

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-2196TTS

ALAN ROSIER,

Respondent.

_____/

LAKE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-2309TTS

KATIE LASSEN,

Respondent.

_____/

RECOMMENDED ORDER

A duly-noticed hearing was held on June 20, 2018, in
Tavares, Florida, before Suzanne Van Wyk, an Administrative Law
Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen W. Johnson, Esquire
Elizabeth A. Turner, Esquire
McLin Burnsed
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For Respondent Katie Lassen

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For Respondent Alan Rosier, pro se

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STATEMENT OF THE ISSUE

Whether Petitioner, Lake County School Board, had just cause to terminate Respondents for the reasons specified in the agency action letters dated April 17, 2018.

PRELIMINARY STATEMENT

Petitioner sent each Respondent a letter dated April 17, 2018, notifying Respondents that Petitioner had concluded its investigation into allegations that Respondents engaged in misconduct and was recommending Respondents' termination. The letters advised Respondents of the grounds for termination and of their right to an administrative hearing. Respondents timely requested hearings to contest the recommendation of termination, and the matters were referred to the Division of Administrative Hearings (Division) on May 7, 2018, for the assignment of an administrative law judge.

Petitioner filed a request to consolidate the two cases, which was granted by the undersigned on May 24, 2018. The

consolidated cases were scheduled for final hearing on June 20, 2018, and commenced as scheduled.

At the final hearing, the parties introduced Joint Exhibits J1 through J12, which were admitted in evidence. Petitioner introduced Exhibits P1 through P4, which were admitted in evidence, and offered the testimony of Kimberly Sneed, Katherine Falcon, and David Meyers.

Respondent, Katie Lassen (Ms. Lassen), testified on her own behalf. Respondent, Alan Rosier (Mr. Rosier), testified on his own behalf and offered the testimony of Dawn Boyd, Kelly Lovely, and Ryan Hernandez. Neither Respondent introduced any exhibits.

A one-volume Transcript of the hearing was filed with the Division on July 9, 2018. On July 24, 2018,^{1/} the parties timely filed Proposed Recommended Orders which have been considered by the undersigned in preparation of this Recommended Order.

Unless otherwise noted, all references to the Florida Statutes are to the 2017 version.

FINDINGS OF FACT

1. Petitioner, Lake County School Board, is the constitutional entity authorized to operate, control, and supervise the public schools within Lake County. See Art. IX, § 4(b), Fla. Const.; § 1001.32, Fla. Stat. Petitioner is authorized to discipline instructional staff and other school employees. See § 1012.22(1)(f), Fla. Stat.

2. Mr. Rosier has been employed at Groveland Elementary School (Groveland) in Lake County, Florida, for three years. During the 2016-2017 and 2017-2018 school years, Mr. Rosier was the Instructional Dean. One of Mr. Rosier's duties was to assist teachers with students who have behavioral problems and liaison with parents of these students. Mr. Rosier also conducted in-school suspension of students.

3. Mr. Rosier also had a contract supplement to assist with students who were on campus after school hours because they either missed the bus or were not picked up by their parent or guardian on time. Mr. Rosier assisted by keeping the student safe and contacting the emergency contact on file for the student to find a way to get the student home.

4. Ms. Lassen has taught at Groveland for four years. She taught first grade during the 2016-2017 and 2017-2018 school years. Petitioner Lassen is an "inclusion teacher," meaning her classroom is a combination of students receiving Exceptional Student Education (ESE) services and students with no need for services.

5. Ms. Lassen has no special training in ESE services for children with behavioral challenges. ESE students in her classroom are "push in, pull out," meaning an exceptional education teacher comes in to work with some of the students in

the classroom, and other students are pulled out of the classroom to work with an exceptional education teacher.

6. Ms. Lassen was not happy at Groveland. She enjoyed teaching and was passionate about her students achieving their learning potential. However, she was frustrated by what she saw as a lack of needed services for her ESE students. Ms. Lassen applied for a transfer during the 2016 school year, but the transfer was denied.

7. During the 2017-2018 school year, Ms. Lassen had eleven ESE students in her classroom, four of whom had severe behavioral issues. Some of her students were violent, even trying to harm themselves. She found it stressful to corral children who were throwing things in the classroom, especially at other children, while trying to teach the required lessons. She often found herself dealing with parents who were upset about their ESE child being disciplined for their behaviors, or who were upset about the treatment of their child by an ESE student.

8. To address these concerns, Ms. Lassen frequently met with Mr. Rosier. Toward the end of the 2017-2018 school year--in March 2018 particularly--they met roughly twice a week. The two met once in Mr. Rosier's office and sometimes in the portable where Mr. Rosier conducted in-school suspension; however, they met most frequently in Ms. Lassen's classroom.

9. The meetings usually occurred around 4:00 p.m., after students were dismissed at 3:30 p.m. and Mr. Rosier's after-school responsibilities ended. Ms. Lassen usually left the school between 4:15 p.m. and 4:30 p.m. to pick up her own children from school and daycare and take them to after-school activities.

10. During the meetings, Ms. Lassen discussed with Mr. Rosier the behavioral challenges she faced with students in her classroom, as well as the issues with parents. Mr. Rosier had the responsibility to deal with parents, often conducting parent conferences to address issues arising in the classroom.

11. Ms. Lassen and Mr. Rosier became friends, and occasionally discussed personal matters, in addition to classroom and parent issues. Sometimes Ms. Lassen would become emotional. Mr. Rosier assured her he would work to get the help the students needed.

12. Kimberly Sneed was the Groveland Principal during the 2017-2018 school year.

13. On April 2, 2018, Mr. Sneed entered Ms. Lassen's classroom shortly after 4:00 p.m. Assistant Principal Joseph Mabry had suggested to Ms. Sneed that she should look into why Mr. Rosier was in Ms. Lassen's classroom at that time.

14. When Ms. Sneed arrived, she observed that the lights were turned off and the classroom was empty. She walked to the

classroom supply closet, inserted her key, and opened the door, which opens inward. Just as she was pushing the door open, Ms. Lassen pulled the door open to exit the closet with her purse and supply bag in hand.

15. Ms. Sneed did not try the closet door handle first to determine whether the closet was locked. She simply inserted the key in the lock and pushed open the door. She testified that she was not certain the closet door was actually locked.

16. The closet light was off when Ms. Lassen opened the closet. Ms. Lassen testified that she had just switched the light off before opening the door to exit the closet. Ms. Sneed turned the light switch on as she entered the closet.

17. Ms. Lassen was surprised to see Ms. Sneed and asked if she could help her find something. Ms. Sneed asked Ms. Lassen why she had been in a dark closet.

18. How Ms. Lassen replied to Ms. Sneed's question was a disputed issue. Ms. Lassen maintains she said, "Ms. Sneed, you don't understand, all it was, it was just a kiss, a kiss on the cheek, nothing more." Ms. Sneed maintains Ms. Lassen said, "We were only kissing, we weren't doing anything, no sex or nothing."

19. Ms. Lassen promptly left to pick up her children.

20. Ms. Sneed entered the closet and observed Mr. Rosier standing at the back of the L-shaped closet, with his back to the door.

21. Mr. Rosier was fully clothed, but his shirt was untucked and his glasses were off.

22. Ms. Sneed did not question Mr. Rosier. Instead she quipped sarcastically, "Really, Mr. Rosier? Really?"

23. Mr. Rosier did not turn toward Ms. Sneed or otherwise respond to her immediately. As Ms. Sneed exited the closet and proceeded to leave the classroom, Mr. Rosier called after her and asked if he could talk with her in her office.

24. What else Mr. Rosier said to Ms. Sneed at that time was also a disputed issue. Ms. Sneed testified that Mr. Rosier stated, "I'll admit we were kissing, and it turned into touching, but nothing else." Mr. Rosier was not certain what exactly he said, but admitted that he did use the word "kiss." He testified that everything happened quickly. He was embarrassed and Ms. Sneed was angry.

25. The following day, Ms. Sneed reported the incident to the School Board Employee Relations Supervisor Katherine Falcon.

26. That same day, both Ms. Lassen and Mr. Rosier were interviewed separately by Ms. Falcon. Ms. Falcon drafted an interview questionnaire based solely on her telephone conversation with Ms. Sneed that morning. The questionnaire contained the following seven questions:

1. For the record state your name.
2. What is your current position?

3. How long have you been in your current position?
4. Yesterday, Ms. Sneed found you and another teacher in a locked dark closet. Can you explain?
5. Is this the first time you have engaged in this activity on campus?
6. Did you share any information about this incident with anyone else?
7. Is there anything else you would like to say?

27. Ms. Falcon asked the questions, and David Meyers, Employee Relations Manager, typed Respondents' answers. Ms. Falcon printed the interview record on site and presented it to each respective Respondent to review and sign.

28. The report states Ms. Lassen's response to Question 4 as follows:

The closet was unlocked. It is always unlocked. I just kissed him. It didn't go any further. There was no touching or clothing off. Nothing exposed. Nothing like that has ever happened before. Yesterday was more, like a kiss goodbye. I was getting ready to leave and getting my stuff. He was standing by the door. He was standing by my filing cabinet. Nobody ever comes in there during the day. Sneed wanted to know what we were doing in there. We told her we were fooling around a little bit, kissing.

29. Ms. Lassen signed her interview report without asking for clarifications or changes.

30. Ms. Lassen testified that she did not review the interview report before signing, did not understand it to be any form of discipline, and was anxious to return to her classroom because her ESE students do not do well in her absence.

31. At the final hearing, Ms. Lassen denied stating anything about "fooling around a little" with Mr. Rosier.

32. In response to the same question, Mr. Rosier's report states the following:

The closet wasn't locked. This teacher, Katie Lassen and I have become good friends. Yesterday we caught ourselves being too close, kissing, hugging We were first in the main classroom. When we began to kiss we went in the closet. There was a knock on the door. It was Ms. Sneed. My clothes were kind of wrangled.

33. Mr. Rosier also signed his interview report without asking for clarifications or changes.

34. At the final hearing, Mr. Rosier denied stating that he and Ms. Lassen were "kissing and hugging" or that "when we began to kiss we went into the closet." As to his statement that "we caught ourselves becoming too close," he testified that he meant they had begun discussing personal issues in addition to Ms. Lassen's concerns with her ESE students.

35. Ms. Lassen and Mr. Rosier testified as follows: they were discussing her concerns about a particular ESE student who was very disruptive and threatened to harm himself. Ms. Lassen

was emotional. Ms. Lassen proceeded into the closet to get her things so she could leave to pick up her children and get them to after-school activities. Just inside the closet, Ms. Lassen broke down crying again. Mr. Rosier entered the closet, closing the door behind him (allegedly to keep anyone from seeing Ms. Lassen cry), put his hands on her shoulders and told her to get herself together and not let anyone see her crying when she left the school. She collected herself, thanked him, gave him a hug and they exchanged kisses on the cheek.

36. Respondents' stories at final hearing were nearly identical, a little too well-rehearsed, and differed too much from the spontaneous statements made at the time of the incident, to be credible.

37. Based on the totality of the evidence, and inferences drawn therefrom, the undersigned finds as follows: Mr. Rosier was consoling Ms. Lassen and the two adults became caught up in the moment, giving in to an attraction born from an initial respectful working relationship. The encounter was brief and there is no credible evidence that Respondents did anything other than kiss each other. Both Respondents regret it and had no intention to continue anything other than a professional relationship.

38. This incident occurred after school hours, sometime between 4:00 p.m. and 4:30 p.m. on April 2, 2018. The only

students on campus were at an after-school care program in a different building across campus. No one witnessed Respondents kissing or entering the closet together. Only Ms. Sneed witnessed Respondents emerging from the closet.

39. Both Respondents were terminated effective April 23, 2018.

Administrative Charges

40. The school board's administrative complaints suffer from a lack of specificity. Both employees are charged with "engaging in sexual misconduct on the school campus with another school board employee which is considered Misconduct in Office," in violation of the Principles of Professional Conduct for Educators (Principles). The administrative complaints do not charge Respondents with any specific date, time, or place of particular conduct which constitutes "sexual misconduct."^{2/} Moreover, the School Board introduced no definition of sexual misconduct.

41. The School Board inquired about some specific conduct during the Employee Relations interviews with Respondents. Ms. Falcon asked Respondents about being found together in a "locked dark closet."

42. The School Board failed to prove that the closet was either locked or dark while Respondents were in the closet.

43. It appears the School Board bases its charge of Misconduct in Office, in part, on an allegation that the Respondents had "engaged in this activity on campus" on dates other than April 2, 2018.

44. When Ms. Sneed went to Ms. Lassen's room on April 2, 2018, she was acting upon a report that Mr. Rosier went to Ms. Lassen's room every day at 4:00 p.m. There is no reliable evidence in the record to support a finding to that effect. The report that Mr. Rosier "went to Ms. Lassen's classroom every day at 4:00," was hearsay to the 4th degree,^{3/} without any non-hearsay corroborating evidence.

45. Petitioner did not prove Respondents were ever together in a closet, much less a dark closet, on campus any date other than April 2, 2018.

46. Finally, it appears the School Board bases its charges, in part, on an allegation that Mr. Rosier was not fulfilling his after-school duties because he was spending too much time with Ms. Lassen.

47. To that point, Petitioner introduced testimony that on the Friday after spring break in March, Mr. Rosier was not to be found when the administration had to deal with a student who had either missed the bus or was not picked up on time. Ms. Sneed testified that Mr. Rosier came through the front office, observed the student there with herself and Mr. Mabry, and left through

the front office. Ms. Sneed assumed Mr. Rosier had left for the day, but that when she left the school she saw his car in the parking lot.

48. Mr. Rosier recalled that particular day, and testified that, as two administrators were attending to the student, he did not see the need for a third. He chose instead to keep his appointment with Ms. Lassen to discuss her difficult students.

49. Petitioner did not prove that Mr. Rosier neglected either his after-school or any other duties.

CONCLUSIONS OF LAW

50. The Division has jurisdiction over the subject matter and parties in this case, pursuant to section 1012.33(6) and sections 120.569 and 120.57(1), Florida Statutes (2018).

51. 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 Lake County, Florida, under section 1012.22.

52. Petitioner seeks to terminate Respondents' employment, and has the burden of proving the allegations set forth in its letter of dismissal by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to the 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).

53. Florida Administrative Code Rule 6A-5.056 sets forth criteria for suspension and dismissal of school personnel. Subsection (2) defines Misconduct in Office in pertinent part, as follows:

(2) 'Misconduct in Office' means one or more of the following:

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C. [the Principles];

(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.

The Principles

54. At the final hearing, Petitioner clarified that it has charged Ms. Lassen with violations of rule 6A-5.056(2) (b) and (c), and Mr. Rosier with violations of 6A-5.056(2) (b), (c), and (e).

55. Petitioner alleges Respondents violated the following provisions of the Principles:

6A-10.081(1) (b): 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 growth and will seek to exercise the best professional judgement and integrity.

6A-10.081(1)(c): 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. The Principles are divided into two sections: subsection (1), which consists of ethical principles^{4/}; and subsection (2), which provides disciplinary principles with which educators "must comply."

57. The ethical principles in subsection (1) have been described as "aspirational in nature, and in most cases [are] not susceptible of forming a basis for suspension or dismissal." Sarasota Cnty. Sch. Bd. v. Simmons, Case No. 92-7278 (Fla. DOAH Nov. 9, 1993), and "of little practical use in defining normative behavior." Miami-Dade Cnty. Sch. Bd. v. Lantz, Case No. 12-3970 (Fla. DOAH July 29, 2014); Broward Cnty. Sch. Bd. v. Weinberg, Case No. 15-4993 (Fla. DOAH Apr. 13, 2016; Fla. Broward Cnty. Sch. Bd. Aug. 23, 2016). By contrast, the disciplinary principles enumerate specific "dos" and "don'ts" to put a teacher on notice concerning what conduct is forbidden. See Miami-Dade Cnty. Sch. Bd. v. Brenes, Case No. 06-1758, (Fla. DOAH Feb. 27, 2007; Fla. Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007). "Thus, it is concluded that while any violation of [subsection (2)] would

also be a violation of [subsection (1)], the converse is not true.” Id. “Put another way, in order to punish a teacher for misconduct in office, it is necessary but not sufficient that a violation of a broad ideal articulated in [subsection (1)] be proved, whereas it is both necessary and sufficient that a violation of a specific rule in [subsection (2)] be proved.” Id.; see Miami-Dade Cnty. Sch. Bd. v. Regueira, Case No. 06-4752 n.4 (Fla. DOAH Apr. 11, 2007; Fla. Miami-Dade Cnty. Sch. Bd. May 25, 2007).

58. Here, Petitioner did not allege that Respondents violated any of the specific disciplinary principles enumerated in subsection (2). The alleged violations of the broad aspirational objectives of subsection (1) are insufficient to establish a violation of the Principles.

59. Petitioner did not prove Respondents violated the Principles; thus Petitioner did not prove that either Respondent violated rule 6A-5.056(1) (b).

School Board Policies

60. Rule 6A-5.056(1) (c) defines Misconduct in Office to include “[a] violation of the adopted school board rules.’

61. Petitioner alleges that Respondents violated the following Lake County School Board policies:

6.301(2) Principles of Professional Conduct
(2): All instructional Personnel and School

Board Administrators shall adhere to the [Principles].

6.301(3) Principles of Professional Conduct (3): All Administrative, instructional, and non-instructional personnel shall familiarize themselves with the Code of Ethics for Public Officers and Employees as set forth in F.S. 112.311, et seq. All employees shall abide by the Code at all times, and shall be held to the standards of the Code in all matters related to their employment with the Lake County School Board.

5.33 Bullying and Harassment: Expected Behaviors: Students and employees are expected to conform to reasonable standards of socially acceptable behavior; respect the person, property, and rights of others; obey constituted authority; and respond to the educational, support and administrative staff.

62. Petitioner did not prove Respondents violated Policy 6.301(2) because it did not prove either Respondent violated the Principles.

63. Petitioner did not introduce, or request official recognition of, the Code of Ethics for Public Officers and Employees, or cite to any section thereof which Respondents allegedly violated.

64. Petitioner did not prove Respondents violated Policy 6.301(3).

65. Policy 5.33 is an 18-page rule titled "Bullying or Harrassment," which incorporates the School Board's policy against bullying and harassment of both students and employees,

associated definitions, components of bullying and harassment, and the procedures for reporting, investigating, and resolving incidents of bullying or harassment.

66. From this 18-page policy, Ms. Falcon pulled out the one sentence quoted above because it spoke to "socially acceptable behavior." Ms. Falcon admitted the incident in question had nothing to do with either bullying or harassment.

67. Petitioner did not prove Respondents violated Policy 5.33.

68. Petitioner did not prove that Respondents violated rule 6A-5.056(c) because it did not prove Respondents violated any School Board policy.

69. Finally, Petitioner alleges Mr. Rosier violated subsection (e), which defines Misconduct in Office to include "[b]ehavior that reduces the teacher's ability or his her colleagues' ability to effectively perform duties."

70. Petitioner introduced no evidence bearing on Mr. Rosier's ability to perform his duties before or after the incident in question. None of his colleagues were called on to testify about his abilities, or impairment of their own abilities, following the incident.

71. Petitioner failed to prove that Respondent Rosier violated rule 6A-5.056(1)(e).

72. Petitioner failed to prove either Respondent engaged in Misconduct in Office, as defined in rule 6A-5.056, Criteria for Suspension and Dismissal.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lake County School Board enter a final order dismissing the charges against Respondents Katie Lassen and Alan Rosier, and award back pay and benefits retroactive to April 23, 2018.

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



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of August, 2018.

ENDNOTES

^{1/} The parties requested, and were granted, 15 days from the date the Transcript was filed to file their Proposed Recommended Orders. Pursuant to Florida Administrative Code Rule 28-106.216(2), the parties waived the requirement for the

undersigned to issue this Recommended Order within 30 days after receiving the Transcript.

^{2/} Absent a motion for more definite statement, or a motion to dismiss for failure to state a cause of action, the hearing proceeded on an administrative complaint alleging essentially that Respondents somewhere, at some time, engaged in something called "sexual misconduct."

^{3/} Allegedly, the custodian who cleans Ms. Lassen's classroom, Ms. Delgado, told the head custodian, Mr. Ellicott, who told Mr. Mabry, who told Ms. Sneed.

^{4/} The three broad principles of subsection (1) were formerly codified in rule 6A-10.080 as the Code of Ethics of the Education Profession in Florida, which was repealed on March 23, 2016.

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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.