

STATE OF MICHIGAN
COURT OF APPEALS

GARY SAMMONS,

Appellant,

v

ECORSE PUBLIC SCHOOLS,

Appellee.

UNPUBLISHED

June 16, 1998

No. 201636

State Tenure Commission

LC No. 96-000016

Before: Jansen, P.J., and Kelly and Markey, JJ.

PER CURIAM.

Gary Sammons appeals as of right the February 21, 1997 decision of the State Tenure Commission ordering Sammons' discharge. We affirm.

Sammons taught eighth grade social studies at Ecorse High School and seventh grade social studies at Ecorse's "School 3" during the 1995-1996 school year. In a letter dated April 11, 1996, Ecorse informed Sammons that charges were being filed against him with the Ecorse Board of Education based on a list of allegations stated in the letter. Ecorse was seeking Sammons' discharge. A hearing was held before a referee who found that Sammons had been verbally abusive toward his students by calling them names and screaming at them, and that Sammons had been insubordinate by failing to follow administrative directives to refrain from leaving his classroom unattended, to leave the principal's office, and to decorate his classroom. The referee's preliminary decision and order was upheld by the State Tenure Commission and Sammons was discharged.

I.

Sammons contends that certain findings of fact made by the referee and upheld by the commission were not supported by competent, substantial, and material evidence.

First, Sammons contends that substantial evidence was not presented to support the finding that Sammons verbally abused his students and that Ecorse failed to show that Sammons' name-calling had an adverse effect on the students. Although the showing of "adverse effect" on

students or staff is a permissible basis for discipline, it is not an element that the school board is required to show. *Miller v Grand Haven Bd of Ed*, 151 Mich App 412, 420; 390 NW2d 255 (1986). "Where a teacher's conduct occurs on school grounds during working hours, or otherwise involves students, and is obviously inappropriate, disciplinary action may be taken without a pleading or showing of adverse effect." *Id.* at 421. While it may be appropriate to expect a showing of adverse effect in cases where a teacher has been disciplined for utilizing a particular teaching style or for conduct occurring outside of the school and not involving students, even in such situations it is not required that adverse effect be shown. *Id.* at 420-421.

In this case, Sammons' verbal abuse occurred in the classroom and his statements were directed toward his students. Students testified that Sammons had called them names such as "pervert," "trash," "stupid," "idiot," "bum," "pigs," "queers," "ignorant," "slobs," "punk" and "coward." One student also testified that Sammons told another student that he "stank." Under no circumstances would it be appropriate for a teacher to address students in such terms, making Sammons' conduct "obviously inappropriate." Therefore, a showing of adverse effect is not required.

Further, the referee found the testimony of the students to be credible. Deference must be given to an agency's findings of fact, *THM, Ltd v Comm'r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989), especially as to conflicts in the evidence and the credibility of witnesses, *Arndt v Dep't of Licensing*, 147 Mich App 97, 101; 383 NW2d 136 (1985). Given the number of students testifying at Sammons' hearing and the consistent testimony of the students regarding the names Sammons called his students, the referee's decision that Sammons verbally abused his students by name calling was supported by competent, material and substantial evidence.

Sammons also challenges the finding that he verbally abused his students by "screaming" at them. The high school principal testified that she heard Sammons "screaming" at his students as she walked past his classroom. The principal testified that Sammons was "threatening" his students. The principal was frightened by Sammons' screaming and stated that in her twenty years of teaching she had never heard anyone "scream at kids like that."

Again, deference is given to the administrative agency's findings of fact regarding the credibility of witnesses. *Arndt, supra* at 101. Screaming at students in such a fashion as to frighten the school principal as she walks past the closed door of Sammons' classroom is obviously inappropriate conduct as contemplated in *Miller, supra* at 421. Given the principal's testimony and the deference given to the administrative agency regarding her credibility, the referee's finding that Sammons verbally abused his students by screaming at them is supported by competent, material and substantial evidence.

Next, Sammons argues that the finding that he had been insubordinate in three separate circumstances was not supported by the evidence. Sammons was found to be insubordinate for leaving his classroom unattended, for failing to leave the principal's office as directed, and for failing to decorate his classroom as directed.

Insubordination is defined as "the willful disobedience to a directive or policy by one fully understanding such directive or policy." *Lakeshore Bd of Ed v Grindstaff (After Remand)*, 436 Mich

339, 344 n 7; 461 NW2d 651 (1990); *Sutherby v Gobles Bd of Ed (After Remand)*, 132 Mich App 579, 586-587; 348 NW2d 277 (1984). The record reveals that Sammons repeatedly left his classroom unattended despite both verbal and written orders to refrain from such conduct. Nearly all of the witnesses presented by Ecorse testified that Sammons left his classroom unattended during the class period. The high school principal testified that she had verbally directed Sammons not to leave his classroom unattended and also submitted a written memo giving such a directive to Sammons. Sammons does not contend that he failed to understand such a directive. Therefore, the record supports the finding that Sammons was insubordinate by continuing to leave his classroom unattended despite administrative requests to the contrary.

Next, Sammons contends that the record does not support the finding that he refused to obey the principal's directive to leave his office. The principal of School 3 testified that he asked Sammons to come into his office to discuss Sammons' failure to comply with the school's "sign-in" policy. The principal testified that when Sammons did not respond to the principal's comments, he asked Sammons to leave his office. The principal testified that Sammons remained seated and refused to leave. The principal stood up and opened the door for Sammons and Sammons again refused to leave the principal's office.

Although Sammons testified that he was attempting to explain his failure to sign in to the principal, such testimony is in sharp contrast to the principal's testimony that Sammons "just sat there blank." Deference is given to the agency's findings regarding conflicts in evidence and the credibility of witnesses. *Arndt, supra* at 101. Because the principal clearly testified that he asked Sammons several times to leave his office, and that Sammons refused, the agency's finding is supported by competent, material and substantial evidence.

Finally, Sammons contends that the referee erred in finding that Sammons was insubordinate by failing to follow an administrative directive to decorate his classroom. The high school principal testified that she instructed Sammons to decorate his classroom and that he refused to comply. The principal testified that she was in Sammons' classroom on numerous occasions following her request to decorate, and Sammons never decorated his room. A substitute teacher who taught in Sammons' classroom following Sammons' dismissal testified that when he entered the classroom it had not been decorated. Therefore, the agency's finding that Sammons disregarded the principal's directive to decorate his classroom is supported by competent, material and substantial evidence.

In sum, we hold that the factual findings made by the referee and upheld by the commission regarding the charges of verbal abuse and insubordination were supported by competent, material and substantial evidence.

II.

Sammons also contends that the decision of the referee and the commission was in error because Ecorse did not give Sammons notice of his deficiencies and an opportunity to improve. Neither did Ecorse show an adverse effect on the teachers or students or a record of progressive discipline.

First, although a teacher may be entitled to notice and an opportunity to improve where charges against the teacher are related to teaching competency, such an opportunity is not required where a teacher is charged with unprofessional conduct. *Perron v Bd of Ed of the Royal Oak School Dist*, 155 Mich App 759, 768-769; 400 NW2d 709 (1986); *Bd of Ed of Benton Harbor Area Schools v Wolff*, 139 Mich App 148, 155; 361 NW2d 750 (1984). Hence, Ecorse was not required to give Sammons notice of his deficiencies and an opportunity to improve.

Next, Sammons contends that the referee improperly sustained charges of insubordination and verbal abuse without requiring a showing of adverse effect. As noted previously, "where a teacher's conduct occurs on school grounds during working hours, or otherwise involves students, and is obviously inappropriate, disciplinary action may be taken without a pleading or showing of adverse effect." *Miller, supra* at 421. Because Sammons' conduct was obviously inappropriate, as discussed in Issue I, and was unrelated to teaching competency, a showing of adverse effect was not required.

Finally, Sammons argues that the referee and the commission erred in finding that Sammons was insubordinate for failing to leave the principal's office as directed, for failing to decorate his room, and for leaving his classroom unattended. Insubordination is defined as "the willful disobedience to a directive or policy by one fully understanding such directive or policy." *Grindstaff, supra* at 344 n 7; *Sutherby, supra* at 586-587. The record reveals that Sammons received clear directives on the issues of leaving his classroom unattended, failing to decorate his classroom, and refusing to leave the principal's office as directed and that Sammons willfully disobeyed such directives. Therefore, the commission properly found that Sammons was insubordinate.

In conclusion, the commission made no errors of law in determining that Sammons verbally abused his students and was insubordinate.

III.

Finally, Sammons contends that the penalty of discharge was excessive. We disagree. In *Sutherby, supra* at 587-588, we held that the commission's discharge of a teacher was based upon reasonable and just cause where the evidence showed that the teacher repeatedly failed to comply with certain administrative rules and regulations, including permitting students to play cards or chess during class, failing to follow school policy concerning procedures for dismissing students from class, allowing unsupervised students to remain in the classroom during lunch period, leaving the classroom unsupervised on numerous occasions, and failing to file lesson plans with the principal's office.

In contrast, we held that there was not reasonable and just cause for the discharge of a teacher by the school board in *Grindstaff, supra* at 357. In *Grindstaff*, the teacher was discharged for using physical force on students, leaving his classes unsupervised for prolonged periods of time, and leaving the school building during school hours without permission. *Id.* at 343. On review, the commission found that the penalty of discharge was inappropriate because the teacher "had shown himself to be a 'true motivator' of students in his eighteen years of service" and had "demonstrated outstanding skills as an educator." *Id.* at 345. "His was the classic case of a good teacher, but a poor employee." *Id.* at

345-346. We held that the commission properly found the penalty of discharge to be excessive. *Id.* at 357-358.

The commission's findings in this case were based on competent evidence and reveal conduct more egregious than that described in *Sutherby*. Unlike the teacher in *Grindstaff*, no evidence was presented that Sammons was a "motivator of students" or had demonstrated "outstanding skills as an educator." In fact, the evidence revealed that many parents requested that their children be removed from Sammons' class. Moreover, letters from the students indicate a dislike of Sammons and his name-calling. Based on Sammons' verbal abuse of his students and repeated accounts of insubordination, the commission's decision to discharge Sammons was fair and reasonable.

Affirmed.

/s/ Kathleen Jansen

/s/ Michael J. Kelly

/s/ Jane E. Markey