

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 08-2720
)
 REBECCA WILLARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 5, 2008, in Sarasota, Florida, before Carolyn S. Holifield, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Hunter, W. Carroll, Esquire
Matthews, Eastmoore, Hardy,
Crauwels & Garcia, P.A.
1777 Main Street, Suite 500
Sarasota, Florida 34236

For Respondent: Rebecca Willard, pro se
Post Office Box 602
Nokomis, Florida 34274

STATEMENT OF THE ISSUE

Whether Petitioner, Sarasota County School Board ("School Board"), has just cause to terminate Respondent, Rebecca Willard's (Respondent), employment as a teacher's aide.

PRELIMINARY STATEMENT

By letter dated May 1, 2008, Respondent was notified that the Superintendent of the Sarasota County School District (School District) was recommending to the School Board that she be terminated from her position as a teacher's aide in the School District for job abandonment. Respondent challenged the proposed termination and requested a formal hearing.

The matter was forwarded to the Division of Administrative Hearings on June 9, 2008, for assignment of an Administrative Law Judge to conduct the hearing and prepare a Recommended Order. The matter was set for hearing and the proceeding followed.

At hearing, the School Board presented the testimony of three witnesses: Daniel Parrett, principal of Oak Park School; Carol Perkins, an employee at Oak Park School; and Anna Mulligan, an administrative assistant at Oak Park School. The School Board's Exhibits 1 through 5 were admitted into evidence. Respondent testified in her own behalf and offered no exhibits into evidence.

A Transcript of the proceeding was filed on August 21, 2008. Petitioner filed a Proposed Recommended Order on August 25, 2008, which has been considered in preparation of this Recommended Order. Respondent did not file a Proposed Recommended Order or other post post-hearing submittal.

FINDINGS OF FACT

1. Respondent was a teacher's aide at the Oak Park School in Sarasota, which is operated by the School Board. Oak Park School serves students with a broad range of special needs.

2. During the 2007-2008 school year, Respondent was a teacher's aide in a classroom of six autistic children. The disabilities of these children included aggressive and non-verbal children, as well as a child who would run away if not constantly supervised.

3. That classroom was led by one teacher and two aides, including Respondent. That staffing level was necessary for that classroom to ensure the safety of the children.

4. Respondent has a history of excessive absenteeism, which she acknowledged. During the 2007-2008 school year, Oak Park School principal Dan Parrett counseled her informally, and later formally in a noticed meeting, for her excessive absenteeism and reminded her of the critical need for her to be present or inform administration of her absence in sufficient time so that substitute coverage could be arranged.

5. Oak Park School maintained a designated answering machine that staff would use to call in and notify the school of an impending absence, if an employee had not previously notified administration of the absence. For instance, if an employee became ill during the night prior to work, that employee would

call the answering machine and advise that he or she was ill and would not be at work. Oak Park School personnel reviewed the messages on the designated answering machine at the beginning of each morning (7:00 a.m.) and would arrange for substitutes for those individuals who left messages that they would be absent.

6. Oak Park School personnel have a difficult time arranging for a substitute if they first learn of an absence later in the morning due to a lack of available substitutes.

7. At all times material to this case, Respondent was aware of the answering machine and the need to inform the Oak Park School administration of any upcoming absence.

8. Respondent failed to report to work at Oak Park School on Monday, April 28, 2008; Tuesday, April 29, 2008; Wednesday, April 30, 2008; and Thursday, May 1, 2008.

9. Respondent did not, nor did anyone on her behalf, notify anyone at Oak Park School or anyone with the School Board prior to these absences that she would not be reporting to work on these dates.

10. Respondent did not, nor did anyone on her behalf, leave a message on the answering machine at Oak Park School at anytime from the end of the school day on Friday, April 25, 2008, through the afternoon of Thursday, May 1, 2008.

11. On May 1, 2008, the fourth consecutive day that Respondent was absent from work without notifying anyone of her

absence, the Superintendent recommended Respondent's termination for job abandonment.

12. Respondent testified that the reason she did not report to work the week of April 28, 2008, or leave a message on the answering machine was that she suffered from back spasms and her phone was inoperable. Respondent, however, failed to produce any document or witness to corroborate her statements.

13. Notwithstanding her contention that she could not report to work at Oak Park School on April 28, 2008, or call to advise of her absence, she worked at her second job on Sunday, April 27 and, Monday, April 28, 2008. The undisputed evidence established that Respondent worked at Nokomis Publix on both Sunday, April 27, 2008 (during the afternoon and evening for 8.52 hours), and Monday April 28, 2008 (during the evening for 3.95 hours), which provided her access to a telephone and an opportunity to notify Oak Park School of her absence. Publix's time records for Respondent demonstrate that she was afforded breaks both of those dates and she easily could have made a telephone call and left a message on the Oak Park School answering machine.

14. Because Respondent worked at Publix on Monday evening, April 28, 2008, the assertion that she was suffering from severe back spasms that day and the following days, which precluded her from working at Oak Park School that day is not credible.

15. On April 27 and 28, 2008, Respondent was able to drive to her job at Publix.

16. Respondent conceded that she had an operable motor vehicle the week of April 28, 2008. However, Respondent testified that she was unable to walk down the steps of her apartment or house and drive to the location where she could notify Oak Park School personnel that she would be absent. This testimony is not credible. Contrary to her testimony, Respondent could have notified personnel at Oak Park School, either in person or by telephone prior to her absences, but she did not.

17. Respondent was willfully absent from her teacher's aide position at Oak Park School from April 28, 2008, through and including May 2, 2008. Contrary to her testimony, Respondent could have notified personnel at Oak Park School, either in person or by telephone prior to her absences, but she did not.

18. Respondent voluntarily abandoned her job with the School Board and has no legitimate excuse for her absences.

19. Respondent never requested any type of leave of absence (such as, family medical leave) associated with her absences for the week of April 28, 2008, either before or after that week.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57, and 1012.33(6), Fla. Stat. (2008).

21. As a teacher's aide, Respondent is an "educational support employee" as defined by Subsection 1012.40(1)(a), Florida Statutes (2007).^{1/}

22. The superintendent of the School District has the authority to recommend to the School Board that any school employee be suspended and/or dismissed from employment. § 1012.27(5).

23. The School Board has the authority to terminate and/or suspend, without pay and benefits, any school employee, including educational support employees. §§ 1001.42(5)(a), 1012.22(1)(f), and 1012.40(2)(c).

24. Section 1012.67 authorizes the School Board to discharge any School Board employee who is willfully absent from duty. That section provides:

Absence without leave.--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.

This is the same version of the statute that was in effect at the time the School Board entered into the current Collective Bargaining Agreement relating to classified employees, such as Respondent.

25. Pursuant to Section 1012.67, the School Board has the authority to discharge any employee who is willingly absent from work without leave.

26. An educational support employee who has successfully completed the required and applicable probationary period can be terminated only for the reasons set forth in the Collective Bargaining Agreement, which governs these employees.

§ 1012.40(2)(b).

27. According to the applicable Collective Bargaining Agreement, the School Board may exercise any right it has that is consistent with the law and the Collective Bargaining Agreement on matters, including the "discharge . . . [of] any employees of the Board . . . for cause and to relieve such employees from duty because of lack of work or for other legitimate reasons."

28. The Collective Bargaining Agreement provides that support employees can be terminated only for "just cause," although it does not define that term. See Article XXI, A.1. of the Collective Bargaining Agreement.

29. The School Board has the burden of establishing just cause to terminate Respondent by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990); see also § 120.57(1)(j), Fla. Stat. (2008).

30. The School Board has met its burden in this case and has established by a preponderance of the evidence that it has "just cause" to terminate Respondent's employment.

31. The evidence established that Respondent was absent from work four consecutive days and failed to call her assigned school to notify appropriate school personnel that she would be absent.

32. The evidence established and Respondent admits that she was absent without notifying school officials. Respondent contends that due to her medical situation, she was unable to call the school. This contention is unpersuasive in light of undisputed evidence that during that time period, Respondent was working at another job during the evening. Respondent offered no evidence to support this assertion.

33. Respondent's willful absence from her job duties for four days constitutes job abandonment, which is "just cause" to terminate her employment as a teacher's aide with the School District.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that Petitioner, Sarasota County School Board, enter a final order that dismisses Respondent, Rebecca Willard, from her position as a teacher's aide.

DONE AND ENTERED this 30th day of September, 2008, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2008.

ENDNOTE

1/ All references are to 2007 Florida Statutes, unless otherwise indicated.

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 should be filed with the agency that will issue the Final Order in this case.