

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WALTON COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0429TTS

HARRIET HURLEY,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On March 27, 2014, a duly-noticed hearing was held in Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Holly A. Dincman, Esquire  
Melissa S. Leonard, Esquire  
Coppins, Monroe, Adkins, and Dincman, P.A.  
1319 Thomaswood Drive  
Tallahassee, Florida 32317

For Respondent: Clay B. Adkinson, Esquire  
Adkinson Law Firm, LLC  
41 South 6th Street  
Defuniak Springs, Florida 32435

STATEMENT OF THE ISSUE

Whether Respondent committed the actions set forth in the Notice of Charge of Misconduct in Office, dated December 18, 2013, and if so, whether these actions constitute just cause for suspension.

PRELIMINARY STATEMENT

Respondent, a teacher at Walton Middle School (WMS), received a Notice of Charge of Misconduct in Office on December 18, 2013, advising her of allegations that she engaged in misconduct and advising her that the Superintendent of Schools would be recommending that she be suspended for a period of ten days without pay. She was advised of her right to request an administrative hearing within 15 days. In an e-mail communication that same day, Respondent requested an administrative hearing. On January 24, 2014, the matter was referred to the Division of Administrative Hearings ("DOAH") for the assignment of an administrative law judge, and the case was scheduled for final hearing on March 27, 2014.

The parties stipulated to certain facts, which were accepted at hearing, and are included among those set out below. Petitioner presented the testimony of seven witnesses: Ms. Black, a teacher at WMS; S.A., a sixth-grade student of Ms. Black; Mr. Campbell, Assistant Principal; Ms. A., parent of S.A.; Ms. Howell, Guidance Counselor; Mr. Hope, Principal; and Ms. Alford, Human Resource Director of Walton County Schools. Petitioner offered exhibits P-1 through P-13 at hearing, which were admitted into evidence. Respondent testified and presented the testimony of one other witness, Ms. Liming, a teacher at WMS. Respondent offered no exhibits. Official recognition was

given to several statutes and administrative rules and Respondent's admissions in response to Requests for Admissions were accepted as conclusively established.

Without objection, Petitioner was authorized at hearing to submit a late-filed exhibit to show whether Walton County School Board Policy 6.25 had been adopted pursuant to the provisions of chapter 120 and so was an adopted "rule" within the meaning of section 120.57(1)(e), Florida Statutes. Respondent filed no response or objection to the late-filed exhibit, which was admitted as Exhibit P-14.

The three-volume Transcript of the hearing was filed at the Division of Administrative Hearings on April 14, 2014. Pursuant to Respondent's Motion, time for filing Proposed Recommended Orders was extended to May 2, 2014. Proposed Recommended Orders were timely filed by both parties and were carefully considered.

#### FINDINGS OF FACT

1. The Walton County School Board (School Board) is charged with the responsibility to operate, control, and supervise the public schools within the School District of Walton County, Florida.

2. During the 2013-2014 school year, Ms. Harriet Hurley was a teacher at Walton Middle School.

3. Ms. Hurley had earlier been a teacher in Georgia for eight years, had been employed in Walton County Schools in 1984

for a period of three years, and taught in Okaloosa County Schools for five years. She then returned to Walton County Schools where she has been ever since, for a career of over 30 years.

4. In addition to her responsibilities as a teacher at Walton Middle School, Ms. Hurley assists in scheduling parent-teacher conferences for students at Walton Middle School.

5. Ms. Hurley's responsibilities in scheduling conferences are limited to a coordination function. She is not responsible for addressing the substance of the issues to be addressed in the conferences or becoming involved in attempting to resolve them. Principal Hope never asked Ms. Hurley to assume a role as a guidance counselor.

6. Ms. Hurley is employed by the School Board. As a member of the School Board's instructional staff, Ms. Hurley's employment is subject to section 1012.33, Florida Statutes (2013), which provides that her employment will not be suspended or terminated except for "just cause."

7. As a teacher, Ms. Hurley is required to abide by all Florida Statutes which pertain to teachers, the Code of Ethics and the Principles of Conduct of the Education Profession in Florida, and the Policies and Procedures of the School Board of Walton County, Florida.

8. Ms. Hurley is not the legal guardian of her granddaughter, B.C., who is a student at Walton Middle School.

9. On November 20, 2013, Ms. Hurley's granddaughter, B.C., approached her in the adult dining area about a group math assignment that was upsetting her.

10. B.C. told Ms. Hurley that she had been told by her sixth-grade math teacher, Ms. Black, that her "high grade was gone" because of the failure of her group to complete a group math assignment. B.C. told Ms. Hurley that she blamed S.A., another student in her group, for their failure to complete the work.

11. Ms. Hurley immediately left the adult dining area with her lunch only partially eaten and went with B.C. back to Ms. Black's classroom. B.C. had been released for lunch a few minutes before the other students because she was an A/B Honor Roll student, so the other students were still in the classroom when Ms. Hurley arrived there.

12. When Ms. Hurley and B.C. arrived at the classroom, the students were packing up their personal items in preparation for their release for lunch. Ms. Black testified in part:

At that time, I think it was because the students leave five minutes early, A/B honor roll students. I don't really want to go ahead and teach them anything, because they're missing that opportunity to learn. At that time I get them to pack up and get their things together to leave for lunch.

There was a high level of noise in the classroom. Ms. Black, in her first year as a teacher, was at her desk trying to help some students who did not understand something, and was in a verbal altercation with S.A., who was walking away from her.

13. On November 20, 2013, S.A. was not a student in one of Ms. Hurley's classes.

14. Ms. Hurley addressed S.A., telling him that he should not talk to his teacher that way.

15. Ms. Hurley told S.A. to "come here to me." She was upset with S.A. and told him that he needed to stop playing around. In a loud and forceful tone of voice, she told him that he was not going to be the cause of a "straight A" student getting a bad grade and that he needed to concentrate on his schoolwork. She told him that she knew his mother, who worked at a KFC-Taco Bell restaurant in Miramar Beach, and that she would talk to his mother if necessary. S.A. denied that his mother worked at KFC, and Ms. Hurley restated that she knew that his mother did. The other students in the class heard Ms. Hurley's disparagement and public discipline of S.A. The bell rang and Ms. Hurley and the students began to leave the classroom.

16. S.A. was embarrassed and upset by the incident.

17. Due to the fact that the students were already packing up their things to leave, and because Ms. Black had been in a

verbal altercation with S.A., the actions of Ms. Hurley in Ms. Black's class did not disrupt the students' learning environment.

18. Ms. Hurley's actions were unnecessary. She might have comforted B.C., and encouraged B.C. and her parents to pursue the issue with Ms. Black. S.A. was not one of Ms. Hurley's students and at the time she decided to go to Ms. Black's class Ms. Hurley had not directly witnessed any behavior by S.A. that called for immediate correction. Even had it been appropriate for Respondent herself to take action based upon her granddaughter's information, there was no emergency which required that Ms. Hurley intrude upon a colleague's class and loudly berate S.A. in front of other students. She used her institutional privileges as a teacher to gain access to Ms. Black's classroom in order to assist her granddaughter.

19. As Ms. Black was leaving her classroom, she saw that S.A. was reluctantly moving toward the door and she noticed he was crying. She attempted to comfort him. Ms. Black then reported the incident to Mr. Jason Campbell, Assistant Principal, who was in the student lunch room. A few minutes later, S.A. also approached Mr. Campbell to report his version of the incident.

20. Ms. Hurley returned to her lunch in the adult dining room. When Ms. Black came in to the dining room later, Ms. Hurley apologized to her for coming into her classroom.

21. That evening, Ms. Hurley drove to Miramar Beach and went to dinner at the fast food restaurant where she knew Ms. A. worked. Ms. Hurley was one of Ms. A's teachers when Ms. A. had been in the seventh grade, and the two were casual acquaintances. Ms. Hurley told Ms. A. what had happened that morning with S.A. and B.C. in their math group. Ms. Hurley told Ms. A. that she had "kind of stepped out and went into grandma mode" and had "gotten onto" (disciplined) S.A. Ms. Hurley relayed that she had told S.A. that she knew his mother and that if he did not improve his conduct, she was going to let his mother know about his behavior. During the course of the conversation, Ms. A. relayed that she was concerned about an incident involving a damaged globe from Mr. Price's classroom, which was S.A.'s SPEAR classroom ("home room").

22. The following day, on November 21, 2013, Ms. Hurley removed S.A. from his first-period classroom.

23. Neither Principal Hope nor Vice Principal Campbell authorized Ms. Hurley to remove S.A. from his first-period classroom on November 21, 2013.



24. On November 21, 2013, Ms. Hurley contacted S.A.'s mother on the telephone on her own initiative and without the authority of Principal Hope or Vice Principal Campbell.

25. Ms. Hurley called Ms. A. on the telephone with S.A. present. Ms. Hurley and Ms. A. talked about the incident involving S.A. and the damaged globe from Mr. Price's classroom. The telephone conversation had barely begun when Mr. Hope, upon learning that Ms. Hurley had gone to S.A.'s classroom and removed him from class, came into Ms. Hurley's room and took S.A. back to Mr. Hope's office. While the School Board alleged that Ms. Hurley and Ms. A. discussed the incident that happened in Ms. Black's classroom the day before, this was not shown by the evidence. The allegation that Ms. Hurley was misusing her institutional privileges by engaging in the phone call may be correct, for Ms. Hurley was not authorized to discuss the substance of parent/teacher conferences, but was instead limited to scheduling responsibilities. The evidence did not show that the phone conversation was conducted for personal gain or advantage to Ms. Hurley, however.

26. The School Board's further argument that Ms. Hurley's actions on November 21, 2013, reduced the ability of Principal Hope to efficiently perform his duties is also rejected. Assuming that Principal Hope could even be considered a "colleague" of Ms. Hurley's, the evidence showed that he was

able to efficiently "track down" S.A. with minimal effort. To the extent that Ms. Hurley's actions on November 21, 2013, exceeded her "job description," they could be corrected with a simple directive or memorandum, and in the absence of evidence that her actions were taken for her personal gain, they are not a just cause for discipline.

27. Statements were taken from several students in Ms. Black's math class regarding the incident on November 20th, which vary in detail, but taken as a whole corroborate the findings of fact above regarding the incident on November 20, 2013. No statement was taken from B.C., and neither party called B.C. as a witness at hearing.

28. On December 2, 2013, Ms. Hurley met with Walton Middle School administration to discuss the events of November 20 and November 21, 2013.

29. On December 17, 2013, Principal Tripp Hope issued a letter of reprimand advising Respondent that he would be recommending a 10-day suspension without pay to the Superintendent.

30. On December 18, 2013, the Superintendent notified Respondent of her intention to recommend a 10-day suspension without pay.

31. A Notice of Charge of Misconduct in Office, dated December 18, 2013, notified Respondent of the Petitioner's

intent to suspend her employment for 10 days without pay. (As stipulated by the parties.)

32. Although the Notice of Charge of Misconduct in Office did not explicitly identify all rules that Ms. Hurley was charged with violating, the allegations of more specific rule violations were included in the Letter of Reprimand which was attached to the charge. Ms. Hurley was not prejudiced or hindered in the preparation of her defense by any lack of specificity in the charging documents.

33. Ms. Hurley is substantially affected by the intended action of the School Board to suspend her employment without pay for ten days.

34. The evidence did not show that Ms. Hurley failed to "value" the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, or the nurture of democratic citizenship. The evidence did not show that Ms. Hurley did not strive for professional growth or did not "seek" to exercise the best professional judgment or integrity. The evidence did not show that Ms. Hurley did not "strive" to achieve or sustain the highest degree of ethical conduct.

35. The evidence showed that by entering S.A.'s classroom and raising her voice in anger towards him in the presence of other students, Ms. Hurley failed to make reasonable effort to

protect S.A. from conditions harmful to his learning or to his mental health.

36. The evidence showed that any required discipline of S.A. should not have been administered by Ms. Hurley and so her actions were unnecessary. Her actions, which reduced S.A. to tears, exposed him to unnecessary embarrassment and disparagement.

37. The evidence showed that in entering another teacher's classroom to assist her granddaughter by disciplining S.A. when he was not even one of her students, Ms. Hurley used institutional privileges for personal gain or advantage.

38. The evidence did not show that Ms. Hurley lacked integrity, high ideals, or human understanding or that she failed to "maintain or promote" those qualities.

39. The evidence did not show that in entering Ms. Black's classroom during the final minutes of the class, when the students were already packing up their things and preparing to go to lunch, Ms. Hurley engaged in behavior that disrupted the students' learning environment.

40. The evidence did not show that Ms. Hurley engaged in behavior that reduced her ability or her colleague's ability to effectively perform duties. One might speculate as to whether Ms. Black's ability to maintain control over her class in the future was undermined by Ms. Hurley's aggressive intrusion, but

Ms. Black did not testify that her ability to effectively perform was reduced and this was not otherwise shown. There was similarly no evidence offered to indicate that Ms. Hurley's own effectiveness was reduced. Her actions were not taken in her own classroom, there was no evidence that she had any of Ms. Black's students in her classes, or that her own students or the student body generally was even aware of her actions.

41. The actions of Ms. Hurley on November 20, 2013, constitute misconduct in office. Her actions are just cause for suspension of her employment without pay.

42. The School Board witnesses conceded that Ms. Hurley has never received "formal" counseling, and presented no documentary evidence that she had been counseled even informally. The School Board did present credible testimony from Principal Hope and Assistant Principal Campbell that Ms. Hurley had been informally counseled regarding raising her voice with students and for communication with her peers.

43. The actions of Ms. Hurley on November 20, 2013, were not so serious as to justify a ten-day suspension, but do warrant suspension without pay for three calendar days.

#### CONCLUSIONS OF LAW

44. The Division of Administrative Hearings (DOAH) has jurisdiction over the subject matter and parties in this case, pursuant to section 1012.33, and sections 120.569 and 120.57(1),

Florida Statutes (2013).<sup>1/</sup> Pursuant to section 120.65(11),  
Petitioner has contracted with DOAH to conduct these hearings.

45. Petitioner is a duly-constituted School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Walton County, Florida, under section 1001.32.

46. Petitioner has the authority to discipline employees pursuant to sections 1012.22(1)(f) and 1012.33(6)(a).

47. Respondent's substantial interests are affected by suspension of her employment and she has standing to contest Petitioner's action. McIntyre v. Seminole Cnty. Sch. Bd., 779 So. 2d 639, 641 (Fla. 5th DCA 2001).

48. Petitioner has the burden of proving the allegations set forth in its Notice of Charge of Misconduct in Office by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to 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).

49. 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).

50. The parties stipulated that Respondent's employment is subject to section 1012.33. Under that statute, members of the instructional staff are subject to suspension for just cause. Just cause includes, but is not limited to, 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, as these terms are defined by rule of the State Board of Education. §§ 1012.33(4)(c), 1012.33(6)(b), Fla. Stat.

51. 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.

52. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code Rule 6A-5.056(2), which provides:

(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.

53. A Notice of Charges should "specify the rule the agency alleges has been violated," as well as the offending conduct. Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983) (Jorgenson, J., concurring). While the Notice of Charge of Misconduct in Office alleged the offending conduct of Respondent in some detail, it was less clear in alleging the rules that had been violated. Although the Notice did cite to rule 6A-5.056(2), defining misconduct in office, it failed to identify which provisions of rules 6B-1.001 or 6B-1.006, which are incorporated within the misconduct rule, had been violated.

54. However, a deficient Administrative Complaint is not fatal so long as there is sufficient specificity to allow a fair chance to prepare a defense. Davis v. Dep't of Prof'l Reg., 457 So. 2d 1074 (Fla. 1st DCA 1984). Here, the more specific rule violations were included in attachments to the charge, referencing 6B-1.001(2), 6B-



1.006(3) (a), (3) (e), and (4) (c), as well as policy 6.25 of the Policies and Procedures Manual of the Walton County School Board. No contention was raised at hearing that Respondent was in any way hindered in her preparations by any lack of specificity in the charging documents. No prejudice is found.

55. Rule 6A-5.056(2) (a) incorporates by reference rule 6B-1.001, which has been renumbered without change as 6A-10.080, and is entitled Code of Ethics of the Education Profession in Florida. It 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.

56. While rule 6A-5.056(2) (a) provides that violation of the Code of Ethics constitutes "misconduct," it has been

frequently noted that the precepts set forth in that Code are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." See, e.g. Miami-Dade Cnty. Sch. Bd. v. Brenes, Case No. 06-1758 (Fla. DOAH Feb. 27, 2007; Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007). In any event, there was insufficient evidence of Respondent's "values," "concerns," or "strivings" to find a violation of these ideals.

57. Rule 6A-5.056(2)(b) incorporates by reference rule 6B-1.006, which has been renumbered without change as 6A-10.081. It is entitled Principles of Professional Conduct for the Education Profession in Florida. Rule 6A-10.081(3)(a) provides:

(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.

58. It is clear that the duty of a teacher to protect students from conditions harmful to learning or their mental health is breached when the actions involved are those of the "protecting" teacher. Respondent's intrusion into another teacher's classroom to loudly berate and discipline S.A. in front of other students, upsetting him and causing him to cry, failed to reasonably protect him from conditions harmful to learning.

59. Rule 6A-10.081(3) (e) provides:

(3) Obligation to the student requires that the individual:

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

60. Respondent's intentional action of going to another teacher's class and confronting S.A. in a loud voice in the presence of the other children exposed S.A. to embarrassment and disparagement, and was unnecessary.

61. Rule 6A-10.081(4) (c) provides:

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

\* \* \*

(c) Shall not use institutional privileges for personal gain or advantage.

62. Personal "gain or advantage" is not limited to financial gain. Cf. Bollone v. Dep't of Mgmt. Servs., 100 So. 3d 1276, 1281-1282 (Fla. 1st DCA 2012) (section 112.3173(2) (e) 6. of retirement forfeiture statute does not limit "personal gain" to only economic gain). Respondent used her institutional privileges as a teacher to gain access to Ms. Black's classroom on November 20, 2013, in order to assist her granddaughter.

63. Rule 6A-5.056(2) (c) defines misconduct to include a violation of adopted school board rules.

64. Section 1001.41(2), Florida Statutes, grants the Walton County School Board the authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement its statutory duties and to supplement rules prescribed by the State Board of Education.

65. Policy 6.25 of the Policies and Procedures Manual of the Walton County School Board was adopted pursuant to the Administrative Procedure Act and is a "rule" within the meaning of rule 6A-5.056(2) (c). It provides:

An effective educational program requires the services of personnel of integrity, high ideals, and human understanding. All employees shall be expected to maintain and promote these qualities. The Board shall also expect all administrative and instructional staff members to adhere to the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

66. Petitioner did not show that Respondent lacked integrity, high ideals, or human understanding. Petitioner did not show that Respondent failed to "maintain or promote" those qualities. Any allegation that Respondent was guilty of misconduct because she violated Policy 6.25 through failure to adhere to the Code of Ethics or the Principles of Professional Conduct of the Education Profession in Florida would not constitute a distinct offense, given the identical charges already discussed above.

67. Rule 6A-5.056(2)(d) defines misconduct in office to include behavior that disrupts a student's learning environment. Given that Respondent's intrusion into Ms. Black's classroom took place in the last minutes of class when students were already preparing to go to lunch and Ms. Black was engaged in a verbal confrontation with student S.A., Petitioner did not prove a disruption of students' learning environment.

68. Rule 6A-5.056(2)(e) defines misconduct in office to include behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties. There was little, if any, testimony on this issue. Even assuming, without deciding, that certain conduct might be deemed so severe that impairment of effectiveness might be presumed in the absence of evidence as to that impairment,<sup>2/</sup> the conduct proven here does not rise to that level. Petitioner failed to prove by a preponderance of the evidence that Respondent's behavior reduced her ability or her colleagues' ability to effectively perform duties.

69. Petitioner proved by a preponderance of evidence that Respondent failed to make reasonable effort to protect a student from conditions harmful to learning, intentionally exposed a student to unnecessary embarrassment or disparagement, and used institutional privileges for personal gain or advantage. Respondent therefore violated the Principles of Professional

Conduct and is guilty of misconduct in office as defined by rule 6A-5.056(2) (b) .

Penalty

70. Instructional personnel who have engaged in misconduct in office may be suspended without pay. §§ 1012.33(4) (c), 1012.33(6) (a), Fla. Stat.

71. Section 120.57(1) (k) provides that a Recommended Order shall include a "recommended disposition, or penalty, if applicable" based upon the entire record.

72. The facts show that Respondent "went into grandmother mode" in reaction to information that the actions of another student threatened her granddaughter's "straight A" grade average. She intruded upon another teacher's classroom and loudly berated the accused student in front of other students, though she had not witnessed him commit any action which needed immediate discipline, and though he was not even one of her students. Respondent's many years of teaching experience should have led her to a more indirect and dispassionate response. While the evidence did not show the "cover up" alleged by Petitioner, Respondent did little to acknowledge her actions or show remorse. Considering the seriousness of the offense and the lack of any prior formal discipline, suspension without pay for a period of three days is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Walton County, Florida, enter a final order finding Ms. Harriet Hurley guilty of misconduct in office and suspending her employment, without pay, for a period of three days.

DONE AND ENTERED this 14th day of May, 2014, in Tallahassee, Leon County, Florida.



---

F. SCOTT BOYD  
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 14th day of May, 2014.

ENDNOTES

<sup>1/</sup> References to statutes and rules throughout this Recommended Order are to versions in effect in November 2013, except as otherwise indicated.

<sup>2/</sup> Under the previous State Board of Education rule, violation of a Principle of Professional Conduct for the Education Profession in Florida did not constitute misconduct in office unless it was "so serious as to impair the individual's effectiveness in the school system." Fla. Admin. Code R. 6A-5.056(3) (2011); MacMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 230 (Fla. 1st DCA 1993). However, under that rule certain

conduct was deemed so egregious so as not to require separate evidence as to impaired effectiveness. See, e.g. Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000) (lying under oath and resisting arrest was misconduct that supported inference that effectiveness was impaired); Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000) (commotion in class, including intoxicated student, showed class was out of control such that no evidence of impaired effectiveness was necessary, misconduct "spoke for itself"); Summers v. Sch. Bd. of Marion Cnty., 666 So. 2d 175, 175 (Fla. 5th DCA 1995) (though no specific evidence presented, it was clear that conduct must have impaired effectiveness as a teacher). Under the new rule, conduct that "reduces the teacher's ability or his or her colleagues' ability to effectively perform duties" is a distinct offence, not merely an element necessary to show that violation of a Principle of Professional Conduct rises to the level of misconduct, but it appears otherwise quite similar.

COPIES FURNISHED:

Holly A. Dincman, Esquire  
Coppins, Monroe, Adkins,  
and Dincman, P.A.  
1319 Thomaswood Drive  
Tallahassee, Florida 32308

Clay B. Adkinson, Esquire  
Adkinson Law Firm, LLC  
41 South 6th Street  
Defuniak Springs, Florida 32435

Melissa Sale Leonard, Esquire  
Coppins, Monroe, Adkins,  
and Dincman, P.A.  
1319 Thomaswood Drive  
P.O. Box 14447  
Tallahassee, Florida 32317

Carlene H. Anderson  
Superintendent  
Walton County School Board  
145 Park Street  
Defuniak Springs, Florida 32435



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

Matthew Carson, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
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.