STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 13-1488TTS

RAYMOND WANTROBA,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on September 26, 2013, utilizing webcast technology, between sites in Fort Lauderdale and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Adrian Alvarez, Esquire
Haliczer, Pettis, and Schwamm, P.A.
One Financial Plaza, Seventh Floor
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394

For Respondent: Branden M. Vicari, Esquire
Herdman and Sakellarides, P.A.
29605 US Highway 19, North
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether Raymond Wantroba (Respondent), a teacher employed by the School Board of Broward County (School Board), committed the

acts alleged in the Administrative Complaint filed by the School Board and, if so, the discipline that should be imposed against Respondent's employment.

PRELIMINARY STATEMENT

At the times relevant to this proceeding, Respondent was employed by the School Board as a teacher at Lyons Creek Middle School (Lyons Creek), a public school in Broward County, Florida. Respondent taught physical education and mathematics during the 2012-2013 school year. The conduct at issue in this proceeding occurred while Respondent was teaching physical education.

At its regularly scheduled meeting on April 9, 2013, the School Board took action to suspend Respondent's employment without pay and institute proceedings to terminate his employment. Respondent timely challenged the School Board's action, the matter was referred to DOAH, and this proceeding followed.

The Administrative Complaint alleged certain facts pertaining to Respondent's treatment of a student and, based on those facts, alleged that Respondent's employment should be terminated.

Paragraph 8 of the Administrative Complaint is as follows:

> 8. The legal basis for [Respondent's] termination is immorality, misconduct in office and insubordination. See Fla. Admin. Code r. 6A-10.080, 6A-10.081, 6A-5.056; [and] Fla. Stat. §1012.33 Fla. Stat. [sic].

At the final hearing, the School Board presented the testimony of Dr. Ted Toomer (principal of Lyons Creek), Susan Cooper (a labor relations specialist employed by the School Board), Bernard Brennan (a physical education teacher at Lyons Creek), H.R. (a teacher at Lyons Creek and the mother of student S.R.), S.R. (a Lyons Creek student), D.R. (a Lyons Creek student), A.D. (a Lyons Creek student), Christopher Barker (a campus monitor at Lyons Creek), Respondent, and Debra Harrington (an assistant principal at Lyons Creek). The School Board offered the following pre-numbered exhibits, each of which was admitted into evidence: 3-6, 10, 11, 14, 20, 21, 23, 24, 32, and 33. Respondent testified on his own behalf, but offered no other testimony and no exhibits.

A Transcript of the proceedings, consisting of one volume, was filed on November 4, 2013. The parties timely filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2012), and all references to rules are to the version thereof in effect as of the date of the conduct at issue in this proceeding.

FINDINGS OF FACT

1. At all times material hereto, the School Board has been the constitutional entity authorized to operate, control, and

supervise the public schools in Broward County, Florida; and Robert Runcie was Superintendent of Schools (Superintendent).

2. Respondent has been employed by the School Board since 2004 and holds a professional services contract, issued in accordance with section 1012.33(3)(a). Respondent taught at Lyons Creek for nine years. Respondent has been employed as a teacher for over 25 years.

3. During the 2012-13 school year, Respondent was assigned to teach physical education and a math class at Lyons Creek.

4. Bernard Brennan also taught physical education at Lyons Creek during the 2012-13 school year.

5. S.R., a 13-year-old male, was a seventh grade student at Lyons Creek during the 2012-13 school year. During that school year, Respondent taught S.R. physical education during fourth period, which was the first class after lunch.

6. While the physical education class was coed, students would change from school clothes into gym clothes in non-coed locker rooms and change back into school clothes after concluding the class activity. S.R. had a locker, which he shared with A.D., another male student. S.R. and A.D. kept their school clothes in the locker while they were in their gym clothes.

7. Mr. Brennan knew S.R. and he knew S.R.’s mother, who is a teacher at Lyons Creek. Mr. Brennan joked around with S.R. by

hiding his shoes, a backpack, and a jacket on different occasions. Respondent did not typically joke around with S.R.

8. On February 6, 2013, Respondent saw a group of eighth grade male students playing with a woman's undergarment (lacy, purple panties) during his first period class. Respondent took the underwear and placed it in the office he shared with Mr. Brennan.

9. During lunch hour on February 6, Mr. Barker was resting in Respondent's office when Respondent placed the panties on Mr. Barker's leg. Respondent used his cell phone to take a picture of Mr. Barker with the panties on his leg. Mr. Barker heard the cell phone take the picture, gave the panties back to Respondent, and left Respondent's office. Mr. Barker did not see what Respondent did with the panties.

10. On February 6 during Respondent's class, S.R. and A.D. changed from their school clothes into their gym clothes. They placed their school clothing and school shoes in the locker they shared. S.R. and A.D. both testified that they locked the locker before leaving the locker room for the class activity.[1/]

11. Following the class activity, S.R. and A.D. began to change back into their school clothes. When S.R. tried to put his foot into his shoe, he discovered the panties stuffed into his shoe. When he took the panties out of his shoe, he was among between 30 and 40 classmates, many of whom laughed at him.

Respondent was also present and laughed when S.R. took the panties out of his shoe. Respondent asked S.R. if the panties were his and if he wore them every day. S.R. was embarrassed by the incident.

12. Respondent denied at the formal hearing that he put the panties in S.R.'s shoe, and he denied making the statements attributed to him by S.R. and A.D. That denial is not credible in light of the other, more credible evidence presented by the School Board. Respondent asserts that he put the panties in a communal locker near S.R.'s locker because Mr. Brennan wanted to put the panties in S.R.'s locker.[2/] Respondent also asserted that he put the panties in the communal locker in an effort to ease his relationship with Mr. Brennan.[3/] Mr. Brennan testified, credibly, that he knew nothing about the panties until the following day.

13. S.R.'s mother heard about the incident the day it happened. That afternoon as they were walking towards her car to leave school, S.R. explained to his mother what had happened. S.R. and his mother immediately found an assistant principal and reported the incident. The school administration began an investigation into the incident the following day.

14. On February 7, Respondent spoke to S.R. without any other adult present and asked him to "clear the air" with the school administration so he and Mr. Brennan would not get into

trouble. S.R. did not know who put the panties in his shoe, but he suspected Mr. Brennan. The record is not clear as to what Respondent wanted S.R. to tell the school administrators.

15. On February 8, Dr. Toomer sent Respondent a letter advising him that there would be a pre-disciplinary meeting conducted February 14. Respondent was advised he could be represented at that meeting.

16. During the pre-disciplinary meeting on February 14, Respondent admitted to Dr. Toomer that he had placed the panties in S.R.'s locker. Respondent stated the he wanted to feel accepted by Mr. Brennan and Mr. Barker. Although there was no direct evidence that Respondent had a key or the combination to the lock on S.R.'s locker, his admission to Dr. Toomer establishes that Respondent put the panties in S.R.'s locker.

17. Prior to the incident involving the panties, Respondent had been counseled about his classroom management, locker room supervision, behavior management, and his own behavior on occasions in 2006, 2007, 2009, and 2011. In May 2012, Respondent's employment was suspended without pay for three days following his refusal to allow a student to use the bathroom.

18. In January 2013, Debra Harrington, an assistant principal at Lyons Creek, counseled Respondent about the lack of adult supervision in the locker room. Ms. Harrington notified Respondent in writing as to her concerns and expectations (School

Board's Exhibit 11). Ms. Harrington advised Respondent that failure to adhere to her expectations could result in further discipline.

19. Dr. Toomer recommended to the Superintendent that Respondent's employment be terminated. In turn, the Superintendent recommended to the School Board that Respondent's employment be terminated. On April 9, 2013, the School Board accepted the Superintendent's recommendation that Respondent's employment be terminated. The School Board suspended Respondent's employment without pay and instituted these proceedings.

20. With his mother's approval, S.R. remained a student in Respondent's fourth period physical education class until Respondent's employment was suspended.

21. Respondent testified that he did not intend to hurt any student and was remorseful for his behavior.

CONCLUSIONS OF LAW

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

23. Because the School Board, acting through the superintendent, seeks to terminate Respondent's employment, which does not involve the loss of a license or certification, the School Board 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).

24. 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)).

THE ALLEGED VIOLATIONS

25. Section 1012.33(1)(a) includes the following as just cause to terminate a teacher's professional services contract:

> . . . Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

26. The Administrative Complaint alleged that Respondent was guilty of immorality, misconduct in office, and insubordination. The Administrative Complaint referenced section

1012.33, Florida Statutes, and Florida Administrative Code Rules 6A-5.056, 6A-10.080, and 6A-10.081.

IMMORALITY

27. The Administrative Complaint charges, in relevant part, that Respondent was guilty of immorality.

28. Rule 6A-5.056(1) contains the following definition of the term immorality:

> (2) "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

29. As will be discussed below, the School Board proved that Respondent engaged in misconduct. The School Board did not prove that Respondent's misconduct rose to the level of "immorality."

MISCONDUCT IN OFFICE

30. Rule 6A-5.056(2) defines the term "Misconduct in Office" as follows:

> (2) "Misconduct in Office" means one or more of the following:
>
> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in [Rule 6A-10.080];
>
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in [Rule 6A-10.081] . . . .

31. Rule 6A-10.081, sets forth the "Principles of Professional Conduct for the Education Profession in Florida," and provide, in relevant part, as follows:

> (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.
>
> * * *
>
> (e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.
>
> * * *
>
> (h) Shall not exploit a relationship with a student for personal gain or advantage.

32. The School Board alleges that Respondent is guilty of misconduct in office within the meaning of section 1012.33 because he violated the above-quoted portions of rule 6A-10.081. The School Board failed to establish that Respondent was guilty of violating rule 6A-10.081(3)(h) because Respondent did not have a relationship with S.R. other than as his teacher. Respondent violated rule 6A-10.081(3)(a) and (e) as alleged in the Administrative Complaint, and, consequently, is guilty of misconduct in office.

INSUBORDINATION

33. The School Board charged Respondent with insubordination, not gross insubordination. Florida Administrative Code Rule 6A-5.056(4) defines "gross insubordination" to mean "a consistent or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties." The term insubordination has not been defined by rule. The common meaning of insubordination is the refusal to obey a direct order, reasonable in nature, and given by and with proper authority. The School Board did not prove that Respondent was guilty of either gross insubordination or insubordination. The order given to Respondent was to provide supervision in the locker room. Respondent was supervising his class when the events at issue in this proceeding occurred. While Respondent is guilty of misconduct, he is not guilty of insubordination.

34. In making the recommendation that follows, the undersigned has considered the recommended dispositions asserted by the School Board and Respondent, the nature of the misconduct, the employment history of Respondent, and the School Board's "Employee Disciplinary Guidelines" (School Board's Exhibit 24). Respondent's use of a 13-year-old student to serve as the butt of his joke is inexcusable, and he should be punished for his

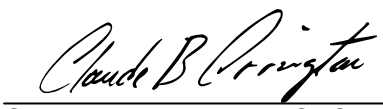
misconduct. In recommending that his employment be suspended without pay, as opposed to recommending that his employment be terminated, the undersigned is persuaded by the remorse expressed by the Respondent, his long tenure as an educator, and the isolated nature of the conduct at issue.

RECOMMENDATION

The following recommendations are 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 set forth in this Recommended Order. It is FURTHER RECOMMENDED that the final order suspend Raymond Wantroba's employment without pay through the end of the 2013-2014 School Year.

DONE AND ENTERED this 4th day of December, 2013, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 2013.

ENDNOTES

[1/] There was no testimony as to the type of lock on their shared locker, and there was no evidence as to who had a key or combination to the lock.

[2/] Respondent testified that Mr. Brennan saw the panties during lunch and said he wanted to put them in S.R.'s locker. That testimony is rejected based on Mr. Brennan's credible testimony that he knew nothing about the panties until the next day.

[3/] The administrators at Lyons Creek had counseled Mr. Brennan and Respondent about lack of supervision of the boys' locker room. In response, Respondent communicated information to the school principal about Mr. Brennan's conduct. As a result, the relationship between Mr. Brennan and Respondent was strained

COPIES FURNISHED:

Adrian Alvarez, Esquire
Eugene K. Pettis, Esquire
Haliczer, Pettis, and Schwamm, P.A.
One Financial Plaza, Seventh Floor
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394

Branden M. Vicari, Esquire
Herdman and Sakellarides, P.A
29605 US Highway 19, North
Clearwater, Florida 33761

Matthew Carson, General Counsel
Department of Education
Suite 1244
Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

Robert Runcie, Superintendent
Broward County School Board
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

Pam Stewart
Commissioner of Education
Department of Education
Suite 1514
Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.