at a teacher's meeting and explained the previous day's incident. The ESE director was concerned about the delay in doing anything else about it and immediately went to the school principal, who was in the cafeteria, as were several other students, including Respondent's ESE student. The principal immediately went to the student and asked if she had a knife. The student admitted she did and thought it was no big deal since Respondent did nothing about it the day before. The student later stated that she was depressed and was considering cutting herself with the knife.

7. Respondent now understands that she did not take the appropriate action on February 13, 2012. However, she contends that there are mitigating factors to consider, and any discipline should be constructive (such as, additional training), not punitive.

8. Respondent attempts to defend herself to an extent by saying she did not actually see the knife during fourth period. However, it is clear that Respondent heard students asking about a knife, and saw something silver or metallic that could have

been a knife, and was aware of the student's emotional issues. In light of those circumstances, Respondent should not have been satisfied with the student's denial that she had a knife; she should have involved the school's administrators and resource officer at that point. When she learned during eighth period that the student in fact had a knife, she should not have been satisfied with an unacknowledged electronic message to the ESE director.

9. Respondent also attempts to deflect some blame onto the school for not making sure she knew what to do about incidents like the one that confronted her on February 13, 2012. It may well be true, as she testified, that Respondent did not get a copy of the Parent Guide and Code of Conduct for Students, normally distributed to teachers at the beginning of the school year, which identifies a kitchen knife as a weapon and prohibits it. Petitioner attempted to impeach Respondent's denial of receipt of the document by citing a handful of student discipline referrals by Respondent that use incident types taken from that document. One incident type, albeit not used by Respondent in any of her referrals, was possession of weapons; however, the form does not define weapons. Respondent testified convincingly that she used the forms without reference to the source document. Nonetheless, she knew it would be unacceptable for a student to have a knife at school.

10. When Respondent started teaching at the school, she was offered an opportunity to take the APPLES program for new teachers, which provides information and training on codes of conduct, including provisions to protect the safety of students and faculty. Respondent opted out, stating that she took the APPLES program during her previous employment in Collier County.

11. While perhaps not handed to Respondent when she started teaching at Bonita Springs Middle School, the Parent Guide and Code of Conduct for Students was easily accessible from Respondent's school computer via a program called SharePoint that was a link on the home page. Respondent denies ever accessing the material from her computer. However, Respondent prepared a professional development plan shortly after she started teaching at the school in October 2011. It included a plan to train on how to download documents from SharePoint, but Respondent had not yet followed through on that plan by the time of the incident.

12. Information also was available to Respondent in the form of an Agenda book that she was given. The Agenda book contained the school's rules, including one prohibiting weapons as nuisances and providing that they would be confiscated.

13. It is not clear whether any of the information provided or available to Respondent would have told her what to do in circumstances where she suspected, but was not certain, that a student had a knife, and the student denied it.

14. Based on the facts of this case, additional training is appropriate and actually is desired by Respondent. On the other hand, Respondent would rather not be reprimanded, submit to supervised probation, and pay a \$500 fine and pay costs, as Petitioner proposes. Under the facts and circumstances of this case, Petitioner's proposal would be harsh, not constructive, and possibly demoralizing. The evidence is clear that Respondent will follow the rules she is given and take appropriate action in a situation if she knows what is expected of her. A repeat of the failure to act appropriately in a situation similar to the incident on February 13, 2012, is not likely.

CONCLUSIONS OF LAW

15. Since this is a license discipline action, Petitioner has the burden to prove its allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The Supreme Court has stated:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

16. In its Proposed Recommended Order, Petitioner treats Counts I and II of the Administrative Complaint as two separate charges. They actually combine to make up a single charge. Count I charges Respondent with violating section 1012.795(1)(j), Florida Statutes (2011),^{2/} by violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules. Count II charges Respondent with violating rule 6B-1.006(3)(a). Rule 6B-1.006(3)(a) requires teachers 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."

17. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(3)(a) by not taking appropriate action on February 13, 2012.

18. Petitioner's Proposed Recommended Order asserts that Respondent is guilty of incompetence and personal conduct that seriously reduces her effectiveness as an employee under section 1012.795(1)(c) and (g). Those charges were not pled in the Administrative Complaint and cannot be added now. See Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Aldrete v. Dep't of Health, Bd. of Med., 879 So. 2d 1244 (Fla. 1st DCA 2004); Ghani v. Dep't of Health, 714 So. 2d 1113

(Fla. 1st DCA 1998); Willner v. Dep't of Prof'l Reg., Bd. of Med., 563 So. 2d 805 (Fla. 1st DCA 1990). While those cases all involve physicians, the principle is grounded in due process considerations and applies to any license discipline case. See, e.g., Ag. for Pers. with Disab. v. Amanda & Co., Case No. 08-1812 (Fla. DOAH Oct. 29, 2008; Fla. APD Feb. 3, 2009).

19. According to the disciplinary guidelines in rule 6B-11.007(2), the range of penalties for Respondent's violation is from probation to revocation. Under subsection (2) of the rule, discipline can include probation, referral to the Recovery Network Program, a letter of reprimand, a restriction on scope of practice, a fine, and "administrative fees and/or costs" as additional penalty provisions, as appropriate. Subsection (3) of the rule sets out aggravating and mitigating factors that justify discipline outside the disciplinary guideline range.

20. Considering the aggravating and mitigating factors in section (3) of the rule, it is appropriate to discipline Respondent with a letter of reprimand and a short term of unsupervised probation conditioned on the completion of appropriate additional training.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission find Respondent guilty of violating rule 6B-1.006(3)(a), issue a

letter of reprimand, and place her on a short term of probation conditioned on the completion of appropriate additional training.

DONE AND ENTERED this 8th day of April, 2013, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of April, 2013.

ENDNOTES

^{1/} Rule 6B-1.006 was the State Board of Education rule that codified the Principles of Professional Conduct for the Education Profession in effect on February 13, 2012. Those rules now have been transferred to Florida Administrative Code Rule 6A-10.081.

^{2/} All statutory references are to Florida Statutes (2011), the codification in effect on February 13, 2012.

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.