

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

POLK COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-4993TTS

KATHY BUNCH,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case before J. D. Parrish, an Administrative Law Judge of the Division of Administrative Hearings, on January 22, 2015, in Bartow, Florida.

APPEARANCES

For Petitioner: Donald H. Wilson, Jr., Esquire  
Boswell and Dunlap, LLP  
245 South Central Avenue  
Bartow, Florida 33830

For Respondent: Mark Herdman, Esquire  
Herdman and Sakellarides, P. A.  
29605 U.S. Highway 19, North, Suite 110  
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether there is just cause to terminate Respondent's employment with the school district.

PRELIMINARY STATEMENT

Petitioner, Polk County School Board (Petitioner or Board), through its Superintendent of Schools, gave notice to Kathy Bunch (Respondent) of its intent to terminate her employment with the school district on or about September 23, 2014. The notice to Respondent was dated August 15, 2014. Thereafter, counsel for Respondent requested a formal administrative hearing to challenge the termination. The matter was filed with the Division of Administrative Hearings (DOAH) on October 22, 2014.

In accordance with the parties' Joint Response to Initial Order, the case was scheduled for hearing on January 22, 2015. At the hearing, Petitioner presented the testimony of Angela Allen and Patricia Butler, and its exhibits numbered 1-8 were admitted into evidence. The deposition testimony of Sue Helen Allemang was received. Respondent testified on her own behalf and offered testimony from Cassandra Gibson, Cathryn Goble, Olin Gee and Lisa Andrews. At the conclusion of the hearing, the parties requested 15 days leave from the filing of the hearing transcript within which to file proposed orders. That request was granted and both timely filed Proposed Recommended Orders have been considered in the preparation of this Recommended Order. The Transcript of the proceeding was filed on February 9, 2015.

## FINDINGS OF FACT

1. At all times material to this case, Respondent was employed pursuant to a professional services contract as an Exceptional Student Education (ESE) consultant at Haines City High School (HCHS). In her 20 years at HCHS, Respondent has also served as an ESE teacher, an English teacher, and a Reading teacher. Prior to this case, Respondent has not been disciplined.

2. During the 2013-2014 school year, Respondent was assigned to a small office that she shared with the HCHS football coach, Ron Johnson, and another ESE teacher, Selma Gandy.

3. In January 2014, a mathematics teacher, Sue Allemang, retired and moved to Virginia. Ms. Allemang and Respondent knew one another, and Respondent had Ms. Allemang's telephone number.

4. When spring football started that year, Coach Johnson asked Respondent to telephone Ms. Allemang to see if the mathematics teacher would agree to change a student's grade that had been given in the fall term. According to Ms. Allemang, Respondent telephoned her and asked if the grade could be changed (presumably to improve the student's grade point average). After a brief conversation, Ms. Allemang agreed that the student's grade could be improved. Ms. Allemang's agreement to raise the grade extended to one student.

5. Thereafter, Respondent completed a grade change form for the student, indicated that Ms. Allemang had authorized the change, and signed the form before delivering it to Angela Allen, the terminal operator at HCHS, who was responsible for inputting data into the HCHS system.

6. Although Ms. Allemang recalled authorizing changing a grade for one student, Respondent executed two forms for two of Ms. Allemang's students so that grades could be improved.

7. Between January 13 and May 7, 2014, Respondent delivered 15 grade change forms for students who were on the football team. In almost every instance the changes increased the students' grades and would have thereby increased their grade point averages.

8. Respondent did not feel that she had done anything wrong in delivering the grade change forms. She maintained that she was simply a messenger delivering forms as a courtesy to others because she was going to the office. Such testimony has not been deemed credible or persuasive. Respondent knew or should have known that, absent her conduct, the grades would not have been changed at the times they were.

9. In fact, Respondent was the facilitator of the grade change for Ms. Allemang's student because had she not initiated the telephone conversation there would have been no basis for the change. As it was, Respondent knew or should have known that the

student whose grade was changed had done no additional work to merit the change as Ms. Allemang no longer taught at the school. Further, Respondent did not represent to Ms. Allemang that additional work (supervised by Respondent or another teacher) would support the grade change.

10. Other teachers who have approved grade changes have done so based upon additional work required of the student. In this case, two of Ms. Allemang's students did not perform additional work to support the grade changes. Moreover, Ms. Allemang only authorized the change for one student. The record established that Respondent completed grade change forms for two of Ms. Allemang's students.

11. Another teacher no longer employed at HCHS authorized a grade change for one of the football players. When Ms. Allen questioned Respondent about that change, Respondent claimed that Coach Johnson had obtained the signature from the former teacher to support the change. Whether additional work was required to support the grade change is unknown.

12. During a normal school year, Ms. Allen processes grade change forms for approximately six students. In this case, Respondent submitted 15 grade change forms to Ms. Allen.

13. One of the physical education teachers at HCHS was asked to change grades for athletes. Coach Johnson gave the teacher a list of the athletes needing improved grades. Before

the teacher would agree to the changes, the students were required to complete extra work. Some ran laps or did other physical activities for extra credit. Some wrote essays or did other academic work. The teacher did not change the grades absent extra credit work done by the students.

14. There was not an ongoing "culture of grade changing" at HCHS. Coach Johnson sought grade changes presumably to allow football players to be eligible to participate. Respondent assisted in obtaining the grade changes and should have known that grades should not be improved absent bona fide justification for the change. Respondent knew or should have known that changes without justification were inappropriate.

15. Respondent demonstrated a lack of remorse or comprehension of the gravity of her behavior. Respondent's willful indifference to the fundamental concept of how grades must be earned calls into question her education ethics.

#### CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2014).

17. Section 1012.33(1)(a), Florida Statutes (2014), provides:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified

pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. 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, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, 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.

18. Florida Administrative Code Rule 6A-5.056 provides, in pertinent part:

6A-5.056 Criteria for Suspension and Dismissal.

"Just cause" means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:

(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.;

(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.

19. Florida Administrative Code Rule 6A-10.080 provides:

6A-10.080 Code of Ethics of the Education Profession in Florida.

(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.

20. Florida Administrative Code Rule 6A-10.081 provides, in part:

6A-10.081 Principles of Professional Conduct for the Education Profession in Florida.

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

\* \* \*

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

\* \* \*

(h) Shall not submit fraudulent information on any document in connection with professional activities.

\* \* \*

(n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

21. Respondent's conduct in this case is troubling for a number of reasons. First, Respondent failed to acknowledge that changing grades for students was inappropriate. Instead, Respondent suggested that her behavior was no more than as a delivery person. Respondent facilitated the grade changes for Ms. Allemang's students. She made the telephone call, she completed the relevant forms, she signed the forms, and she delivered the forms. There was no established basis for the changes. Respondent knew or should have known that absent additional work or error in computation (unlikely from a mathematics teacher) the amended grades were not justified. Respondent's claim that she was just helping out by delivering the forms is not supported by the persuasive weight of the credible evidence. Respondent's facilitation of the grade changes demonstrates unethical conduct. In this case, there was no proof that Ms. Allemang's students completed additional work before grades were changed. Respondent ignored the reality that unilateral, unearned grade changes are never appropriate. Ms. Allemang's student's grade was changed as a direct result of Respondent's conduct.

22. Similarly, Respondent's claim that there was a "culture" at HCHS that supported or somehow encouraged grade changes is not supported by the weight of credible evidence. Coach Johnson may have wanted athletes' grades changed but there

was no "culture" that grades would or should be changed absent justification for the change. In fact, student grades were not changed on a habitual or numerically significant basis.

23. In this case, Petitioner bears the burden of proof to establish by a preponderance of the evidence that there is just cause for disciplinary action against Respondent. See Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3rd (Fla. 2d DCA 2009), rev. den., 29 So. 3rd 1118 (Fla. 2010).

24. It is concluded that Respondent initiated and facilitated the grade changes for no fewer than two HCHS students during the 2013-2014 school year. It is further concluded that such conduct constitutes just cause for disciplinary action as Respondent acted unethically and dishonestly in the preparation and submission of the grade changes. Additionally, Respondent acted as a conduit for 13 other grade changes. Accordingly, Petitioner has met its burden of proof.

25. As to the appropriate penalty to be imposed for Respondent's lapse in judgment, the record is deficient. According to Respondent, this is her first instance of disciplinary action. Had Respondent exhibited remorse, a penalty less than termination of employment might be appropriate. Presumably, Petitioner would not want to end the employment of a valued teacher without affording the employee an opportunity to

establish rehabilitation. In this case, however, Respondent does not acknowledge she acted in violation of state ethics and rules.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Polk County School Board enter a final order finding Respondent guilty of misconduct and imposing such penalty as may be appropriate up to, and including, termination of employment.

DONE AND ENTERED this 3rd day of April, 2015, in Tallahassee, Leon County, Florida.



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J. D. PARRISH  
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Filed with the Clerk of the  
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this 3rd day of April, 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.