

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-4993TTS

BRUCE WEINBERG,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on January 12, 2016, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Tria Lawton-Russell, Esquire  
Broward County School Board  
14th Floor  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

For Respondent: Robert F. McKee, Esquire  
Kelly & McKee  
Suite 301  
1718 East Seventh Avenue  
Tampa, Florida 33605

STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to terminate Respondent's employment as a teacher.

PRELIMINARY STATEMENT

By letter dated August 12, 2015, Petitioner, Broward County School Board ("School Board"), notified Respondent, Bruce Weinberg ("Respondent"), of the School Board's intent to suspend without pay and terminate his employment. On August 14, 2015, Respondent timely requested an administrative hearing. On September 1, 2015, at its scheduled meeting, the School Board took action to suspend without pay and terminate Respondent's employment as a teacher. Subsequently, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

The final hearing was initially set for December 2 and 3, 2015. On November 20, 2015, the School Board filed a motion to continue the final hearing. On November 20, 2015, Respondent filed a memorandum of law in opposition to the motion. On November 23, 2015, the undersigned held a telephonic hearing on the motion, with counsel for both parties present. On December 2, 2015, the undersigned entered an Order granting the motion, resetting the final hearing for January 12 and 13, 2016.

The Administrative Complaint contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with the following six counts:

(1) Misconduct in Office; (2) Incompetency; (3) Immorality;

(4) Gross Insubordination; (5) Willful Neglect of Duty; and  
(6) Violation of School Board Policy 4008.

The final hearing commenced as scheduled on January 12, 2016, with both parties present. At the hearing, the School Board presented the testimony of K.C., D.J., T.M., M.J., R.H., S.D., Cornelia Hoff, Brian Faso, Rhonda Stephanik, and Shoni Lewis-Thompson. The School Board's Exhibits 1 through 10 were received into evidence. Respondent testified on his own behalf. Respondent's Exhibits 8 and 9 were received into evidence.

At hearing, the parties agreed to file their proposed recommended orders within 30 days after the filing of the final hearing transcript at DOAH. The two-volume final hearing Transcript was filed at DOAH on February 22, 2016. On March 17, 2016, Respondent filed an unopposed motion to extend the deadline until April 6, 2016, in which to file proposed recommended orders. On March 18, 2016, the undersigned entered an Order granting the motion. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. On January 4, 2016, the parties filed their Joint Pre-Hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

#### FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise the public schools within Broward County, Florida.

2. At all times material to this case, Respondent was employed by the School Board as a drama teacher at Miramar High School ("Miramar"), pursuant to a Professional Services Contract, issued in accordance with section 1012.33(3)(a), Florida Statutes.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law and the School Board's policies.

#### 2010-2011 School Year

4. On November 3, 2010, the vice-principal of Miramar held an informal conference with Respondent due to concerns regarding Respondent's personal interactions with students and staff, at which time Respondent was directed to: 1) "not meet with another teacher's students during his or her class time"; 2) "speak in a calm, respectful and professional tone at all times"; and 3) "always represent Miramar High School in a positive and professional manner."

2011-2012 School Year

5. On February 10, 2012, the vice-principal of Miramar issued a written reprimand to Respondent because of Respondent's alleged "insubordination during a previous meeting." According to the written reprimand, Respondent exhibited conduct during a meeting that "was unbecoming of a professional."

2012-2013 School Year

6. By the end of the 2012-2013 school year, Respondent no longer had any desire to teach drama, and he had requested to be transferred to another school. In an email dated May 30, 2015, Respondent stated:

I think it would be best if we parted ways.  
I think the drama program deserves a fresh start and a teacher with a passion and drive to take the students to the next level. If, for some reason, I do return to Miramar, I would like to teach 9th grade English.

2013-2014 School Year

7. Respondent was unsuccessful in his efforts to obtain a transfer to another school.

8. On September 6, 2013, Respondent wrote to the School Board requesting unpaid leave under the Family and Medical Leave Act. In his explanation for requesting leave, Respondent alleged: "Miramar High is a hostile and harassing environment and it is effecting [sic] my mental and physical well being." Respondent provided the School Board with documentation from a

health care provider in support of his request for unpaid medical leave.

9. The School Board granted Respondent's request for Family and Medical Leave, and Respondent was on unpaid medical leave from September 6, 2013, until December 4, 2013.

10. The proposed discipline is based upon conduct occurring on Monday, February 24, 2014, during Respondent's second-period Drama II class.

11. On Friday, February 21, 2014, Respondent was absent from work. Respondent's son, who was a substitute teacher at Miramar, taught Respondent's second-period Drama II class in Respondent's absence.

12. Respondent's Drama II class was an elective class. There were 31 students in the class. Some of the students were serious about the class and hard-working, while others were not.

13. On Friday, February 21, 2014, the students were supposed to be preparing for an upcoming school play performance called "The Mask." The Mask was an original collaboration by the students. Approximately six weeks had been spent preparing for the play. However, as of February 21, 2014, the play was not performance-ready and a lot of work still needed to be done.

14. The students should have utilized the time during their class on Friday, February 21, 2014, to prepare for the play. However, because there was a substitute teacher, some students

wasted their time and were rude and disrespectful to Respondent's son.

15. Respondent was very upset when he found out that some of the students were rude and disrespectful to his son.

16. On Monday, February 24, 2014, shortly after Respondent's second-period Drama II class began, Respondent gave five of the students a pass to go to another class (history or debate). These students had minor parts in the play, and they were given assignments to work on independently in either the history or debate class.

17. After these five students left the classroom, Respondent "took the stage." The stage is located above and in front of the students' desks. After waiting a few moments, Respondent proceeded to berate the class in a loud, angry, and profane tirade, stating:

You disrespected my son. How dare you. How dare you. I will give every single person in this class an "F," and you all just go screw yourselves. You don't deserve me. You don't deserve me. What are you going to do?

[STUDENT] I'm going to stay --

Sit your ass down and shut up. Not a single sound. You laugh, you make a noise, you're out; you understand me? I am sick of this class and I am sick of this school. You want a play, show me a goddamn play.

18. Respondent's tirade was captured on audio and video by one of the drama students in the class. A copy of the

audio-visual recording of the incident was received into evidence at the hearing as the School Board's Exhibit 2.

19. Respondent's verbal tirade directed at the class was inappropriate, verbally abusive, and disparaging. Respondent could certainly have projected authority and addressed the students' behavior toward his son without resorting to the abusive, profane, and disparaging tirade.

20. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of misconduct in office in violation of Florida Administrative Code Rule 6A-5.056.

21. Through the verbal tirade directed at his students, Respondent violated Florida Administrative Code Rules 6A-10.081(3) (a) and (e) by failing to make reasonable effort to protect his students from conditions harmful to learning and intentionally exposing his students to unnecessary embarrassment or disparagement. Respondent also violated rules 6A-5.056(2) (d) and (e) by engaging in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform his duties.

22. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of incompetence in violation of rule 6A-5.056(3).

23. Through the verbal tirade directed at his students, Respondent failed to discharge his required duties as a teacher



as a result of inefficiency. Respondent was inefficient by failing to communicate appropriately with and relate to students.

24. The persuasive and credible evidence adduced at hearing establishes that Respondent violated School Board Policy 4008. Through the verbal tirade of his students, Respondent failed to treat his students with kindness and consideration. In addition, Policy 4008 requires compliance with the Principles of Professional Conduct of the Education Profession in Florida.

25. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

26. By failing to comply with the specific directive detailed above "to speak in a calm, respectful and professional tone at all times," Respondent intentionally refused a direct order, reasonable in nature, and given by and with proper authority.

27. At hearing, Respondent acknowledged that his language and use of profanity toward his students in the classroom on February 24, 2014, was inappropriate. At hearing, Respondent conceded that "[u]nfortunately, I lost my cool."

28. Respondent was remorseful of his verbal tirade at the hearing.

29. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of immorality in violation of rule 6A-5.056(1) as alleged in the Administrative Complaint.

30. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of willful neglect of duty as alleged in the Administrative Complaint.<sup>1/</sup>

#### CONCLUSIONS OF LAW

31. DOAH has jurisdiction of the subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

32. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes. The School Board has the authority to suspend and terminate instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

33. The School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the violations alleged in the Administrative Complaint and that such violations constitute "just cause" for dismissal.

§§ 1012.33(1)(a) and (6), Fla. Stat.; Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

34. 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. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000). The preponderance of the evidence standard is less stringent than the standard of clear and convincing evidence applicable to loss of a license or certification. Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

35. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); McMillian v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 228 (Fla. 1st DCA 1993).

36. Sections 1012.33(1)(a) and (6) provide in pertinent part that instructional staff may be terminated during the term of their employment contract only for "just cause." §§ 1012.33(1)(a) and (6), Fla. Stat. "Just cause" is defined in section 1012.33(1)(a) to include "misconduct in office," "incompetency," "gross insubordination," "willful neglect of duty," and "immorality."

37. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

38. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), which provides:

(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 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, 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.

39. Rule 6A-10.080, titled "Code of Ethics of the Education Profession in Florida," provides:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) 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 judgment and integrity.

(3) 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.

40. While rule 6A-5.056(2)(a) provides that violation of the Code of Ethics rule constitutes "misconduct," it has been frequently noted that the precepts set forth in the above-cited "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." Miami-Dade Cnty. Sch. Bd. v. Lantz, Case No. 12-3970 (Fla. DOAH July 29, 2014).

41. Rule 6A-5.056(2)(b) incorporates by reference rule 6A-10.081, which is titled "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081(3)(a) provides, in pertinent part:

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

(a) 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.

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

42. Consistent with its rulemaking authority, the State Board of Education has defined "incompetency" in rule 6A-5.056(3), which provides, in pertinent part:

(3) "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

(a) "Inefficiency" means one or more of the following:

1. Failure to perform duties prescribed by law;
2. Failure to communicate appropriately with and relate to students.

43. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), which provides:

(4) "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

44. Consistent with its rulemaking authority, the State Board of Education has defined "immorality" in rule 6A-5.056(1), which provides:

(1) "Immorality" means 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.

45. Consistent with its rulemaking authority, the State Board of Education has defined "willful neglect of duty" in rule 6A-5.056(5) to mean "intentional or reckless failure to carry out required duties."

46. School Board Policy 4008 provides, in pertinent part:

B. DUTIES OF INSTRUCTIONAL PERSONNEL

The members of instructional staff shall perform the following functions:

1. Comply with the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

\* \* \*

4. Treat all students with kindness, consideration and humanity.

47. Turning to the present case, the School Board proved by a preponderance of the evidence that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2). As detailed above, Respondent failed to make reasonable effort to protect his students from conditions harmful to learning and intentionally exposed his students to unnecessary embarrassment or disparagement. Respondent also engaged in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform his duties.

48. The School Board proved by a preponderance of the evidence that Respondent is guilty of incompetence in violation of rule 6A-5.056(3). As detailed above, through the verbal

tirade directed at his students, Respondent failed to discharge his duties as a teacher as a result of inefficiency. Respondent was inefficient by failing to communicate appropriately with and relate to students.

49. The School Board proved by a preponderance of the evidence that Respondent violated School Board Policy 4008 by failing to treat his students with kindness and consideration and by violating the Principles of Professional Conduct of the Education Profession in Florida.

50. The School Board proved by a preponderance of the evidence that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

51. The School Board failed to prove by a preponderance of the evidence that Respondent is guilty of immorality in violation of rule 6A-5.056(1).

52. The School Board failed to prove by a preponderance of the evidence that Respondent is guilty of willful neglect of duty.



RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order upholding the termination of Respondent's employment.

DONE AND ENTERED this 13th day of April, 2016, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of April, 2016.

ENDNOTE

<sup>1/</sup> The School Board's claim that Respondent is guilty of willful neglect of duty is premised on the allegations contained in paragraph 40 of the Administrative Complaint, that "Weinberg failed to perform his duties as an educator and instructor by shuttling his students into other classrooms, including a student who was in the play, to have other teachers manage."

COPIES FURNISHED:

Tria Lawton-Russell, Esquire  
Broward County School Board  
14th Floor  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301  
(eServed)

Robert F. McKee, Esquire  
Kelly & McKee  
Suite 301  
1718 East Seventh Avenue  
Tampa, Florida 33605  
(eServed)

Robert Runcie, Superintendent  
Broward County School Board  
600 Southeast Third Avenue, Floor 10  
Fort Lauderdale, Florida 33301-3125

Pam Stewart, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

Matthew Mears, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

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.