

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 08-5085
)
VALARIE STRAWDER,)
)
 Respondent.)

)

RECOMMENDED ORDER

On January 15, 2009, a formal administrative hearing was conducted in Fort Myers, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966

For Respondent: Robert J. Coleman, Esquire
Coleman & Coleman
Post Office Box 2089
Fort Myers, Florida 33902-2089

STATEMENT OF THE ISSUES

The issues are whether the allegations of the Petition for Termination of Employment are correct, and, if so, whether the Lee County School Board (Petitioner) has just cause for terminating the employment of Valarie Strawder (Respondent).

PRELIMINARY STATEMENT

By Petition for Termination of Employment (Petition) dated September 11, 2008, the Petitioner alleged that the Respondent was involved in a physical altercation with a student in the school cafeteria where the Respondent worked and that the Respondent committed battery by striking the student during the incident. The Petition alleged that the incident constituted misconduct in office under state law and a violation of various school board policies and indicated that the incident constituted "just cause" for termination of the Respondent's employment. The Respondent requested an administrative hearing. The Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the hearing.

At the hearing, the Petitioner presented the testimony of four witnesses and had Exhibits 1 through 13 admitted into evidence. The Respondent testified on her own behalf, presented the testimony of one witness, and had Exhibits 1 through 5 admitted into evidence.

A Transcript of the hearing was filed on February 11, 2009. On February 19, 2009, the Petitioner filed an unopposed Motion for Extension of Time to File Proposed Recommended Orders, which was granted by an Order entered on February 20, 2009. Both parties filed Proposed Recommended Orders on March 19, 2009,

that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was employed by the Petitioner as a food service worker at Riverdale High School.

2. On May 16, 2008, the Respondent became involved in an altercation with a 15-year-old male student ("J.T.") enrolled in the Riverdale Middle School. At the time of the incident, the middle school and high school were co-located on the same campus.

3. For several years prior to the altercation, the Respondent had been the girlfriend of the student's father. According to the uncontroverted testimony of the Respondent, the situation became tense after the man fathered a child by another woman, but the Respondent remained involved with him.

4. The Respondent testified also without contradiction that for various reasons involving the other woman, her boyfriend's school-aged children did not like the Respondent and engaged in routine harassment of the Respondent.

5. There was evidence that both the Respondent and the children had complained about each other to school officials. J.T. was described by one of the school's teacher's as "mouthy."

6. The Respondent also testified as to physical damage that had occurred to her automobile, but the evidence was insufficient to attribute the cause of the damage to the children.

7. The Riverdale cafeteria was designed to separate the dining areas from the combined kitchen and food service areas ("kitchen"). Doors from the kitchen to the dining area were locked from inside the kitchen to prevent unauthorized entry by students. Food was served through openings between the dining and kitchen areas. The openings ("windows") could be securely covered by rolling metal shutters mounted above the windows.

8. At approximately 12:30 p.m., on May 16, 2008, J.T. was in the dining area and, through a window, was engaged in a conversation with Ludine Waters, a food service worker who was located in the kitchen.

9. The Respondent entered the dining area from the kitchen, walked to the open window, and pulled down the rolling metal shutter located above the window through which J.T. and Ms. Waters were talking.

10. The Respondent testified that she saw J.T. standing at the window, but was not aware that he was talking with Ms. Waters at the time the Respondent closed the window.

11. Immediately after the Respondent closed the window, J.T. spoke to the Respondent and called her a "rude bitch" and a "bald-headed bitch."

12. As the Respondent re-entered the kitchen through the secured doors, she replied "your mammy" to the student, apparently intending to convey a derogatory remark about J.T.'s mother.

13. After the Respondent re-entered the kitchen, J.T. threw a beverage bottle through a window that remained open between the dining area and the kitchen.

14. The Respondent then observed J.T. taking off his coat and stating that he would "beat her ass," indicating to the Respondent that J.T. was preparing to fight with her.

15. The Respondent testified that she said to J.T., "if you think you can beat me, bring it."

16. The Respondent also testified at the hearing that she believed that J.T. was "just playing," but the Respondent's subsequent interaction with J.T. does not support the Respondent's testimony.

17. After the Respondent told J.T. to "bring it," J.T. proceeded towards the door into the kitchen and so did the Respondent. At the time both arrived at the door, it opened and the two began to fight.

18. The evidence fails to establish who opened the door, but given that the door locks were designed to prevent students entering from the dining area, it is reasonable to presume that the door was opened from inside the kitchen.

19. The physical altercation between the Respondent and J.T. was brief. Both the Respondent and the student struck and hit each other, and the student pulled off the Respondent's wig.

20. The Respondent and J.T. were separated by a physical education teacher who was in the cafeteria at the time of the incident and who, upon observing the commotion, rapidly moved to quell the disturbance by pulling the student away from the Respondent.

21. The Respondent has asserted that she was acting in self-defense at the time of the altercation, but the evidence fails to support the assertion. In addition to the doorway where the altercation occurred, the kitchen had a second exit that connected to a staff dining room towards the rear of the kitchen. The Respondent made no effort to go to the staff dining room where she could have avoided further interaction with J.T. Additionally, there was a telephone in the staff dining room and another telephone in the cafeteria manager's office. The Respondent made no effort to call for assistance or security prior to engaging in the fight with the student.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

23. The Petitioner has the burden of establishing the facts of the case by a preponderance of the evidence sufficient to warrant termination of the Respondent's employment. 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). Because the statute and rules providing grounds for terminating Respondent's employment are penal in nature, they must be construed in favor of the employee. Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977). In this case, the burden has been met.

24. As a food service worker, the Respondent is an "educational support employee," and termination of her employment is governed by the applicable collective bargaining agreement (CBA). § 1012.40, Fla. Stat. (2008).

25. Section 7.10 of the CBA provides that disciplinary actions related to educational support personnel shall be taken only for "just cause." The CBA does not provide a definition of the phrase "just cause."

26. In previous disciplinary proceedings under the CBA, the Petitioner has utilized the statutory definition applicable to instructional staff at Subsection 1012.33(1)(a), Florida Statutes (2008), which provides in relevant part as follows:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education:
immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

27. The Petition for Termination of Employment filed by the Petitioner against the Respondent alleges that the Respondent has committed a battery on a student, which constituted misconduct in office pursuant to Subsection 1012.33(6)(b), Florida Statutes (2008), as defined by Florida Administrative Code Rule 6B-4.009(3).

28. Florida Administrative Code Rule 6B-4.009(3), which provides a definition of misconduct in office applicable to disciplinary proceedings against instructional personnel, provides as follows:

Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

29. The Respondent's behavior constitutes misconduct in office sufficient to warrant termination of employment. Although the Code of Ethics and Principles of Professional Conduct are directed towards members of the teaching profession, such positions as teaching assistants and classroom paraprofessionals are included within the statutory definition of "educational support employees," as is the Respondent, and it is reasonable to consider such standards in the instant case to the extent that they are applicable.

30. Florida Administrative Code Rule 6B-1.006(3)(a) provides that the employee's "obligation to the student" requires that the employee make a "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." By engaging in a verbal and physical altercation with a student, the Respondent failed to protect the student's health or safety.

31. Florida Administrative Code Rule 6B-1.006(3)(g) requires an employee to make reasonable efforts to protect a student from harassment or discrimination. Here, the Respondent engaged in verbal hostilities with the son of her boyfriend, insulted the student's mother, responded to the student's threat to fight by inviting the student to "bring it," and then met the angry student at the door, apparently ready to engage in battle. The evidence clearly establishes that the Respondent failed to

make a reasonable effort to protect the student from harassment and, in fact, personally committed the harrassment.

32. The Petition for Termination further alleges that the Respondent violated School Board Policies 2.02, 4.09, 5.02, 5.29, and 7.13. The School Board Policies were not introduced into evidence at the hearing and were not incorporated into the Petition for Termination; accordingly, no conclusions have been made as to whether the Respondent's conduct violated any of the cited policies.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner enter a final order terminating the Respondent's employment as a food service worker.

DONE AND ENTERED this 13th day of April, 2009, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of April, 2009.

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.