

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HERNANDO COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-4516TTS

RENEE KOULOURIS,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final formal administrative hearing was conducted in this case on January 31, 2018, in Brooksville, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists for Petitioner, Hernando County School Board (the "School Board" or

"Board"), to terminate the employment of Respondent, Renee Koulouris.^{1/}

PRELIMINARY STATEMENT

A letter dated June 14, 2017, informed Mrs. Koulouris that the superintendent of schools would be recommending termination of her employment at the next school board meeting. Mrs. Koulouris timely requested an administrative hearing to contest the recommendation. The superintendent then revised her recommendation to a suspension without pay until such time as Mrs. Koulouris' case could be heard at DOAH. The School Board accepted the superintendent's recommendation at its July 25, 2017, meeting. Mrs. Koulouris' request for a formal hearing was referred to DOAH on August 10, 2017.

At the final hearing, the School Board called three witnesses: Mrs. Koulouris; Scott Piesik, principal at Suncoast Elementary School ("Suncoast"); and A.S., a former Suncoast student who had been in Mrs. Koulouris' class. The School Board offered 53 Exhibits into evidence which were accepted over objection, but with the caveat that hearsay within the exhibits would not be used solely as the basis for making a finding of fact. Respondent called one witness: A.W., another former student in Mrs. Koulouris' class at Suncoast. One Joint Exhibit, comprised of 11 student deposition transcripts, was also accepted into evidence.

The parties advised the undersigned that a transcript of the final hearing would be ordered. By rule, the parties are allowed ten days from the date the transcript is filed at DOAH to submit proposed recommended orders ("PROs"). The Transcript was filed at DOAH on February 22, 2018. The parties then requested and were granted until March 19, 2018, to submit their PROs. Each party timely submitted a Proposed Recommended Order, and both parties' submissions were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The School Board is responsible for hiring, supervising, and firing all employees within the Hernando County School System. This responsibility includes taking administrative action when an employee violates any rule or policy of the Board.

2. Mrs. Koulouris was hired by the School Board approximately 15 years ago as a fourth grade teacher. At the beginning of the 2016-2017 school year, she was transferred to a fifth grade class in order to provide assistance to a struggling team. Her principal, Mr. Piesik, described Mrs. Koulouris as a very strong teacher with very high standards. Mr. Piesik said Mrs. Koulouris ran her classroom like "a well-oiled machine." Mrs. Koulouris has had no disciplinary actions prior to the incident at issue in the present proceeding.

3. One of the duties of a fifth grade teacher is to administer the Florida Standards Assessment ("FSA") tests in four different subject areas: Language Arts; Math; Writing; and Science. The tests are an integral part of a student's education and are used to determine placement in the next grade level, i.e., which classes the student will be eligible for upon advancement to middle school.

4. It is imperative that FSA tests are administered correctly and securely. Extra measures are taken to ensure that all students take the tests independently, without assistance from anyone. Protocols are put in place to monitor students who are taking the tests. Mrs. Koulouris attended all of the required training prior to administering the tests. She also signed the Test Administration and Security Agreement, and the Test Administrator Prohibited Activities Agreement, acknowledging her understanding of the test protocols.

5. Some of the FSA tests are administered in the classroom; some are done in the computer lab. In either case, the teacher administering the tests must diligently follow all rules and procedures. Fairness and honesty is paramount. The Board recommends the presence of a proctor in addition to the teacher when tests are given to certain sized classes. No proctor was present when the tests at issue herein were administered.

6. Mrs. Koulouris is accused of inappropriately assisting students during the FSA tests she administered in the 2016-2017 school year. Those tests were taken over a period of three months: The writing test was administered on February 20, 2017; the English test was given on April 19 and 22, 2017; the Science tests were given on May 1 and 2, 2017; and the Math test was done on May 5 and 9, 2017. During this same time frame, Mrs. Koulouris' classes took a number of practice FSA tests (as well as regular tests in various subjects).

7. Mrs. Koulouris is alleged to have assisted students by signaling them during the FSA tests to indicate that their answer to a particular question might be wrong. This was allegedly done by tapping a student or making a particular face at them. Any student so notified would then be expected to change their answer. It is also alleged that Mrs. Koulouris would stand behind students for long periods of time, tapping or nudging them if they wrote or entered an incorrect answer. If the allegations are true, Mrs. Koulouris would be in violation of the test protocols and policies.

8. Mrs. Koulouris adamantly and credibly denied any such behavior. She describes her "assistance" to the students as follows: She explains the test-taking process. She stresses the need to concentrate and stay on track. She tells them that if they do not know an answer, to move on and come back to that

question later. She reminds them to be thorough and to take their time, thinking about each question carefully. She instructs the students to go back over their work when they finish, time allowing. In order not to disturb the students while they are testing, she prefers to remain at her desk rather than walking around the room. However, she does move around the room on rare occasions, or when she sees a student who is off task, e.g., sleeping or gazing out the window. She would sometimes tap a student's desk to get them back on track or, in some instances, to wake them up. The testimony of the two students who appeared at final hearing in this matter supports Mrs. Koulouris' description of her normal process for administering an FSA test.

9. In the weeks leading up to the FSA tests, Mrs. Koulouris would give a number of practice exams so that the students would become accustomed to the test format. She does help students during the practice tests, but generally for the purpose of keeping them focused, not to correct their answers. She uses facial expressions and eye contact to provide that assistance.

10. Mrs. Koulouris' demeanor at final hearing gave credence to her testimony. She seemed very sincere concerning her actions and her entire testimony was credible.

11. The allegations concerning Mrs. Koulouris' actions during the 2016-2017 FSA testing cycle came about towards the end of that school year. As she described it: Fifth grade "graduation" occurred on May 18, 2017, a Thursday, at which time awards were handed out to students based on their performance. The following day, Friday, Mrs. Koulouris was in a multipurpose room tending children who would be picked up by their parents. Other adults were present in the room. Mr. F., a fellow Suncoast teacher whose son was a student in Mrs. Koulouris' class, approached Mrs. Koulouris. Mr. F. angrily asked why his son had not received a "gold award" at the graduation ceremony held the day before. Mrs. Koulouris explained that the child had not achieved the necessary grade point average to receive a gold award. Mr. F. told her he was very "pissed off" and that if he found out that Mrs. Koulouris did something "on purpose" to hurt his son, he would be extremely angry at her. Mrs. Koulouris felt very intimidated by Mr. F.'s demeanor and his language. She was also very surprised, as she thought she had a good relationship with the student and had been fair with him. Mrs. Koulouris reported the incident with Mr. F. to her team leader and then to the principal, Mr. Piesik. Mr. Piesik reprimanded Mr. F. for his behavior and told Mr. F. not to have any further contact with Mrs. Koulouris unless an administrator was present. On the following Monday, Mr. F. went to Mr. Piesik

and reported that--according to statements made by Mr. F.'s son over the weekend--Mrs. Koulouris had improperly assisted her students during the FSA tests.

12. The timing of Mr. F.'s allegation against Mrs. Koulouris is extremely suspect.

13. The principal immediately undertook an investigation to determine whether the allegation had any merit. He prepared a list of questions to be posed to Mrs. Koulouris' students. Mr. Piesik went to the classroom on May 23, 2017, and talked individually with several randomly selected students, asking them the questions he had prepared in advance. (Mr. F.'s son was intentionally excluded from the group of students to be questioned.) Some of the questions were very innocuous, i.e., Mr. Piesik asked about the school year and about the FSA testing in general. He then pointedly asked, "During the FSA testing, did your teacher do anything to help students get the right answers?" A few of the students apparently indicated that Mrs. Koulouris had said something about making a face or nudging them if they were off task, gave a wrong answer, or were making mistakes. Others said that no such comments were made by Mrs. Koulouris. Mr. Piesik compiled the students' answers to his queries and contacted two school district administrators: Matthew Goldrick, supervisor for professional standards; and Linda Pierce, supervisor of assessment and accountability. The

administrators suggested Mr. Piesik continue his investigation of the matter.

14. Next, Mr. Piesik drafted a form containing three statements and one question. The singular question on the form was, "Did Mrs. Koulouris instruct you before FSA test [sic] that if she tapped you or gave you a strange look it meant your answer was incorrect and you needed to change it?" He placed "Yes" and "No" lines beneath the question to record the students' responses. The three statements drafted for inclusion on the form were: (1) "Yes I knew Mrs. Koulouris was helping students on the test." (2) "Mrs. Koulouris did NOT help me on the test." (3) "Mrs. Koulouris helped me on the test by giving a tap or a look so I knew I needed to change my answers." Beneath the question and statements were these words: "Please indicate which test she helped you on. Math - Reading - Science."

15. On the following day, May 24, 2017, Mr. Piesik interviewed all 22 of the students who had undergone FSA testing with Mrs. Koulouris, including Mr. F.'s son. This time, the principal used his newly created form containing the one question and three statements. If the student agreed with a statement when it was read to him or her, Mr. Piesik would place a check next to the statement. He would circle either yes or no after asking the question, depending on the student's answer.

The principal testified that "all 22 students" answered "Yes" to the question of whether Mrs. Koulouris said she would tap them if their answer was wrong. Of those students, 12 said Mrs. Koulouris was "helping students" during the test, seven indicated they had been helped, and 13 said Mrs. Koulouris did not help them. However, some of the same students who said their teacher was helping students when asked on May 24, 2017, had said just the opposite on May 23, 2017. The discrepancy in their answers leads to the conclusion that the questions, as posed, were either unclear to the students or were unintentionally leading in nature. By way of example, student C.M.F., who had presumably answered "Yes" to the question posed on May 24, 2014, as to whether Mrs. Koulouris had helped students during the FSA testing (since all students had responded that way), said in her deposition that she misunderstood the question Mr. Piesik had asked her, that it was "all a misunderstanding." She maturely opined that, "So, it is very commonly known that people cannot understand something because it was worded a way that they thought it would mean something else. And I thought what the principal, Mr. Piesik, said, he had asked me if she had helped with the - if Mrs. Koulouris had helped with the test, but he didn't say the specific FSA so I thought he was talking about tests in general. And sometimes she would explain, like rephrase stuff

and explain it to us for the normal tests, but never for the FSA." This sort of equivocation renders the students' statements virtually uncredible.

16. Two of the students testified at final hearing. Their testimony was insufficient to adequately corroborate the hearsay evidence found in the written forms.

17. Student A.S. said at final hearing that "before tests" Mrs. Koulouris would tell us she would tap students on the shoulder if they were "way off track" and you "needed to get back in the game." However, she did not remember any student being touched during the FSA tests. A.S.'s testimony was too equivocal to establish whether or not Mrs. Koulouris had assisted any students during the FSA tests. It is notable that the School Board did not cite to any of A.S.'s testimony from final hearing, but instead relied upon the less certain and unclear statements made by students in their depositions, which are both hearsay in nature and less credible than live testimony.

18. Student A.W.'s memory of the events was even more clouded. She believes she remembers one student messing up the order of his responses (i.e., answering up and down rather than side to side on the answer sheet) and Mrs. Koulouris helped him get realigned, but does not believe Mrs. Koulouris otherwise assisted anyone during the tests. When confronted with her

response to the principal's form questions, A.W. simply could not remember being asked the questions or how she responded. On May 23, 2017, Mr. Piesik had asked her the question from his form, "During the FSA testing, did your teacher do anything to help students get the right answers?" She responded, "No." On May 24, 2017, she answered "Yes" to the question, "Did Mrs. Koulouris instruct you before FSA test [sic] that if she tapped you or gave you a strange look it meant your answer was incorrect and you needed to change it?" At final hearing, A.W. answered "No" to the question, "Did you see or hear Mrs. Koulouris make the statement, 'If I look at you funny or strange or if I give you a tap on the shoulder, that means you need to change your answers'?" Again, the testimony was inconsistent and was not sufficient support to corroborate or affirm the information found in the forms.^{2/}

19. The truth of whether Mrs. Koulouris helped students on the FSA tests cannot be established by Petitioner's evidence, the supposed student responses as tallied by Mr. Piesik, due to their hearsay nature and various discrepancies.

20. When considering how the allegation against Mrs. Koulouris first arose, i.e., after her confrontation with her fellow teacher, Mr. F., and the equivocal testimony of the students, there is insufficient basis to support the allegations against her.

Findings of Ultimate Fact

21. Under Florida law, whether charged conduct constitutes a deviation from a standard of conduct established by rule or statute is a question of fact to be decided by the trier of fact, considering the testimony and evidence in the context of the alleged violation. Langston v. Jamerson, 653 So. 2d 489 (Fla. 1st DCA 1995); Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1st DCA 1985). Accordingly, whether conduct alleged in an administrative complaint violates the laws, rules and policies set forth in the charging document is a factual, not legal, determination.

22. The Board has not met its burden in this case of proving that Mrs. Koulouris engaged in the conduct for which she was charged. Although Mr. Piesik testified as to his conclusion based on interviews with students, that conclusion was not corroborated by the students' testimony. The double hearsay nature of the students' responses to Mr. Piesik's questions, coupled with the vague recollections of students actually testifying, is wholly insufficient to satisfy the Board's burden of proof.

23. It is clear Mrs. Koulouris gave her students instructions about how to take the FSA tests, administered practice test at which the strict FSA rules were not applicable, monitored the tests and redirected students who were sleeping or

otherwise distracted, and sometimes walked around the classroom. But the evidence is woefully short of proving wrongdoing or improper assistance to students. Notably, the deposition transcripts offered into evidence jointly by the parties were not helpful to the finder of fact. The students' responses to questions were vague and disjointed. Each of the parties interpreted the students' statements differently, each seeming to think the statements supported their position in this matter. Besides the obvious hearsay nature of the evidence, the statements were nebulous, and lacking clarity or persuasiveness. The students contradicted each other, some could not even remember where they were sitting during testing, and their memories seemed, at best, confused.

CONCLUSIONS OF LAW

24. DOAH has jurisdiction over this matter pursuant to sections 120.569 and 120.57, Florida Statutes, and pursuant to a contract between DOAH and the Board. Unless specifically stated otherwise herein, all references to Florida Statutes will be to the 2017 codification.

25. This is a disciplinary proceeding in which the Board seeks to terminate Mrs. Koulouris' employment for violating section 1008.24, Florida Statutes; Florida Administrative Code Rules 6A-10.042 and 10.081; and School Board Policy 6.301. Violations of these statutes, rules and policies, if proven,

would constitute just cause for the Board to terminate Mrs. Koulouris' employment as a teacher. See § 1012.33, Fla. Stat.

26. To terminate a teacher's employment, the Board must prove that the teacher committed the acts alleged; that those acts violate the laws, rules, and policies at issue; and that violation of those statutes, rules, and policies constitutes just cause for her dismissal. § 1012.33(1)(a) and (6), Fla. Stat.

27. The Board has the burden of proof in this matter as it is the party asserting the affirmative of the issue. Antel v. Dep't of of Prof'l Reg., 522 So. 2d 1056 (Fla. 5th DCA 1988); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

28. The standard of proof is preponderance of the evidence. See McNeil v. Pinellas Co. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

29. Section 1008.24, which Mrs. Koulouris allegedly violated, states in pertinent part:

(1) A person may not knowingly and willfully violate test security rules adopted by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant

to s. 1088.22, or, with respect to any such test, knowingly and willfully to:

* * *

(c) Coach examinees during testing or alter or interfere with examinees' responses in any way;

* * *

(f) Fail to follow test administration directions specified in the test administration manuals; or

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibitive in this section.

30. Pursuant to the foregoing findings of fact, it is concluded that the Board did not meet its burden of proving that Mrs. Koulouris violated section 1008.24.

31. Rule 6A-10.042 states in relevant part:

(1) Tests implemented in accordance with the requirements of Sections . . . 1008.22 . . . F.S., shall be maintained and administered in a secure manner such that the integrity of the tests shall be preserved.

* * *

(c) Examinees shall not be assisted in answering test questions by any means by persons administering or proctoring the administration of any test.

(d) Examinees' answers to questions shall be not be interfered with in any way by persons administering, proctoring, or scoring the examinations.

* * *

(f) Persons who are involved in administering or proctoring the tests or persons who teach or otherwise prepare examinees for the tests shall not participate in, direct, aid, counsel, assist in, or encourage any activity which could result in the inaccurate measurement or reporting of the examinees' achievement.

32. Again, pursuant to the findings of fact above, it is concluded that the Board did not prove Mrs. Koulouris violated the rules regulating administration of FSA tests.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Petitioner, Hernando County School Board, finding no cause to terminate the employment of Respondent, Renee Koulouris, as there is insufficient evidence that she violated statutes, rules or policies regarding the administration of FSA tests.

DONE AND ENTERED this 3rd day of April, 2018, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of April, 2018.

ENDNOTES

^{1/} As noted in its Proposed Recommended Order, the correct name for Petitioner is actually "The School Board of Hernando County." Inasmuch as the Board has been identified as set forth in the style of the case since the case was filed at DOAH, this error is simply noted herein without formally changing the style.

^{2/} Compare the testimony of the students in this case with that of students in two similar DOAH proceedings: Palm Beach Co. Sch. Bd. v. Ilissa Sanders, Case No. 17-0615TTS (Fla. DOAH July 24, 2017); Palm Beach Co. Sch. Bd. v. Maria Marrero-Rios, Case No. 17-0614TTS (Fla DOAH Sept. 1, 2017). In those cases, the students' testimony was specific as to particular ways in which their teacher helped them during the FSA testing. Those students also tended to corroborate one another's statements, which were much more consistent in nature.

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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.