

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

POLK COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-5144TTS

KEITH ALAN COOK,

Respondent.

RECOMMENDED ORDER

Upon proper notice, a final hearing in this matter was held on January 7, 2020, in Bartow, Florida, before Robert S. Cohen, a duly-assigned Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Donald H. Wilson, Jr., Esquire
Boswell & Dunlap, LLP
245 South Central Avenue
Bartow, Florida 33830-4620

For Respondent: Keith Alan Cook, pro se
5744 Crafton Drive
Lakeland, Florida 33809

STATEMENT OF THE ISSUE

The issue is whether Respondent's employment with Petitioner as a high school teacher should be terminated.

PRELIMINARY STATEMENT

On August 23, 2019, Petitioner issued a letter to Respondent informing him of his immediate suspension from teaching at Lakeland High School, and further informing him that the issue of his termination from employment would be addressed at the September 3, 2019, meeting of the Polk County School Board; and, if approved, the termination would become effective on September 4, 2019. The stated basis for this action was that Respondent made remarks during a lockdown drill at the school that upset many of the students. Generally speaking, the remarks concerned how to better inflict damage on the maximum number of people in the event an active shooter were present on campus. The students shared their experience with their parents, other teachers, and administrators, which resulted in action being taken by Petitioner.

The August 23, 2019, agency action letter from Petitioner informed Respondent of his right to request an administrative hearing prior to September 3, 2019. Respondent made his timely request for a hearing by letter dated August 30, 2019. The case proceeded to hearing, without delay, on January 7, 2020.

At the January 7, 2020, hearing, Petitioner called students L.B., C.T.J., H.M., C.P.J., L.P., L.A., School Resource Officers Oscar Wesley and Justin Conaster, and Employee Relations Director Tony Kirk as witnesses. Petitioner offered five exhibits, all of which were admitted into evidence. Respondent testified on his own behalf and offered no exhibits.

A Transcript of the proceedings was filed with DOAH on January 29, 2020. Petitioner filed its proposed recommended order on February 10, 2020. Respondent did not file a proposed recommended order or any post-hearing document.

References to the Florida Statutes are to the 2019 codification, unless otherwise indicated.

FINDINGS OF FACT

1. Respondent was employed by Petitioner as a classroom teacher at Lakeland High School and held an employment contract pursuant to section 1012.33, Florida Statutes.

2. On August 16, 2019, Respondent was in his classroom with a group of students during a lockdown drill. In the course of the drill, Respondent made a number of comments stating what he would do as an attacker to kill a greater number of people. The facts are not in dispute, and the students' testimony is generally consistent regarding the statements made by Respondent.

3. Respondent testified that, as a Marine, he had seen many terrible things in his life and that he felt it was appropriate during the lockdown drill to "get real" with his students. He was unhappy with the fact that many of the students in his classroom did not seem to take the drill seriously; were seen texting, searching, and posting on social media sites; and, generally, engaging in other unfocused behavior rather than paying attention to the drill that had been ordered by the school. While, in his mind, by making his statements, he may have been acting in the best interest of his students' welfare, his words went above and beyond what could reasonably be expected to be appropriate language for a teaching moment. The students' reactions, many of which appear below, demonstrate that Respondent went too far with his statements and hypotheticals.

THE STUDENTS' STATEMENTS

4. Student L.B. testified as follows:

Q. What did Mr. Cook say?

A. He said if they were real, he--if he were an attacker, he would place certain bombs somewhere and, like, he would use a special bomb to where, like, spikes would shoot out. And where I was, I said at first I was safe and then he said the spikes part so it would get everyone and then I wasn't safe anymore. And I just felt uncomfortable in that situation.

Q. Did what he said upset you?

A. Yes. I wanted to go home.

5. Student C.T.J. testified as follows:

Q. Okay. Can you tell us what happened that day?

A. Well, my friend C., I believe, started the conversation. And Mr. Cook answered: If I was a shooter, I would have many body counts; I would know where to place all the bombs at and all I would have to do is push a button, "boom," everyone's dead.

6. Student H.M. testified as follows:

Q. Can you tell us what happened that day?

A. I just remember Mr. Cook, like, saying, so, yeah, like, I would put, like, a bomb in the corner. And then my friend L. was like, oh, I would be safe because I wasn't in--because she wasn't in the corner. And he said, no, I would put, like, nails in it so that it could get everyone in the class.

7. Student C.P.J. testified as follows:

Q. Can you tell us what happened with that?

A. We have lockdown drills regularly, so we're in--the lockdown drill had started and, like, he started talking and, basically, started explaining like how he would be the best school shooter and what he would do. He--I remember he said that he would plant IEDs where the kids are supposed to hide and put shrapnel in them, like nails and stuff

like that and he would fire a couple of rounds and then they would--kids would hide, the lockdown would start and then he would set the IEDs off.

Q. Did he talk about how many people might be killed?

A. Yeah. He--I don't remember the number, because, like, I don't have my statement in front of me to refresh myself, but it was, like, a big number.

8. Student L.P. testified as follows:

Q. Were you present in his classroom on August 16 during a lockdown?

A. Yes, sir.

Q. Can you tell us what happened that day?

A. We were in the lockdown and some conversation was started. And what I heard was that if he was going to be a school shooter, he would place bombs in the corners where the kids would be and he would have a button he would press and bombs would go off and kill as many students as the bomb could.

Q. Okay. Did--did that concern you?

A. Yeah. It made me feel a little, like, disturbed at the fact because I was, like, oh. Because I was sitting there and I was, like, looking at my friend when we both heard it and we were like, oh, that's not okay in the situation.

9. Student L.A. testified as follows:

Q. Can you tell us what happened at that time?

A. Yeah. So one of the students asked about why we do lockdowns and Mr. Cook started going--talking how we do it because there are school shooters, you know. And then I really wasn't paying attention at that point and then I--everyone

was silent. And then he started talking about what he would have done instead of--like that most school shooters are kind of dumb and they, you know, get caught and then talking about, you know, bombing and things like that. That's all I really remember. It was a long time ago. Sorry.

Q. Was he talking about how he would do it if he--

A. Uh-huh.

Q. And was he a little bit bragging about he would know how to do it better?

A. Uh-huh.

10. Petitioner backed up each of the above students' live testimony with the written statement each made shortly after the alleged lockdown incident.

11. Following a call from a parent regarding possibly inappropriate statements made by Respondent, the Lakeland police officer assigned to Lakeland High School as the school resource officer initiated an investigation with additional personnel. The officers assigned to the investigation obtained the written statements referred to above from each of the students who were in the classroom when the reported incident occurred.

12. The students' statements developed the facts surrounding the incident, and the police officer determined that several of the students were "very disturbed" by what had occurred. The police officers considered the situation a "serious matter."

13. Based upon the information derived from the investigation, representatives of the Lakeland Police Department filed with the Polk County Circuit Court a petition for a risk protection order naming Respondent in this case as Respondent in those proceedings. The risk protection order petition alleged that "Respondent poses a significant danger of causing personal injury to themselves or others by having a firearm or any

ammunition in their custody or control or by purchasing, possessing, or receiving a firearm or any ammunition."

14. The petition further alleged that Respondent "engaged in an act or threat of violence including, but not limited to, acts or threats of violence against themselves; has used, or threatened to use, against themselves or others any weapons; and has been the subject of proceedings under the Baker Act."

15. The petition was supported by portions of the students' statements that had been obtained during the investigation. On August 19, 2019, the Polk County Circuit Court entered a risk protection order directing Respondent "to surrender to law enforcement officers serving this order all firearms and ammunition that they own or have in their custody, control or possession."

16. Baker Act proceedings were also filed against Respondent, and the court entered an order in those proceedings. Pursuant to the order entered in the Baker Act proceedings, Respondent was transported to the Peace River Center for evaluation.

17. By letter to Respondent dated August 23, 2019, Petitioner's associate superintendent for human resources advised Respondent that the superintendent was suspending him without pay and recommending termination of his employment. Respondent timely requested a hearing, and these proceedings are the result of that request.

18. Petitioner's director of employee relations, Tony Kirk, testified that Respondent's statements about how he would do a better job of killing students, and the public exposure those statements received in local media, would make it difficult for Respondent to effectively function in a local school setting. Further, Mr. Kirk explained the difficulty in getting a school administrator or principal to agree to have Respondent in their school. On this point, Mr. Kirk testified as follows:

He made these statements about being a school shooter and how he could do it better, why would we want him in our community and in our environment? And it makes it tough for the principal to be able to justify why he would take a risk on an employee like Mr. Cook after he's made those types of statements.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the parties to and subject matter of these proceedings pursuant to sections 120.569, 120.57(1), and 1012.33, Florida Statutes.

20. Petitioner is the duly-constituted governing body of the School District of Polk County. Art. IX, § 4, Fla. Const.; §§ 1001.30 and 1001.33, Fla. Stat.

21. Petitioner bears the burden to prove the charges against Respondent by a preponderance of the evidence. *Sublett v. Sumter Cty. Sch. Bd.*, 664 So. 2d 1178 (Fla. 5th DCA 1995); *Allen v. Sch. Bd. of Dade Cty.*, 571 So. 2d 568, 569 (Fla. 3d DCA 1990)(citing *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990)); *McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1976); § 120.57(1)(j), Fla. Stat.

22. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. *See Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000); *see also Williams v. Eau Claire Pub. Sch.*, 397 F.3d 441, 446 (6th Cir. 2005)(holding that the trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and produces ... [a] belief that what is sought to be proved is more likely true than not true").

23. In Florida, the district superintendent has the authority to make recommendations for dismissal of school board employees, and the school board has the authority to suspend without pay school board instructional

staff with professional service contracts for "just cause." §§ 1001.42(5), 1012.22(1)(f), and 1012.33(6)(a), Fla. Stat.

24. Section 1012.33(1)(a) provides that school district instructional personnel may be dismissed at any time during the school year for "just cause" defined as:

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, ... 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.

25. Florida Administrative Code Rule 6A-5.056 defines "just cause" as the basis for dismissal actions against instructional personnel:

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:

* * *

(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 6A-10.080, F.A.C.;

(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.;

(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.

26. Florida Administrative Code Rule 6A-10.081 sets out the Principles of Professional Conduct for the Education Profession in Florida, which provides, in pertinent part:

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

* * *

(2) Florida educators shall comply with the following disciplinary principles. 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.

(a) Obligation to the student requires that the individual:

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

27. Section 4.4 of the Teacher's Collective Bargaining Agreement provides:

4.4 Just Cause: No teacher will be disciplined, reprimanded, suspended, terminated or otherwise deprived of fringe benefits or contractual rights during the term of his/her contract without just cause.

28. In an era where we have collectively witnessed unimaginable school shootings at Columbine in Colorado, Sandy Hook in Connecticut, and Parkland in Ft. Lauderdale, to name only a few, even Respondent admitted that there is a heightened sensitivity to the words we use in everyday

conversation about engaging in violent acts on a school campus. In this case, the students, their parents, school officials, law enforcement personnel, and even the judge who entered the risk protection order realized the gravity of Respondent's comments made in such a casual way to his class during the lockdown drill. The seriousness of the situation created by Respondent was borne out by the immediate reactions of all involved and the safety measures they took, according to their training, to ensure that Respondent did not pose an immediate or direct threat to the health, safety, and welfare of the students in his classroom and throughout the school.

29. The seriousness of the incident, as set forth eloquently by counsel for Petitioner in his proposed recommended order, sums up the situation that became the subject of these legal proceedings:

We each must be responsible for what we do, and we must live with the consequences of our actions. While in retrospect it does not now appear that the Respondent intended to physically harm anyone, in real time the Respondent's statements had a dramatic and expected response of great concern from the students, their parents, school administrators, law enforcement officers, judicial officials, the media and the community. The result, as reflected in the record of this case, is that the Respondent's actions will make it very difficult for him to return to any teaching position in Polk County.

30. From the facts of this case, the only appropriate conclusion that can be reached is that Respondent's effectiveness as an educator has been impaired. *See Purvis v. Marion Cty. Sch. Bd.*, 766 So. 2d 492 (Fla. 5th DCA 2000); *Walker v. Highland Cty. Sch. Bd.*, 752 So. 2d 127 (Fla. 2nd DCA 2000); and *Summers v. Sch. Bd. of Marion Cty.*, 666 So. 2d 175 (Fla. 5th DCA 1996).

31. The record of this case establishes that Respondent engaged in misconduct in office that is serious and constitutes just cause for termination of Respondent's employment. The evidence clearly supported Petitioner's

actions here, and the undersigned accepts, without reservation, the credible testimony that it would be impossible for Petitioner to find appropriate placement for Respondent in another Polk County school.

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 terminating Respondent's employment.

DONE AND ENTERED this 26th day of February, 2020, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
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this 26th day of February, 2020.

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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.