

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-5255TTS

ANGEL VILLANUEVA,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Ft. Myers and Tallahassee, Florida, on November 17, 2016, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
Lee County School Board
2855 Colonial Boulevard
Fort Myers, Florida 33966

For Respondent: Angel Villanueva, pro se
438 Parkdale Boulevard
Lehigh Acres, Florida 33974

STATEMENT OF THE ISSUES

Whether Angel Villanueva (Respondent) imposed his personal religious views and views about gender identity on students during classroom and other instructional time, and, if so, should

his employment with the Lee County School Board (Petitioner) be terminated as a result of his conduct.

PRELIMINARY STATEMENT

On or about July 29, 2016, Petitioner, through Gregory K. Adkins, Superintendent of Schools, served on Respondent a Petition for Termination recommending Respondent's termination from employment. Respondent timely filed a request for administrative hearing, and this matter was referred to the Division of Administrative Hearings for a disputed-fact hearing. The disputed-fact hearing was held on November 17, 2016.

During the hearing, Petitioner offered the testimony of Andrew Brown, and students M.G., J.P., and R.R. Respondent testified on his own behalf and called no other witnesses. Petitioner's Exhibits 1 through 11 were admitted into evidence. Respondent's Exhibits 1, 4, and 7 through 11 were admitted into evidence.

A Transcript of the disputed-fact hearing was filed with the Division of Administrative Hearings on December 8, 2016. The parties each submitted a Proposed Recommended Order on December 19, 2016.

FINDINGS OF FACT

A. Stipulated Facts

1. Pursuant to the Joint Pre-hearing Stipulation, the following facts are admitted:

a) Respondent imposed his personal religious beliefs and views regarding gender identity on students during classroom and other instructional time.

b) Respondent made comments in the presence of students regarding the sexual preferences of individuals and professed that those that do not agree with him are wrong and would regret their lifestyle and suffer consequences later on in life.

c) Respondent's conduct unreasonably denied students access to diverse points of view, exposed students to unnecessary embarrassment and disparagement, and was unbecoming of a school district employee.

B. Background

2. The Board is responsible for hiring, terminating, and overseeing all employees in the school district.

3. At all times material to this case, Respondent was employed by Petitioner as an JROTC instructor at East Lee County High School. Respondent has been employed by Petitioner since October 25, 2002.

4. Respondent is an instructional employee and is governed by the collective bargaining agreement between the School Board and the Teachers Association of Lee County (TALC). Respondent is employed pursuant to a professional services contract.

5. On or about May 13, 2016, a concerned parent notified Petitioner of a video posted on Instagram which shows Respondent making comments in class regarding the sexuality of Caitlyn Jenner, the former Olympic decathlon gold medalist who recently

came out as transgender. M.G. recorded the video and is responsible for posting the same on Instagram. The video, which is in evidence, speaks for itself. As a result of the concerns expressed by the parent, Petitioner initiated an investigation regarding Respondent's alleged conduct.

6. As part of the investigation, Petitioner interviewed M.G., who is a transgender student who recently "came out" regarding his gender.

7. M.G. testified that he came out as transgender in March of 2016 and during this time he was a student in Respondent's JROTC class. M.G. stated that Respondent made some initial comments to him in March of 2016, which led him to inform his guidance counselor, who asked M.G. to write his concerns in a statement. M.G. explained in his written statement that the statements made by Respondent regarding gay rights, religion, and homosexuality made him feel that generally he "wasn't human," that he was being "pushed down," and that he did not like the way Respondent's statement made him feel.

8. M.G. also explained that when Respondent became aware that he was going to come out as transgender, Respondent reacted by saying, "Oh, no, you can't do that" and told him that he will always be a female.

9. M.G. testified that in April when he first told the guidance counselor about Respondent's comments, he did not want

anything bad to happen to Respondent. However, that changed when, according to M.G., Respondent's conduct caused M.G. to start having feelings of depression.

10. Respondent admits that he wanted to persuade M.G. not to come out as transgender. Respondent also admits that he made comments in the presence of students regarding the sexual preference of individuals, and further that he told students in his class that individuals who do not agree with him are wrong, will regret their lifestyle, and will suffer consequences later on in life. Respondent testified that his concern for M.G. stems from his personal beliefs as a devout Christian, and that if M.G. had informed Respondent that he was bothered by his comments, then he would not have been as aggressive in stating his opinions to M.G. Respondent acknowledges that he overstepped his boundaries and "should have stayed in his own lane." During the final hearing, Respondent expressed genuine feelings of concern about M.G.'s well-being.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2016).^{1/}

12. Petitioner bears the burden of proving by a preponderance of the evidence that just cause exists for the termination of Respondent's employment. McNeill v. Pinellas

Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

13. As a JROTC instructor, Respondent is an "instructional employee" as defined in section 1012.10(2)(a), Florida Statutes.

14. Section 1012.33(1)(a) provides as follows:

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.

15. The Petition for Termination alleges that Respondent committed the offense of misconduct in office within the meaning of section 1012.33. Respondent admits that his conduct constitutes misconduct in office.

16. The Petition for Termination alleges that Respondent's conduct violated school board policies 5.02 (Professional Standards), 5.03 (General Requirement for Appointment and Employment), and 5.29 (Complaints Relating to Employees).

17. Policy 5.02, states, in part:

[T]he School District of Lee County shall establish high standards and expectations for its professional faculty and staff, including:

(1) Compliance with applicable federal and State laws, rules, codes, regulations and policies concerning professional credentials and employment;

(2) Dedication to high ethical standards.

* * *

(4) Commitment to diversity and equity.

An employee's failure to meet the above standards and expectations may result in discipline, up to and including termination of employment.

18. Policy 5.03 states, in part, that employees "must be of good moral character." Florida Administrative Code Rule 6A-5.056(1) defines immorality as "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."

19. Policy 5.29 states, in part, that “[a]ll employees are expected to exemplify conduct that is lawful and professional and contributes to a positive learning environment for students.”

20. Respondent admits that his conduct failed to comply with the requirements of policies 5.02, 5.03, and 5.29.

21. Respondent raises an issue that, in his opinion, should mitigate in favor of disciplinary action other than termination. Respondent asserts that pursuant to Article 6.022 of the collective bargaining agreement, he should have been informed of M.G.’s initial complaint, and that if he had been so informed, this would have provided him with the opportunity to modify his behavior. In other words, Respondent believes that Article 6.022 required the administration to give him a “heads-up” about M.G.’s initial complaint.

22. Article 6.022 of the TALC collective bargaining agreement provides, in part, as follows:

Should a complaint be made by a parent/guardian, student or other individual which may result in disciplinary action against a teacher, the teacher shall be notified of the complaint in writing, and given an opportunity to be heard by an appropriate administrator prior to the taking of such action. . . . Upon request to the principal or other immediate supervisor, a teacher shall have the right of representation during investigatory meetings, conferences, and/or interviews which may lead to disciplinary action.

23. Article 6.022 sets forth what is commonly referred to as "Weingarten" rights. In NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court held that a unionized employee has a right to union representation in instances where the employee reasonably believes that investigatory meetings, conferences, or interviews may result in disciplinary action against the employee. Article 6.022 is not, as suggested by Respondent, a contractual provision the purpose of which is to give covered employees a "heads-up," but instead, the purpose of the provision is to ensure that covered employees are informed of their right to union representation when questioned by their employer about conduct that could reasonably lead to disciplinary action.

24. As noted above, Respondent, during the final hearing, expressed genuine feelings of concern about M.G.'s overall well-being. The undersigned is persuaded that Respondent's concern for M.G. comes not from a place of hate, but from a place of compassion.^{2/} Accordingly, Petitioner has not established that Respondent's conduct was egregious enough to warrant termination, but has established that just cause exists to impose a lesser form of discipline against Respondent.

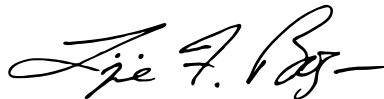
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lee County School Board enter a final order concluding that:

1. Just cause does not exist to terminate Respondent's employment: and

2. Just cause does exist to impose against Respondent discipline other than termination of employment.

DONE AND ENTERED this 9th day of January, 2017, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of January, 2017.

ENDNOTES

^{1/} All subsequent references to Florida Statutes will be to 2016, unless otherwise indicated.

^{2/} Mr. Villanueva testified as follows:

I am a very devout Christian. And the student did mention that, yes, we connected

and she had a - - she was a - - my aide at one time and we spoke about certain things. So when I got this revelation that she wanted to do this change . . . I wanted to persuade her not to do it. I even - - I even did tell her I had you in my prayers. . . . What I saw was a student that was going to do something that I personally believed was not going to be in their best interest and I tried to intervene. . . . So I was bothered by that and I tried to persuade her as much as possible. Because the end of the road for some of these students will not be good. Some of them will commit suicide according to statistics. (Hearing Transcript pp. 60-61).

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.