

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL)
BOARD,)
)
Petitioner,)
)
vs.) Case No. 03-0187
)
CARLEEN BRADDY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on March 13, 2003.

APPEARANCES

For Petitioner: Denise Wallace
Legal Department
Miami-Dade County School Board
1452 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: no appearance

STATEMENT OF THE ISSUES

The issue is whether Respondent is guilty of willful absence from duty, in violation of Section 1012.67, Florida Statutes; willful neglect of duty, in violation of Sections 447.209, 1012.22(1)(f), and 1012.40, Florida Statutes; gross insubordination, in violation of Sections 447.209,

1012.22(1)(f), and 1012.40, Florida Statutes; and incompetence, in violation of Sections 447.209, 1012.22(1)(f), and 1012.40, Florida Statutes.

PRELIMINARY STATEMENT

By Notice of Specific Charges filed February 20, 2003, Petitioner alleged that Respondent was employed as a part-time cafeteria worker at Ludlam Elementary School for the 2001-02 school year. Petitioner alleged that, by January 24, 2002, Respondent had been absent for 16 days. After receiving an order from the principal to communicate in advance and document future absences, Respondent allegedly failed to report to work or call in several more times. After a conference-for-the-record with the principal, who warned that continued failure to comply with her order would be gross insubordination, Respondent allegedly failed to report to work or call in several more times. Petitioner alleged that Respondent never eliminated her pattern of excessive absenteeism and failing to advise the school on days that she would not be coming to work.

At the hearing, Petitioner called two witnesses and offered into evidence six exhibits, which were all admitted. Petitioner did not order a transcript.

FINDINGS OF FACT

1. During the 2001-02 school year, Petitioner employed Respondent as a part-time cafeteria worker at Ludlam Elementary

School. Except for the manager, all food workers at the school are part-time employees. The absence of any of these workers, especially without notice on the morning of the nonappearance, places a considerable burden on the other cafeteria workers and jeopardizes the provision of what may be the first meal of the day for many students.

2. By January 24, 2002, Respondent had been absent 16 days, including the four consecutive days preceding Christmas vacation, four of five days in mid-January, and January 22-24, 2002. Responding to this problem, the school principal sent Respondent a memorandum dated January 24 and ordering her to notify the principal of when Respondent intended to return to work and use leave procedures in the future. On the same date, the principal sent another memorandum to Respondent ordering her to communicate directly to the principal when Respondent intended to be absent and document future absences with medical excuses. Respondent signed this memorandum, indicating receipt.

3. On Sunday, January 27, 2002, Respondent telephoned the principal and told her that Respondent would be returning to work the following day. The next day, when Respondent appeared at work, the principal talked to her about Respondent's professional responsibilities and offered to refer her to the Employee Assistance Program for help with a problem with alcohol

that Respondent said that she had. Respondent declined the offer and said she would follow the principal's orders.

4. The next day, Respondent arrived to work late. The following day, Respondent did not report to work or call in to notify the school of her absence. The two succeeding days, Respondent did not report to work, but she called the principal to say that she was in the hospital. However, on the last day of the week, Respondent did not report to work and did not call in.

5. On February 11, 2002, the principal conducted a conference-for-the-record (CFR) with Respondent. Respondent said that she had been a recovering alcoholic for 15 years and had been encountering problems with alcohol since October. The principal again offered a referral to the Employee Assistance Program, but Respondent said that she was already in counseling. The principal warned Respondent that further noncompliance with her order would be gross insubordination.

6. On February 19 and 20, 2002, Respondent was again absent and again failed to notify anyone at school of her absence. On the next day, the principal sent another warning memorandum to Respondent.

7. On February 26 and March 11, 2002, Respondent again missed work and again failed to call anyone at the school. Respondent never provided medical documentation for these

absences. Also, on March 5 and 8, 2002, Respondent was tardy without calling in to say that she would be late.

8. On March 11, Respondent also failed to attend an appointment that the principal had scheduled for her with the Employee Assistance Program. Respondent told the principal that she would reschedule the appointment, but later failed to appear at this appointment.

9. On September 20, 2002, the district office conducted a CFR. Out of 18 workdays in the new 2002-03 school year, Respondent had already missed four. For the prior school year, Respondent had been absent 47 times and late 11 times. Of the 47 absences, Respondent never called the principal 23 times and never even called the school 11 times. Respondent at first claimed that she had only been absence once that school year, but later admitted to four absences. She then explained that two of the absences were due to a job interview and an accident at the train station.

10. On January 16, 2003, Petitioner advised Respondent that it had suspended her and initiated dismissal proceedings for the reasons set forth above.

11. Petitioner has proved that Respondent is guilty of willful absence from duty without leave by repeated absences without leave and without notification on the day of the absence; willful neglect of duty by repeated absences, repeated

failures to advise the school of absences, and repeated failures to provide medical documentation for absences; gross insubordination for the repeated disregard of the principal's order to call in before absences and document absences; and incompetence for the failure to perform her job duties adequately.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

13. Section 1012.67 provides: "Any district school board employee who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his or her employment shall be subject to termination by the district school board."

14. Section 1012.33(1)(a) authorizes Petitioner to terminate the contract of any employee for "just cause," which includes incompetency, gross insubordination, and willful neglect of duty."

15. Petitioner has the burden of proving the material facts by a preponderance of the evidence. Dilleo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

16. Petitioner has proved that Respondent is guilty of willful absence from duty without leave, willful neglect of duty, gross insubordination, and incompetency.

RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order dismissing Respondent from employment.

DONE AND ENTERED this 14th day of March, 2003, 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 14th day of March, 2003.

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.