

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESCAMBIA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-4717TTS

HOLLY BAMONTE,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held in this case before Diane Cleavinger, Administrative Law Judge of the Division of Administrative Hearings, on December 15, 2014, in Pensacola, Florida.

APPEARANCES

For Petitioner: Joseph L. Hammons, Esquire
The Hammons Law Firm, P.A.
17 West Cervantes Street
Pensacola, Florida 32501-3125

For Respondent: Holly A. Bamonte, pro se
1248 Plata Canada Drive
Cantonment, Florida 32533

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Respondent should be terminated from employment with Petitioner.

PRELIMINARY STATEMENT

By letter dated September 12, 2014, the Superintendent of the Escambia County School District notified Respondent Holly Bamonte (Respondent) that he was recommending to Petitioner Escambia County School Board (Petitioner or School Board) termination of her employment as a teacher for violation of the Escambia County School Board's Code of Ethics. Specifically, Respondent was charged with violating the code of ethics by contributing to the delinquency of several minors in that she provided alcohol to them when she permitted them to drink alcohol in her home. On September 16, 2014, at its regular meeting, the School Board approved the recommendation of the Superintendent and terminated Respondent's employment effective September 17, 2014. Respondent was notified of her termination by letter dated September 17, 2014. Thereafter, Respondent requested a hearing and the matter was forwarded to the Division of Administrative Hearings.

At the hearing, the School Board offered the testimony of five witnesses and introduced four exhibits into evidence. Respondent testified on her own behalf and offered the testimony of one witness.

After the hearing, Petitioner filed a Proposed Recommended Order on January 20, 2015. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Respondent Holly Bamonte was employed as a classroom teacher by the Escambia County School District.

2. As such, Respondent was subject to the rules and certification requirements of the Florida Department of Education, including the Code of Ethics of the Education Profession in Florida and the Principles of Professional Conduct for the Education Profession in Florida, Florida Administrative Code Rules 6A-10.080 and 6A-10.081.

3. Additionally, Respondent was subject to the Escambia County School District Employee Code of Ethics. The employee code provided that all school district employees were expected to acknowledge and accept responsibilities stated in the state code of ethics and must conduct themselves in a manner that promotes and supports ethical principles and values.

4. All of these rules and codes were included in Petitioner's Federal/State Compliance Packet for school year 2013-2014. The compliance packet was provided and accessible to all certified instructional personnel of the Escambia County School District, including Ms. Bamonte.

5. During the holiday break in 2013, J.T., C.G., and about 10 to 15 other high school students under the age of 21 attended

a party at the Respondent's home. The home is approximately 1,500 square feet with a small kitchen and living area.

6. During the party these students consumed alcohol. The students who drove were asked to put their keys on the counter or in a bucket, if they were going to drink. Respondent was present during the party and was aware that the students were drinking alcohol. C.G. and J.T. saw and spoke to Respondent in the area where student drinking was openly occurring. She did not stop or prohibit such alcohol consumption and was not concerned that such overt alcohol consumption was taking place.

7. Ms. Teresa Bowden was the mother of C.G., then a high school student. C.G. also attended the party at the Respondent's house where he consumed alcohol. Ms. Bowden went to Respondent's house because her son, who had been drinking beer at the party, called her to be picked up. On arriving, she went into the living room and saw five to ten students in a circle. She could not determine if any had been drinking alcohol. Another pair of parents was present who were angry because of a concern that the students, and in particular their son, had been drinking alcohol. These parents were told that Respondent was in the bathroom at the back of the house. Ms. Bowden asked her son, C.G., if he had been drinking and he said that he had. Like the other parents, Ms. Bowden was upset and concerned that her son was allowed to drink at Respondent's home.

8. At some point during the evening, law enforcement officers arrived at the house. As the officers arrived outside, J.T. was leaving and spoke with them. They asked if there were kids inside drinking and he stated there were. The police entered the house, but did not find Respondent. Law enforcement contacted the parents of the students who were present at the party to come pick them up.

9. At hearing, Respondent claimed that she and her husband had a fight the night of the party and that she left the residence earlier in the evening before the police arrived. She claimed that she did not see any of the teens at her home drinking. However, given the testimony of the teenage party attendees, Respondent's testimony is not credible.

10. On the other hand, the evidence clearly demonstrated Respondent allowed underage high school students to gather in her home, and consume alcohol with her knowledge and in her presence. Whether she purchased the alcohol is not relevant. By permitting underage drinking in an environment she controlled, Respondent failed to protect students from harm and permitted them to engage in conduct that was illegal. Clearly, Respondent's lack of judgment regarding student alcohol consumption at her home was significant and impaired her ability to function as a teacher with responsibility for protecting and supervising students.

Such conduct was of sufficient severity as to justify termination of her instructional contract.

11. Further, the party at Respondent's house, where students were knowingly permitted by her to consume alcohol, became known in the school community and resulted in upsetting parents in that community. Petitioner's lack of judgment demonstrated that parents could not have faith in her ability to protect their children. Such parental lack of confidence impaired her ability to serve as a teacher in the school system. As such, termination of her instructional contract with the School Board was warranted and should be upheld.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. See §§ 120.569 and 120.57, Fla. Stat. (2014).

13. In this proceeding, the School Board seeks to terminate the Respondent's employment. As such, the School Board must establish by a preponderance of the evidence that Respondent violated the various codes of ethics described above. See Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

14. The basis for dismissal of instructional personnel with the public schools of the State of Florida is set forth in section 1012.33(6), Florida Statutes, which provides that instructional staff may be terminated for "just cause."

15. Section 1012.33(1)(a) defines just cause as including immorality and misconduct in office as defined by rule of the State Board of Education. The State Board has promulgated such rules defining just cause in Florida Administrative Code Rule 6A-5.056.

16. Florida Administrative Code Rule 6A-5.056 provides in relevant part:

(1) "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.

(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. [now 6A-10.080];

(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. [now 6A-10.081];

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

* * * *

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

17. Generally, "in order to dismiss a teacher for immoral conduct, the factfinder must conclude: a) that the teacher

engaged in conduct inconsistent with the standards of public conscience and good morals; and b) that the conduct was sufficiently notorious so as to disgrace the teaching profession and impair the teacher's service in the community." McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

18. It is not necessary, however, that there be specific testimony regarding impairment of the teacher's effectiveness in the school system, where impaired effectiveness in the school system can be inferred from the misconduct at issue. See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000) ("evidence of impaired effectiveness not necessary where misconduct "spoke for itself").

19. Florida Administrative Code Rule 6A-1.080(3), from the Code of Ethics of the Education Profession, provides that the educator must strive to achieve and sustain the highest degree of ethical conduct.

20. The Principles of Professional Conduct for the Education Profession in Florida, found at rule 6A-1.081(3), recites the obligation of a teacher to protect the student from conditions harmful to learning, or the student's mental or physical health and safety, and provides that a teacher shall not exploit a relationship with the student for personal gain or advantage.

21. Florida courts have recognized that a teacher's effectiveness may be impaired by off-campus conduct, as well as conduct at school. Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000).

22. In this case, there is no question that Respondent's misconduct was inconsistent with the standards of public conscience and good morals, or that it was sufficiently notorious to bring disgrace upon the teaching profession, and impaired Respondent's effectiveness as a teacher in the school system. Further, the manner in which Respondent's misconduct impaired her effectiveness as a teacher "speaks for itself."

23. The evidence clearly demonstrated Respondent allowed underage high school students to gather in her home and consume alcoholic beverages with her knowledge and in her presence. Whether she purchased the alcohol is not relevant. By permitting underage drinking in an environment she controlled, Respondent failed to protect students from harm and permitted them to engage in conduct that was illegal. Further, Respondent's lack of judgment towards these students demonstrated that parents could not have faith in her ability to protect their children, thereby impairing her ability to serve as a teacher in the school system. Such conduct was of sufficient severity as to justify termination of her instructional contract, and the action of the School Board in that regard should be upheld.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that:

The Escambia County School Board enter a final order terminating the Respondent's employment effective September 17, 2014, as originally noticed and approved by the Board.

DONE AND ENTERED this 2nd day of March, 2015, in Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of March, 2015.

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.