

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 02-0994
)
 MICHAEL RANSAW,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Fort Lauderdale, Florida, on April 17, 2002.

APPEARANCES

For Petitioner: Carmen Rodriguez, Esquire
Carmen Rodriguez, P.A.
9245 Southwest 157th Street, Suite 209
Miami, Florida 33157

For Respondent: David T. Alvarez, Esquire
Alvarez & Martinez, L.L.P.
One East Broward Boulevard, Suite 604
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

The issue is whether, in violation of Section 231.36(1)(a) and (6), Florida Statutes, Respondent committed misconduct in office when he pawned a school laptop computer and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

By letter dated January 30, 2002, Dr. Frank Till, Petitioner's Superintendent, informed Respondent that he would recommend to the School Board that it suspend him without pay for ten days from his position as assistant principal. By Administrative Complaint dated January 30, 2002, Petitioner alleged that on July 19, 2001, Respondent assigned to Respondent an Apple G-4 Titanium laptop computer valued at about \$2500. The Administrative Complaint alleges that, on August 25, 2001, Respondent pawned the computer at Richie's Pawn Shop in Tamarac for \$350.

The Administrative Complaint alleges that Respondent did not return to the pawn shop to redeem the computer until September 12, 2001--the day after he had received a hand-delivered notice from Petitioner advising him that he was under investigation for misuse of School Board property.

The Administrative Complaint alleges that Respondent thus misused institutional privileges for personal gain or advantage, in violation of Rule 6B-1.006(4)(c), Florida Administrative Code; committed immorality, in violation of Section 231.36(1)(a), Florida Statutes, and Rule 6B-4.009, Florida Administrative Code; and misconduct in office through the violation of various provisions of the Code of Ethics of the Educational Profession, in violation of Section 231.36(1)(a),

Florida Statutes, and Rule 6B-4.009(3), Florida Administrative Code.

The Administrative Complaint requested a recommendation of discipline in the form of a ten-day suspension without pay and transfer to an instructional or guidance position, in the sole discretion of the Superintendent, for a period of three years, after which, if Respondent completes three years of satisfactory evaluations, he would be eligible to return to an administrative position.

At the hearing, Petitioner called two witnesses and offered into evidence one exhibit. Respondent called five witnesses and offered into evidence no exhibits. The parties jointly offered into evidence five exhibits. All exhibits were admitted.

The court reporter filed the transcript on May 3, 2002. The parties filed their proposed recommended orders on May 16, 2002.

FINDINGS OF FACT

1. Respondent is 33 years old. His father has served Petitioner as a principal, and his mother has served Petitioner as a primary specialist; combined, Respondent's parents have 64 years' service in Petitioner's school system. Respondent attended high school locally, where he achieved prominence as a football player, and continued his football career in college.

2. Petitioner hired Respondent in an instructional position on July 1, 1992, shortly after he obtained his bachelor's degree. Respondent began work as a pool substitute. At the time, he was also pursuing a master's degree in guidance. When a guidance job became available, Petitioner hired Respondent as a guidance counselor.

3. After four years as a guidance counselor, Respondent became an assistant principal in March 2001 at a middle school. Three assistant principals help the principal at this middle school. Respondent's duties include supervision of discipline, safety, and maintenance of the school.

4. On July 19, 2001, Respondent's principal assigned to Respondent an Apple G-4 Titanium laptop computer. Respondent understood that he was to use the computer for school-related job duties, such as staff development and classroom use.

5. On August 25, 2001, Respondent took the computer to Richie's Pawn Shop in Tamarac to pawn the computer. Respondent disclosed to the pawn shop owner that the computer was owned by Petitioner, not Respondent. However, the pawn shop owner, who had known Respondent nearly 20 years earlier, when he had purchased items from the shop, nevertheless allowed Respondent to pawn the computer. Respondent signed a document that represented that he owned the computer.

6. Pursuant to the agreement, the pawn shop owner gave Respondent \$350. The agreement provided that Respondent could redeem the computer at anytime during the next 30 days by repaying the \$350 plus a finance charge of \$52.50. According to the agreement, at the conclusion of the first 30 days, Respondent could redeem the computer at anytime during the next 30 days by repaying the \$350 plus a finance charge of \$105. After 60 days, Respondent would lose the right to redeem the computer.

7. Respondent used the money for expenses on a trip that he was taking that weekend to retrieve his four-year-old daughter, who was visiting Respondent's parents in Ocala. The following Monday, August 27, Respondent was back at work as an assistant principal.

8. Respondent did not return to the pawn shop to redeem the computer for a little over two weeks. On September 12, Respondent returned to the pawn shop and attempted to redeem the computer.

9. The prior day, though, a Broward County Sheriff's Officer, on a routine check of the pawn shop, had run the registration number of the computer that Respondent had pawned and learned that it was the property of Petitioner. The officer had informed one of Petitioner's investigators of the presence of the computer in the pawn shop. One of the law enforcement

officers then ordered the pawn shop owner to hold the computer and not allow anyone to remove it.

10. Pursuant to the order that he had received, the pawn shop owner informed one of Petitioner's investigators when Respondent tried to redeem the computer. Contrary to the allegation of the Administrative Complaint, Respondent went to the pawn shop to redeem the computer not knowing that Petitioner or law enforcement had discovered the wrongful pawning. Petitioner recovered the computer, undamaged.

11. Petitioner's investigator correctly concluded that Respondent had not attempted or intended to deprive Petitioner of the computer permanently. He also correctly concluded that Respondent had not intended to deprive Petitioner permanently of the computer.

12. Among the witnesses attesting to Respondent's value as an employee of Petitioner was Petitioner's Executive Director of Professional Standards and Special Investigation Unit. The Executive Director has served Petitioner for 28 years, including four years as a principal. While a principal, the Executive Director hired Respondent and found him a valuable employee. When the Professional Standards Committee recommended termination of Respondent, the Executive Director suggested to the Superintendent that he recommend a ten-day suspension and

three-year demotion, which the Superintendent adopted as his recommendation to the School Board.

13. Other witnesses with considerable knowledge of Petitioner testified to his enthusiasm, talent, energy, and competence as an employee of Petitioner. In particular, Respondent's principal, who has served Petitioner for 33 years, testified that Respondent showed considerable initiative and exceeded all expectations. Although unaware of the reason for Respondent's absence, the students and parents all missed Respondent. The principal testified that even the teachers were unaware of the reason for Respondent's absence.

14. Describing Respondent as a "tremendous asset" to the school system, the principal testified that the incident did not diminish Respondent's effectiveness as an employee of Petitioner. The temporary loss of possession of the computer did not prevent Respondent from completing any of his work assignments, nor did it deprive anyone else from the use of a computer, as the school has dozens of extra computers. Respondent has not previously received discipline as an employee of Petitioner.

15. Petitioner's Employee Disciplinary Guidelines provides in part:

I. DISCIPLINARY GUIDELINES

(a) It is the intent of the School Board to treat all employees on a fair and equitable basis in the administration of disciplinary measures.

(b) Discipline is a corrective rather than a punitive measure. In dealing with deficiencies in employee work performance or conduct, progressive discipline shall be administered, except in situations where immediate steps must be taken to ensure student/staff safety. Progressive discipline may include, but is not limited to: informal discussion, oral warning, written warning, written reprimand, enrollment in professional skills enhancement programs, suspension without pay, demotion, change in contract status or termination of employment.

(c) There are certain categories of misconduct, however, which are so offensive as to render an employee no longer employable. The only appropriate disciplinary measure in these cases (See Section II, Category A) is the termination of the employment relationship with the Broward County School System (F.S., 231.28)

(d) The severity of the misconduct in each case, together with relevant circumstances (III (c)), will determine what step in the range of progressive discipline is followed. A more severe discipline measure will be used when it is in the best interest of the students of the community we serve. It is the intent that employees who have similar deficiencies in work performance or misconduct, will be treated similarly and compliant with the principle of just cause.

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II. DISCIPLINARY ACTION

(CATEGORY A)

OFFENSE	PENALTY
(a) Inappropriate sexual conduct including, but not limited to, sexual battery, possession or sale of pornography involving minors, sexual relations with a student or the attempt thereof	Dismissal
(b) Sale/distribution of a controlled substance	Dismissal
(c) Reckless display, threatening with guns or weapons on School Board property or at School Board events	Dismissal

(CATEGORY B)

OFFENSE	PENALTY
(a) Committing a criminal act--felony	Suspension/Dismissal
* * *	*
(c) Unlawful possession, use or being under the influence of a controlled substance	Suspension/Dismissal
(d) Driving Under the Influence under the scope of employment	Suspension/Dismissal
* * *	*

(i) Possession of guns or weapons on School Board property Reprimand/Dismissal

* * *

(m) Any violation of The Code of Ethics of the Education Profession in the State of Florida--State Board of Education, Administrative Rule 6B-1.001 Reprimand/Dismissal

* * *

(o) Misappropriation of Funds Suspension/Dismissal

(p) Insubordination, which is defined as a continuing or intentional failure to obey a direct order, reasonable in nature and given by and with proper authority Reprimand/Dismissal

(q) Unauthorized use of School Board property Reprimand/Dismissal

* * *

16. Section III of the Employee Disciplinary Guidelines reserves to the Superintendent and School Board considerable discretion in imposing discipline, including termination, for any just cause. This section identifies a wide range of aggravating or mitigating factors, including the severity of the offense, degree of student involvement, impact on the school and community, number of repetitions of the offense, length of time since the misconduct, employment history, actual damage,

deterrent effect of discipline, actual knowledge of the employee about the misconduct, related misconduct by the employee, pecuniary benefit by the employee, mental or physical harm to persons in school or community, length of employment, employee's evaluation, and employee's adherence to self-reporting policy.

17. Although the actions of Respondent in this case may also constitute misuse of institutional privileges, they are best defined as misconduct in office. The record fails to establish that these actions rise to the level of immorality.

18. The unlawful pawning of a school computer reduces an employee's effectiveness as an employee of the school system, even if, as here, few administrators, teachers, students, or parents know of the misconduct. Unlawfully pawning a school computer is a betrayal of trust that, once detected, is necessarily known by at least some superiors of Respondent, and their knowledge of this misconduct reduces the trust they can place in Respondent and must be able to place in each employee, especially administrators.

19. Numerous mitigating factors apply in this case. The offense is not especially severe, especially given Respondent's intent to redeem the computer prior to the maturity date of the pawn. Nothing in the record suggests that Respondent or any other of Petitioner's employees was prevented or impeded from performing his or her duties due to the pawning of the computer

for less than three weeks. The incident does not involve students. It is an isolated incident, and Respondent has not previously been the subject of discipline during his ten-year tenure with Petitioner. Respondent has been an outstanding employee. Another mitigating factor is Respondent's relative youth. Obviously, aggravating factors are that the incident involves pecuniary gain on Respondent's part, although a relatively modest amount, and Respondent did not self-report.

20. Another aggravating factor is the deterrent effect of discipline in this case. Petitioner is justifiably concerned with safeguarding its computers.

21. Obviously, the most applicable provision from the disciplinary guidelines is unauthorized use of school property, for which the penalty ranges from reprimand to dismissal. In some respects, the pawning of the computer is a minor instance of the unauthorized use of school property because Respondent was without the computer for less than three weeks, did not need the computer during that time to perform his school work, did not consume the property or shorten its useful life during its unauthorized use, and never intended to permanently deprive Petitioner of the computer. Also, others at his school did not go without computers while Respondent's computer was in the pawn shop. In one respect, the pawning of the computer is a serious

instance of the unauthorized use of school property because it is an expensive asset of the school.

22. The disciplinary guidelines also require the imposition of progressive discipline. The range for the unauthorized use of school property is reprimand to dismissal. Petitioner has imposed demotion and suspension, which more closely approach dismissal than reprimand.

23. Petitioner's selection of discipline in this case is driven mostly by a desire to achieve deterrence and fairness. Petitioner must discourage its many employees from pawning school computers and other expensive, portable electronic equipment, even in situations, as here, where they do not intend to deprive Petitioner permanently of the asset. Deterrence is a listed aggravating factor, and, given the potential for a problem with this kind of behavior, deterrence is the most important aggravating factor.

24. The fairness issue is more problematic for Petitioner. Petitioner is commendably trying to treat Respondent as it has treated two other, nonadministrative employees who were caught misusing computers. In one case, an employee broke into a secure area, stole a computer, and pawned it. In the other case, an employee with authorized possession of a computer pawned it, possibly with the intent of permanently depriving Petitioner of its property. Otherwise, the facts concerning

aggravating and mitigating factors in these two cases are not developed in this record.

25. The three cases are the same in that employees pawned school computers, but, based on this record, the resemblances end there. Respondent is a relatively young person, who admittedly exercised poor judgment, but his employment record with Petitioner has been outstanding and this misconduct constitutes an isolated incident.

26. An important part of this case is the testimony of experienced, mature coworkers and superiors, who are informed about the incident and have known Respondent for many years. Supporting Respondent in his effort at least to reduce the punishment, these employees provide a balanced view of the competing factors in finding the appropriate discipline. They weigh the importance of deterring employees from misusing expensive school equipment against the importance of, as provided by Petitioner's disciplinary guidelines, treating discipline not as punitive, but as corrective--in recognition of the fallibility of the human element and its preeminence among Petitioner's assets.

27. The Administrative Complaint seeks a 10-day suspension and demotion under one factual misunderstanding--that Respondent did not redeem the computer until after he knew that Petitioner had uncovered the misconduct. Under all of the circumstances,

including Petitioner's use of progressive, corrective discipline, the most serious discipline authorized by the disciplinary guidelines is a 10-day suspension without pay.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 231.36(6)(a)2, Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

29. Section 231.36(6)(a) authorizes the suspension or dismissal of Respondent at anytime during the term of the contract for "just cause." Section 231.36(1)(a) provides that "just cause" includes "misconduct in office." Rule 6B-4.009(3) defines "misconduct in office" as a "violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001 . . . , and the Principles of Professional Conduct in the Education Profession in Florida, as adopted in Rule 6B-1.006 . . . , which is so serious as to impair the individual's effectiveness in the school system."

30. Rule 6B-1.006(4)(c) provides that an educator "[s]hall not use institutional privileges for personal gain or advantage."

31. Petitioner has not proved immorality. Among other things, Respondent was not caught stealing the computer.

Clearly, though, Respondent has committed misconduct in office or has misused institutional privileges. Given Petitioner's disciplinary guidelines, which cover unauthorized use of School Board property, the distinction between the two offenses is unimportant. Both offenses fall under statutory misconduct, so Petitioner must also prove that Respondent's actions were so serious as to impair his effectiveness in the school system. Probably, misconduct in office generally describes Respondent's actions better than use of institutional privileges for gain or advantage.

32. This case presents the reverse of a more common situation, in which an educator has not committed any offense, but major segments of the relevant communities, aware of the charges, have formed adverse opinions so as to make it more difficult for the educator to continue to serve as an effective employee of his or her school board. Here, there is little evidence of loss of effectiveness, partly due to a lack of knowledge of Respondent's misconduct. However, loss of effectiveness arises from the obvious knowledge of a few persons within the District, including of course the Superintendent, of a clear act of misconduct.

33. For the reasons set forth in the Findings of Fact, the appropriate discipline in this case is a ten-day suspension

without pay and not a ten-day suspension without pay and a demotion.

RECOMMENDATION

It is

RECOMMENDED that the Broward County School Board enter a final order finding Respondent guilty of misconduct in office and imposing a ten-day suspension without pay.

DONE AND ENTERED this 2nd day of July, 2002, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2002.

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 must be filed with the agency that will issue the final order in this case.