

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-3849TTS

WILLIAM DORAN,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in Fort Pierce, Florida, on June 3, 2014, before Administrative Law Judge Mary Li Creasy.

APPEARANCES

For Petitioner: Elizabeth Coke, Esquire
Richeson and Coke, P.A.
Post Office Box 4048
Fort Pierce, Florida 34948

For Respondent: Thomas L. Johnson, Esquire
Law Offices of Thomas Johnson, P.A.
510 Vonderburg Drive, Suite 309
Brandon, Florida 33511

STATEMENT OF THE ISSUES

The issues are whether Respondent, William Doran, committed the acts alleged in the Statement of Charges and Petition for Ten-Day Suspension Without Pay, and, if so, the discipline to be imposed.

PRELIMINARY STATEMENT

Respondent, a teacher at Southport Middle School (SMS), received a letter in May 2013 advising that the Superintendent of Schools would be recommending that he be suspended for a period of ten days without pay for just cause. He was advised of his right to request an administrative hearing within 15 days and timely requested a hearing.

On October 2, 2013, Petitioner, St. Lucie County School Board (School Board), provided Respondent with a Statement of Charges and Petition for a Ten-Day Suspension (Petition). The Petition alleges that the School Board has just cause pursuant to section 1012.33, Florida Statutes, to warrant a ten-day suspension without pay. More specifically, it is alleged that Respondent's actions on May 3, 2013, constitute a violation the following: Florida Administrative Code Rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida (principles of Professional Conduct); rule 6A-10.080, Code of Ethics of the Education Profession in Florida (Code of Ethics); rule 6A-5.056, Immorality and Misconduct in Office; and School Board Policy 6.301(3)(b), Employee Standards of Conduct.

On October 2, 2013, the matter was referred to the Division of Administrative Hearings (DOAH) for the assignment of an Administrative Law Judge, and the case was originally scheduled for final hearing on December 19 and 20, 2013. Due to a series

of unopposed motions to continue the final hearing filed by both parties, the matter was rescheduled for June 3 and 4, 2014.

The parties stipulated to certain facts, which were accepted at hearing, and are included among those set out below. The School Board presented the testimony of nine witnesses: Lydia Martin, principal of SMS; students M.M., A.L., H.S., D.M., and J.B.; Maurice Bonner, director of personnel, St. Lucie County Public Schools; and Susan Ranew, assistant superintendent for Human Resources. Petitioner's Exhibits 1 through 6 and 8 through 14 were admitted into evidence. Respondent testified on his own behalf and presented the testimony of three other witnesses: Linnea Norton, teacher at SMS; Dan Hochberg, teacher at SMS; and Dan Kaiser, teacher at SMS. Respondent's Exhibits 1 through 5 were admitted into evidence.

The Transcript of the hearing was filed with DOAH on July 2, 2014. Pursuant to Respondent's two unopposed motions, time for filing proposed recommended orders was extended to August 13, 2014. Proposed recommended orders were timely filed by both parties and were carefully considered in the preparation of this Recommended Order. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty of operating, controlling, and supervising all free public schools within St. Lucie County, Florida, pursuant to Article IX, section 4(b), Florida Constitution, and section 1001.32, Florida Statutes.

2. At all times material hereto, Respondent was employed as a teacher at SMS, a public school in St. Lucie County, Florida, pursuant to a professional services contract. Respondent has been employed by the School Board for approximately eight years. Respondent most recently provided individualized instruction and assistance to students with individualized education plans.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law, the School Board's policies, and the collective bargaining agreement between the School Board and the St. Lucie Classroom Teachers' Association.

4. Lydia Martin, principal of SMS, was authorized to issue directives to her employees, including Respondent.

The 2010-2011 School Year

5. On November 8, 2010, Respondent was counseled by Principal Martin for discourteous and disparaging remarks to students causing them to feel unnecessary embarrassment.

6. Students and parents reported that Respondent made comments in the classroom including "the Bible is crap and we should not believe it," told students they could not work in groups because they "would just bullshit," called a student "stupid," and referred to a group of African-American students as the "black coffee group." Parents also expressed concern that Respondent discussed prostitution and told students that, in some countries the younger the girls are, the better it is considered because they have not lost their virginity.

7. Respondent denied saying that the Bible is "crap" but admitted telling students that he did not believe in it. Respondent denied calling a student stupid but admitted that he told a student certain choices may be what a "not so smart" person would do. Respondent admitted to referring to a group of black students as a "coffee klatch," but denied any reference to race or ethnicity. Respondent admitted discussing prostitution in the context of human rights and his personal observations of sex trafficking while serving in the military in East Germany.

8. Principal Martin provided Respondent with a written Summary of Conference that stated, "In the future, do not make comments to students that may cause them embarrassment or that are unprofessional. My expectation is that you will treat students with respect and follow the district guidelines

under 6.302 Employee Standards of Conduct and Code of Ethics for Educators.”

9. On May 2, 2011, Principal Martin gave Respondent a Letter of Concern for making comments to a student that caused embarrassment to the student when Respondent stated that, “somebody cried about not getting their stupid PTO FCAT Goodie bag” and that “they were filled with cheap candy.” The daughter of the PTO president was in the class.

The 2011-2012 School Year

10. During the fall of 2011, Respondent was accused of inappropriately touching students.^{1/} As a result, on December 5, 2011, Respondent was removed from the classroom at SMS and placed on Temporary Duty Assignment at the School Board district office pending an investigation into the allegations. In a letter from Maurice Bonner, director of personnel, dated December 14, 2011, Respondent was directed not to engage witnesses, their parents, or potential witnesses during the open investigation.

11. While he was working at the district office, two co-workers of Respondent overheard Respondent contact the parents of one of the student witnesses involved in the investigation by telephone to discuss the investigation. Also, during the investigation, it was discovered that Respondent had taken pictures of students when they were misbehaving in his class as a means of disciplining those students.

12. On February 13, 2012, Principal Martin provided Respondent a Letter of Reprimand for the violation of the administrative directive (not to contact witnesses and parents during a pending investigation) and inappropriately disciplining students. This Letter of Reprimand reminded Respondent of his previous counseling and Letter of Concern and notified Respondent that his failure to follow the prior directives or violation of any other School Board policy would result in more severe disciplinary action being taken against him.

13. In May 2012, Respondent received a three-day suspension without pay for embarrassing students. Respondent is alleged to have announced a student's name in class and stated that he (Respondent) was "just wasting red ink" by grading the student's paper. Respondent does not deny the statement, but claims he muttered it under his breath, and it was overheard by several students.

14. Respondent embarrassed another student by sharing personal information about her family with the class. A student's mother had privately discussed with Respondent the fact that her daughter might act out in class due to the distress she was experiencing as a result of her parents' divorce. During a classroom discussion about families, this student made a comment that she had a "normal" family. Respondent said to the student, in front of the class, "If you're so normal, where is your

father?" Respondent admits this was inappropriate behavior on his part.

The 2012-2013 School Year

15. On May 3, 2013, Respondent was in the classroom of another teacher for the purpose of providing additional teaching assistance for several students. On this date, the usual classroom teacher was absent, and a substitute teacher was present.

16. While walking around the classroom, Respondent observed two students, M.M. and A.L., engaged in a game of "slaps," in which both students tried to hit each other's hands. Respondent directed M.M. to stop and asked why he was doing the game during class time. M.M. responded that he was trying to cheer up A.L., it felt good, and they liked playing the game. At this time, Respondent was approximately eight to ten feet away from M.M. who was sitting at a desk.

17. Respondent told M.M. that he didn't care if it felt good for M.M. to "jump off a bridge," it was not to go on in the classroom and to get back to work. M.M. asked Respondent what he meant and the two began to argue.

18. Respondent approached M.M. and bent over him while M.M. remained seated at his desk. Respondent testified that he closed the gap between him and M.M. when he felt M.M. told him to shut up by saying "get out of my face." Respondent stated, "At that

point I decided I wasn't going to let him push me around and I decided to engage him."

19. The credible testimony from several of the student witnesses was that Respondent approached M.M. and stood over him and that M.M. repeatedly asked Respondent to "please, get out of my face" and to leave him alone. M.M. also cursed and used a racial slur directed at Respondent.^{2/}

20. Respondent told M.M. to get up and get out of the classroom. When Respondent did not move away from looming over M.M., M.M. said something to the effect of "I don't want to do any of this."

21. M.M. stood up, and he and Respondent were face to face, only a few inches apart. M.M. told Respondent that he was a grown man and that he was "acting like a bitch." Respondent repeatedly mocked M.M., yelling in his face, "Come on big man-- What are you going to do about it, hit me?" and told M.M. to hit him because it would "make my day." Respondent called M.M. a coward several times when M.M. refused to hit Respondent and backed away.

22. While this was going on, the other students in the classroom believed that Respondent and M.M. were going to have a physical fight, and they stood up, pushed the desks and chairs back, and got out their cell phones to take photos and video. Several of the students began screaming and yelling.^{3/}

23. M.M. left the classroom and continued to curse at Respondent as Respondent followed him to the Dean's office. During this altercation, the substitute teacher did not intervene or attempt to help or contact the SMS office. Respondent admits that, once M.M. told Respondent to "get out of his face," Respondent did nothing to de-escalate the situation. To the contrary, Respondent intentionally escalated the altercation. According to Respondent, "He [M.M.] needed to be shown you can't tell an adult to shut up." Respondent testified that he believed that he was teaching M.M. a "life lesson"--that "you can't engage an adult and expect to get away with it."

24. SMS has a protocol for handling belligerent students in the classroom. Teachers receive training at the beginning of each school year regarding the difference between classroom managed behaviors and office managed behaviors. Teachers are trained not to engage a belligerent student but rather to use the buzzer which is tied to the intercom or telephone, available in every classroom, to notify the main office of the situation. In response, someone from the trained management team will come to the classroom to retrieve the student and bring them back to the Dean's office.

25. As explained by Principal Martin, the purpose of sending an adult from out of the classroom to retrieve a disruptive student is to minimize the possibility of harm to

either the student, teacher, or other students, and to allow a "cooling off period" while the misbehaving student is escorted to the Dean's office.

26. During the altercation with M.M., Respondent made no effort to use the buzzer or the telephone or ask anyone else to notify the office of the escalating situation. Respondent was aware of the protocol but chose to ignore it. According to Respondent, "[M.M.] wanted to intimidate me and he failed and I let him know about it." Respondent was purposely confrontational and testified that he wanted to show M.M. that Respondent "was not going to back down." Respondent disregarded the protocol because he believed it would be ineffective and he wanted to teach M.M. a "humility lesson."

27. Respondent's explanation, that he thought using the buzzer or telephone would be ineffective because sometimes the buzzer does not work or he was blocked from reaching the buzzer by M.M., was not supported by credible evidence. Further it was directly contradicted by Respondent's explanation that he didn't contact the office because M.M.'s behavior problems likely started in elementary school and that at this point, M.M. was not responsive to "conventional means of disciplining students."

28. While the undersigned is sensitive to the difficulty faced by teachers when dealing with confrontational and unruly students, no rational justification was provided for Respondent's

extreme and outrageous act of attempting to engage M.M. in a fight and labeling him a coward in front of his peers.

Respondent's actions were an unwarranted attempt to bully and belittle a middle school student.

29. In May 2013, Respondent received a letter from then Superintendent Michael Lannon advising Respondent that he was recommending him to the School Board for a ten-day suspension without pay. During the School Board's investigation and at the final hearing of this matter, Respondent expressed no remorse regarding his actions towards M.M. and testified that, despite knowing his actions constitute a violation of School Board policies, he would do the same thing again.

30. Respondent received all the necessary steps of progressive discipline required by the collective bargaining agreement between the parties prior to receipt of the recommendation for the ten-day suspension without pay.

31. As discussed in greater detail below, the School Board proved by a preponderance of the evidence that Respondent engaged in misconduct in office in violation of rule 6A-5.056(2).

CONCLUSIONS OF LAW

32. DOAH has jurisdiction over the subject matter and parties in this case, pursuant to sections 1012.33(6), 120.569, and 120.57(1), Florida Statutes (2013). Pursuant to

section 120.65(11), the School Board has contracted with DOAH to conduct these hearings.

33. Respondent's substantial interests are affected by suspension and termination of his employment, and he has standing to contest the School Board's action. McIntyre v. Seminole Cnty. Sch. Bd., 779 So. 2d 639, 641 (Fla. 5th DCA 2001).

34. The School Board seeks to suspend Respondent's employment for ten days without pay and has the burden of proving the allegations set forth in the Petition by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to the loss of a license or certification. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351 (Fla. 2d DCA 2009) rev. denied, 29 So. 3d 1118 (Fla. 2010); Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

35. Pursuant to sections 1012.22(1)(f) and 1012.33(6)(a), Florida Statutes (2012), the School Board has the authority to suspend or terminate employees under a professional services contract for just cause. Section 1012.33(1)(a) provides:

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, 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.

36. According to the Petition, Respondent is charged in this case with immorality and misconduct in office.

37. Whether Respondent committed the charged offenses is a question of ultimate fact to be decided by the trier-of-fact in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

38. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

Immorality

39. Consistent with this rulemaking authority, the State Board of Education has defined "immorality" to implement section 1012.33(1).

40. Rule 6A-5.056 defines "immorality" as follows:

[C]onduct 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.

41. In the instant case, the School Board presented no evidence establishing the applicable "standards of public conscience and good morals" with which Respondent's behavior was inconsistent. Lack of evidence establishing the "standards of

public conscience and good morals" has been the basis for recommending dismissal of charges of immorality. See Miami-Dade Cnty. Sch. Bd. v. Swirsky-Nunez, Case No. 10-4143 (Fla. DOAH May 16, 2012; Miami-Dade Cnty. Sch. Bd. Dec. 19, 2012); Broward Cnty. Sch. Bd. v. Harris, Case No. 10-10094TTS (Fla. DOAH Nov. 23, 2011; Broward Cnty. Sch. Bd. Feb. 7, 2012); Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842 (Fla. DOAH July 31, 2006).

42. The undersigned concludes that evidence as to the particular moral standards need not be introduced. It is axiomatic that, by virtue of their leadership position, teachers are traditionally held to a high moral standard in the community. Adams v. Prof'l Practices Council, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981). Teachers are expected to be leaders and role models for students. Id., See also Citrus Cnty. Sch. Bd. v. Stone, Case No. 13-3340 (Fla. DOAH Jan. 10, 2014; Citrus Cnty. Sch. Bd. April 8, 2014).

43. Respondent acted contrary to the high moral standard for teachers when he chose to challenge M.M. to hit him and then called M.M. a "coward" when he chose to walk away.

44. However, it is not enough for Respondent's conduct to have been inconsistent with the standards of public conscience and good morals. It must also be "conduct that brings the individual concerned or the education profession into public

disgrace or disrespect and impairs the individual's service in the community." Fla. Admin. Code R. 6A-5.056(1).

45. No evidence was introduced to demonstrate that Respondent's actions were ever the subject of public knowledge or debate. Although the evidence and testimony indicates students took photos and video recordings of the altercation, there was no evidence that this material was placed on social media or was disseminated to the public. Accordingly, the evidence fails to demonstrate that Respondent's misrepresentations brought "public disgrace or disrespect" to Respondent or to the education community.

46. While Respondent's actions are demeaning to the teaching profession, and he lost the respect of his students, the School Board offered insufficient evidence to show that Respondent's actions impaired his service in the community.

47. The School Board failed to prove by preponderance of the evidence that Respondent's conduct constituted immorality as defined in rule 6A-5.056.

Misconduct in Office

48. Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), which reads in pertinent part 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 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;

(c) A violation of the adopted school board rules;

(d) Behavior that disrupts the student's learning environment; or

(e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

49. Florida Administrative Code Rule 6B-1.001, renumbered without change as rule 6A-10.080, Code of Ethics, 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.

50. Rule 6B-1.006, renumbered without change as rule 6A-10.081, sets forth the Principles of Professional Conduct. The School Board alleges that Respondent violated section (3) (a) of the rule, which reads 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.

51. The School Board demonstrated by a preponderance of the evidence that Respondent violated the Code of Ethics and the Principles of Professional Conduct. Respondent clearly failed to use his best professional judgment and integrity during his altercation with M.M. By attempting to bait M.M. into a physical fight, Respondent lost the respect and confidence of his students as evidenced by the pandemonium that took place in the classroom during the altercation.

52. Respondent's choice, to forgo SMS's protocol for handling disruptive students and instead attempt to teach M.M. a "life lesson" in "humility," created conditions harmful to learning and to M.M. and his classmates' mental and physical health and safety. It is notable that the other students in the classroom clearly anticipated a physical fight and felt it necessary to push back the tables and chairs to prevent injury.

53. Respondent's actions fall squarely within the definition of "misconduct in office" because they severely disrupted the students' learning environment and dramatically reduced Respondent's ability to effectively perform his duties.

54. School Board Policy 6.301(3)(b) provides a list of typical infractions that warrant disciplinary action which includes the following provisions with which Respondent was charged:

(i) insubordination;

(ix) abusive or discourteous conduct or language to supervisors, employees, students, visitors, or vendors;

(xix) violation of any rule, policy, regulation, or established procedure;

(xxix) any violation of the code of ethics of the education profession, the principles of professional conduct for the education profession, the standards of competent and professional performance, or the code of ethics for public officers and employees; and

(xxxii) inappropriate or disparaging remarks to or about students or exposing the student to unnecessary embarrassment or disparagement.

55. On four separate occasions during the preceding two school years, Respondent received counseling and increasing levels of discipline for subjecting students to unnecessary embarrassment or disparagement. Respondent was notified that future subsequent similar behavior would result in additional

discipline, and he was instructed to refrain from making embarrassing or disparaging remarks to or about students. Respondent categorizes his own actions on May 3, 2013, as an intentional effort to humiliate M.M. In light of Respondent's past disciplinary history, this constitutes insubordination and a violation of School Board Policy 6.301(3)(b)(i).

56. As discussed in greater detail above, Respondent's actions toward M.M. were certainly discourteous, if not abusive. Respondent's decision to "engage" M.M., rather than utilize SMS's establish protocol of contacting the office for assistance, violates School Board Policy 6.301(3)(b)(ix) and (xix).


57. By knowingly attempting to humiliate and embarrass M.M., Respondent violated the Code of Ethics and the Principles of the Profession, thus also violating School Board Policy 6.301(3)(b)(xxix) and (xxxix).

58. The School Board proved that Respondent is guilty of misconduct in office as defined in rule 6A-5.056(2). In light of this serious violation, Respondent's prior disciplinary history for embarrassing and humiliating students, and his refusal to acknowledge any wrongdoing regarding his actions on May 3, 2013, the School Board has just cause to suspend Respondent for ten days without pay.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the St. Lucie County School Board enter a final order finding William Doran guilty of misconduct in office, suspending his employment without pay for a period of ten school days, and placing him on probation for a period of one year.

DONE AND ENTERED this 19th day of August, 2014, in Tallahassee, Leon County, Florida.



MARY LI CREASY
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 19th day of August, 2014.

ENDNOTES

^{1/} The allegations of touching were determined by SMS to be unfounded.

^{2/} M.M. received a five-day out of school suspension from school for using profanity and a racial slur directed at Respondent during the May 3 altercation.

^{3/} Respondent can be heard on the video tape of the altercation (Petitioner's Ex. 8) taunting M.M. that he is a "big man" and calling him a "coward." Another student is heard yelling at Respondent, "You can't do that to a kid. He ain't your children."

COPIES FURNISHED:

Thomas L. Johnson, Esquire
Law Office of Thomas Johnson, P.A.
510 Vonderburg Drive, Suite 309
Brandon, Florida 33511

Elizabeth Coke, Esquire
Richeson and Coke, P.A.
Post Office Box 4048
Fort Pierce, Florida 34948

Genelle Zoratti Yost, Superintendent
St. Lucie County School Board
4204 Okeechobee Road
Fort Pierce, Florida 34947

Lois S. Tepper, Interim General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Pam Stewart
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
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.