

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-5339TTS

TIRSO VALLS,

Respondent.

_____ /

RECOMMENDED ORDER

This case was heard before Administrative Law Judge Robert L. Kilbride, of the Division of Administrative Hearings, on December 20, 2018, by video teleconference with sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

For Respondent: Tirso Valls, pro se
2811 Southeast 17th Avenue, Unit 100
Homestead, Florida 33035

STATEMENT OF THE ISSUE

Whether just cause exists to uphold the dismissal of Tirso Valls ("Respondent") from employment with the Miami-Dade County School Board ("School Board" or "Petitioner").

PRELIMINARY STATEMENT

On August 15, 2018, Petitioner took action to suspend without pay and dismiss Respondent from employment.

Respondent timely requested a hearing, pursuant to sections 120.569 and 120.57(1), Florida Statutes, and the matter was referred to the Division of Administrative Hearings to conduct a hearing.

On October 22, 2018, Petitioner, as ordered, filed a Notice of Specific Charges which outlined the charges against Respondent in more detail.

On December 12, 2018, the School Board filed Petitioner's Notice of Admitting Business Record via Declaration. This filing, and the accompanying documents, complied with the applicable provisions of the Florida Evidence Code, chapter 90, Florida Statutes, and supported the admissibility of Dr. Theodora "Teddy" Tarr's confidential assessment report at the final hearing.

A final hearing was held on December 20, 2018.^{1/} Petitioner presented the testimony of Principal Adrienne Wright-Mullings ("Wright-Mullings") and Helen Pina ("Pina"). Petitioner's Exhibits 1 through 25 were admitted into evidence.

Respondent testified on his own behalf and offered no other witnesses. Respondent presented three exhibits on the morning of the final hearing. Petitioner objected to Respondent's

Exhibit 1. The objection was sustained and Respondent's Exhibit 1 was not admitted. The remaining two exhibits were not offered into evidence by Respondent.

The Transcript of the hearing was filed on February 4, 2019. Petitioner filed its Proposed Recommended Order on February 26, 2019. Respondent did not file a proposed recommended order. Petitioner's Proposed Recommended Order was reviewed and considered in the preparation of this Recommended Order.

All statutory references are to the 2018 version of the statute, unless otherwise noted.

FINDINGS OF FACT

Based on the record and the evidence presented, the undersigned makes the following findings of fact:

1. At all times relevant to this case, Petitioner was charged with the duty to operate, control, and supervise all public schools within the school district of Miami-Dade County, Florida, pursuant to Article IX, § 4(b), Florida Constitution, and section 1012.23, Florida Statutes.

2. Respondent was employed as a physical education teacher at Cutler Ridge Elementary School ("CRES"). Respondent first arrived at the school in August 2017 at the start of the 2017/2018 school year.

3. Shortly after his arrival, Respondent began exhibiting odd behavior, which was noticed by the administration and other staff members. The principal, Wright-Mullings, found that it was difficult to communicate with Respondent and he appeared disheveled in his dress and appearance at times.

4. Early in the 2017/2018 school year, fifth-grade students also began complaining about Respondent's behavior. In response, three separate investigations were initiated into Respondent's conduct based on specific reports by several students.

5. The first concerned allegations that Respondent was making insulting comments, screaming, and poking students; the second concerned Respondent allegedly snatching a jump rope from a female student, injuring her hand; and the third allegation concerned Respondent referring to a female student in a demeaning manner and calling her derogatory names. Pet. Exs. 3-5.

6. These allegations gave the principal cause for concern because she wanted students and their parents to feel comfortable with teachers at the school. She also felt that these allegations raised safety concerns.

7. After investigation by the school police, probable cause for three separate violations of School Board Policy 3210, Standards of Ethical Conduct, were found.^{2/}

8. Taking exception to the investigative results, Respondent requested that a supplemental investigation be conducted. This was done. However, the outcomes of the initial investigations did not change. Pet. Exs. 6 and 7. Respondent was not formally disciplined for the allegations or findings made in these investigations, since the disciplinary process was never fully completed.

9. However, as a result of these investigations, Respondent was removed from CRES and placed in an alternative assignment at the regional office on September 1, 2017, followed by placement at the District's Federal and State Compliance Office on September 19, 2017.

10. The principal remained concerned that despite completion of the three investigations and disciplinary process, the safety of the students could still be in jeopardy if Respondent returned to the school.

11. Suffice it to say, that in addition to these three investigations, multiple and repeated instances of odd and bizarre behavior by Respondent occurred at school and around the students he was charged to protect and educate.

12. These are outlined in detail in Petitioner's Exhibit 14. They occurred primarily from August 18 through September 1, 2017.

13. Some of the odd and abnormal behavior by Respondent was witnessed by the principal herself. Other behavior was reported by staff members and supplemented or explained what the principal had seen.

14. For several months, and during the course of the investigations, the principal had expressed her ongoing concerns about Respondent to Pina, district director of the Office of Professional Standards. They also discussed the need to refer Respondent for a medical fitness for duty evaluation.

15. Pina shared the principal's concerns regarding Respondent's odd behavior and conduct. This was based, in part, on her own observations of Respondent. She too was concerned for the safety of the students.

16. When Pina brought the results of the investigations regarding Respondent before the Disciplinary Review Team for review and action, it was decided that discipline would be deferred while the School Board proceeded with a fitness for duty evaluation of Respondent.

17. Pina instructed the principal to monitor and record Respondent's behaviors and maintain the results in writing. Wright-Mullings contacted her staff and had some of them write statements regarding their observations of Respondent. Pet. Exs. 10-13.

18. Wright-Mullings compiled her own written summary containing her observations of Respondent's conduct, as well as conduct and actions by Respondent that her staff had observed and reported. Pet. Ex. 14.

19. These observations by her and the staff included, among other things, Respondent's inability to understand directives and to communicate; repeatedly asking the same questions or asking for clarity on points made to him; the inability to understand sample lesson plans; a disheveled appearance that included holes in his shirts and body odor; suppressed anger when questioned about uncompleted tasks; illogical explanations concerning his actions; a nervous laugh; odd facial expressions; staring blankly at coworkers; speaking very close to people in their personal space and becoming agitated.

20. These behaviors and the incidents giving rise to the investigations were carefully evaluated, weighed, and considered by Wright-Mullings. They gave the principal reasonable cause for concern, and she was uneasy with the prospect of Respondent coming back to work at CRES.

21. Other teachers and staff members at CRES also expressed discomfort regarding Respondent's odd and abnormal behaviors.^{3/}

22. Pursuant to School Board Policy 3161--Fitness for Duty--and Article XXI, Section (2)(F), of the Collective Bargaining Agreement between the United Teachers of Dade Labor Union and the School Board ("UTD Contract"), Pina held a Conference for the Record ("CFR") with Respondent on April 11, 2018, to address concerns about his fitness for duty. Pet. Ex. 19.

23. At the conference, Respondent was advised of the troubling nature of his behavior and conduct, and the need of the School Board to do a fitness for duty evaluation of him. Pet. Ex. 19.

24. On April 16, 2018, Respondent was again advised of the basis for a fitness for duty evaluation in writing. He signed a release to have the results of that evaluation sent to Pina. Pet. Exs. 16 and 17.

25. As permitted by School Board policy, Respondent reviewed and selected a licensed psychologist from a list provided to him. Thereafter, a request for an evaluation of Respondent was sent to the doctor he selected, Dr. Theodora "Teddy" Tarr, on April 17, 2018. Pet. Exs. 18 and 19.

26. Dr. Tarr had two clinical sessions with Respondent. She also reviewed Respondent's work history at Miami-Dade County, as well as Respondent's prior written responses to the complaints at the elementary school. Respondent also completed

an intake form and a self-inventory on certain issues that were of concern to the doctor, both of which were reviewed and considered by her. Pet. Ex. 20, p. 57.

27. After an examination and testing of Respondent, Dr. Tarr prepared a confidential assessment report. In essence, her report concluded that Respondent was not fit for duty as a teacher.

28. More specifically, the report from Dr. Tarr stated:

Refer Mr. T.V. for therapy. He needs social skill training and further assessment. He is incapable or unwilling to correct negative behaviors evidencing poor communication skills for self-control. It is not advisable he return to a teaching environment without identifying inappropriate behaviors and correct boundary, communication and social skill issues. Mr. T.V. is not qualified to return to his position in the MDC School System due to poor insight, poor boundaries, difficulty communicating, and confusing body language. (Emphasis added).

Pet. Ex. 20, p. 57.

29. Dr. Tarr provided the report to Pina. Subsequently, Pina held another conference with Respondent on April 30, 2018. At the conference, it was explained to Respondent that he had the option to seek a second fitness medical opinion pursuant to the UTD Contract, and that he could take a medical leave of absence, resign, or retire. Pet. Ex. 21. Respondent was required to give Pina his decision by May 3, 2018.

30. Respondent gave no response by the May 3, 2018, deadline. He also never sought a second medical opinion despite having the rest of the school year and summer months to do so.

31. On August 1, 2018, Pina held another meeting with Respondent and advised him that since he had not exercised any of the options available to him, and based on the doctor's report and his conduct and actions to date, the School Board would be dismissing him at the School Board meeting of August 15, 2018. Pet. Exs. 22 and 23.

32. On August 16, 2018, Respondent was sent a final memorandum informing him that he had been dismissed by the School Board. Pet. Ex. 25.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties pursuant to sections 120.569, 120.57(1), and 1012.33(6)(a).

34. Because the School Board seeks to terminate Respondent's employment, and this action does not involve the loss of Respondent's teaching license or certification, it has the burden of proving the allegations in its Notice of Specific Charges by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

35. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

36. The School Board's Notice of Specific Charges alleged that Respondent was guilty of (I) misconduct in office, and (II) incompetency due to inefficiency and incapacity.

Misconduct in Office

37. Under State Board Rule 6A-5.056(2), "Misconduct in Office" means one or more of the following: (a) A violation of the adopted school board rules; (b) Behavior that disrupts the student's learning environment; or (c) Behavior that reduces the teacher's ability or his or her colleague's ability to effectively perform duties.

38. Petitioner produced adequate evidence that Respondent's conduct and actions violated this rule definition, and he was subject to dismissal.

Incompetency Due to Inefficiency and Incapacity

39. Additionally, under State Board Rule 6A-5.056(3), "Incompetency" means the inability, failure, or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

40. "Inefficiency" can mean a failure to properly perform duties prescribed by law or a failure to interact appropriately or effectively with colleagues, administrators, or subordinates.

41. Respondent was periodically found without lesson plans and seemed unable to understand or follow directions from either the principal or his assigned teaching mentor. His responses to questions were often unrelated to the questions asked, and he would either not respond to assistance being given or try to deflect the subject to other topics. This frustrated his colleagues and administrators and also made them uncomfortable. Dr. Tarr confirmed and noted Respondent's communication difficulties in her assessment report. Pet. Ex. 20, pp. 56-57.

42. Based on the foregoing and the other findings of fact made, Respondent did not work competently due to his inefficiency and lacked the capacity to work effectively and easily with others.

43. During her evaluation of Respondent, Dr. Tarr found *inter alia* that Respondent had social boundary issues, communication problems, and, what she described as other "puzzling behaviors."

44. Ultimately her determination as a trained psychologist was that Respondent was not fit for duty. This finding reasonably translates into a determination that Respondent was

not competent to fulfill his duties as a teacher--to protect, train, and educate his students. Respondent's lack of competency as a teacher constitutes just cause for dismissal.

45. In summary, while Respondent's actions and conduct towards students and other staff members may be colloquially perceived or referred to as "odd" or "bizarre," Dr. Tarr's professional assessment left little room for doubt or conjecture.

46. The doctor succinctly concluded that Respondent was "not qualified to return to his position" as a teacher and warned that it was "not advisable" for the School Board to return him to a teaching environment.

47. Regardless of the type or extent of the behaviors or events that prompted the principal to require him to undergo a fitness for duty examination, her instincts, concerns, and observations were confirmed by the trained psychologist, Dr. Tarr.

48. To conclude, since the safety of the students, teachers, and staff is of paramount importance, the psychologist's opinions and warnings cannot be ignored. As a result, dismissal was appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Miami-Dade County School Board upholding Tirso Valls' dismissal from employment with the School Board.

DONE AND ENTERED this 12th day of March, 2019, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of March, 2019.

ENDNOTES

^{1/} At the start of the hearing, the undersigned denied Respondent's oral Motion to Dismiss.

^{2/} Other allegations of improper corporal punishment, in violation of School Board Policy 5630, were not founded.

^{3/} As it turned out, their concerns were justified, as outlined in the detailed report issued by the psychologist, Dr. Tarr.

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.