

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WASHINGTON COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 09-1562
)
 STEPHANIE LEE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A final hearing was conducted in this case on May 18 and 19, 2009, in Chipley, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James J. Dean, Esquire
Messer, Caparello & Self, P.A.
2618 Centennial Place
Post Office Box 1876
Tallahassee, Florida 32308

For Respondent: Dawn Pompey Whitehurst, Esquire
Knowles & Randolph, P.A.
3065 Highland Oaks Terrace
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues are whether Petitioner has cause to discipline Respondent, and if so, whether Respondent's employment should be terminated.

PRELIMINARY STATEMENT

In a letter dated February 13, 2009, Sandra M. Cook, Ph.D., Superintendent of Washington County School District (the "District") advised Respondent Stephanie Lee (Respondent) that she was suspended with pay. According to the letter, Dr. Cook suspended Respondent based on allegations that Respondent struck a supervised employee with a cardboard tube and threw the employee's shoes out the door. The letter also stated that Dr. Cook intended to recommend the termination of Respondent's employment at the next regularly scheduled meeting of Petitioner Washington County School Board (Petitioner) on March 9, 2009.

In a letter dated February 19, 2009, Respondent requested an administrative hearing.

In a letter dated March 18, 2009, Dr. Cook advised Respondent that Petitioner would hold a special meeting on March 19, 2009. The purpose of the meeting was to determine whether Petitioner would hear Respondent's case or refer the matter to the Division of Administrative Hearings.

The March 18, 2009, letter also advised Respondent of additional charges against her. The charges included Respondent's alleged comments and statements to employees under her supervision that created an intimidating and abusive work environment.

On March 25, 2009, Petitioner referred the case to the Division of Administrative Hearings. The referral included a Notice of Charges, alleging the following specific violations of Petitioner's Rule 6.37: (a) Inappropriate method of discipline; (b) Incompetence; (c) Using position for personal gain; (d) Harassment or discrimination which interferes with an individual's performance of professional or work responsibilities or which creates a hostile, intimidating, abusive, offensive or oppressive environment; (e) Inappropriate interaction with colleagues including, but not limited to physical or verbal altercation; (f) Misconduct or misconduct in office; (g) Unauthorized use of School Board property; and (h) Failure to comply with School Board policy, state law or appropriate contractual agreement.

On March 31, 2009, the parties filed a Joint Request for Extension of Time to Respond to Initial Order. An Order Granting Extension of Time was issued that same day.

The parties filed a Joint Response to Initial Order on April 7, 2009. The undersigned issued a Notice of Hearing on April 9, 2009. Pursuant to the agreement of the parties, the final hearing was scheduled for May 18 and 19, 2009.

During the hearing, Petitioner presented the testimony of nine witnesses. Petitioner offered the following exhibits that were accepted as evidence: P1, P3-P20, and P25-P29.

Respondent testified on her own behalf and presented the testimony of two additional witnesses. Respondent offered three exhibits, R1-R3, that were accepted as evidence.

The Transcript was filed on June 10, 2009. Petitioner filed an Unopposed Request for Extension of Time to File Proposed Recommended Orders on June 16, 2009. The undersigned issued an Order Granting Extension of Time that same day.

The parties filed Proposed Recommended Orders on June 29, 2009.

FINDINGS OF FACT

1. At all times material, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Washington County, Florida.

2. Respondent began working as a food service worker for Petitioner in 1998. In February 2009, Petitioner employed Respondent as Manager of Food Services at the Chipley High/Roulhac Middle School Cafeteria (the "Cafeteria"). Respondent received good performance evaluations throughout her tenure. Petitioner never had cause to discipline Respondent.

3. In her capacity as manager, Respondent supervised several food service workers at the Cafeteria. These included, among others: Becky Brock, cashier and cook; Florence Harmon, cook; Louise Pettis, cook; and Evelyn Harmon, cook. Respondent was the only manager at the Cafeteria.

4. Petitioner has a contract with an outside vender, Chartwell Food Service Management Company (Chartwell), to provide management oversight for food service operations at Petitioner's school cafeterias. In February of 2009, Chartwell's on-site manager for the District was Jim Boylen.

5. Every five years, the Florida Department of Education (DOE) conducts a Coordinated Review Effort (CRE) Audit of selected school cafeterias.

6. When Bill Lee became Petitioner's Director of Food Services in October 2008, he learned that there would be a CRE Audit in February of 2009. Mr. Lee knew that DOE would audit two schools in the District. He also knew DOE would not disclose the identity of the schools until February 2, 2009.

7. The CRE Audit is a very important audit. It is designed to assure the integrity of the federally-funded child nutrition programs operated by school districts. The CRE Audit can affect the District's entire national school lunch operations.

8. As the February 2, 2009, date approached, Mr. Boylen and Mr. Lee were eager to learn which two schools DOE intended to audit. It was Mr. Boylen's responsibility to make sure that the specific schools were ready for the audit. Thus, Mr. Boylen asked Mr. Lee a couple of times on February 2, 2009, whether DOE had identified the schools.

9. Mr. Lee received an email on February 2, 2009, at 4:11 p.m., that the Cafeteria was one of the two school cafeterias selected for the CRE Audit. Mr. Lee notified Mr. Boylen that same day of the Cafeteria's selection.

10. Earlier on February 2, 2009, Mr. Boylen met with Respondent and her staff to discuss their production sheets. Mr. Boylen identified some deficiencies with the quality of the forms that the staff used.

11. While Mr. Boylen was addressing Ms. Brock, Respondent looked directly at Ms. Brock and made a gesture with her hand while pointing at her head. Ms. Brock understood Respondent's hand gesture to mean that Ms. Brock was stupid. Respondent's hand gesture embarrassed Ms. Brock.

12. Later on February 2, 2009, Respondent asked Ms. Brock to give her a ride home from work. When Ms. Brock refused because her husband was sick, Respondent told Ms. Brock to "go home to [her] cry-baby husband."

13. On February 3, 2009, Mr. Boylen notified Respondent that DOE had selected the Cafeteria for the CRE Audit. Respondent was not happy about the selection because DOE had selected the Cafeteria for a previous audit. Respondent felt it was unfair that her lunchroom would be subjected to another audit for the 2008/2009 school term.

14. The CRE Audit is stressful for cafeteria managers because the audit includes a live observation component. During the observation, the auditors observe cafeteria cashiers to determine whether they are properly following collection procedures. The collection process is the least controlled component of the audit. If a cashier makes a mistake during the live-observation, the mistake cannot be fixed.

15. During the afternoon of February 3, 2009, Respondent's staff was cleaning the kitchen in preparation for the audit. When Respondent moved a rolling cart, she saw a pair of Ms. Brock's shoes under the cart, along with a hard, heavy-duty cardboard tube.

16. The cardboard tube was from an industrial-size roll of Saran Wrap. The cardboard edge of the tube is about a quarter of-an-inch thick, and the opening of the tube is two and one-half inches in diameter. The cardboard tube itself is about 18 inches long.

17. Respondent grabbed the cardboard tube and approached Ms. Brock, who was putting away food. Ms. Brock did not see Respondent approach her, but she heard Respondent talking about a big inspection coming up. Ms. Brock heard Respondent say that "there needed to be some housecleaning starting with [Ms. Brock]."

18. Respondent had the cardboard tube in her right hand. Without any warning, Respondent stopped behind Ms. Brock, drew back, and hit her hard on her hip/buttocks area with the cardboard tube. Ms. Brock had not said anything to provoke Respondent.

19. When Respondent hit Ms. Brock, there was a loud pop. At first Ms. Brock was shocked, asking her co-workers what she had done. Then with a red face and tears coming down her face, Ms. Brock told Ms. Pettis how much it hurt. Ms. Brock's hip/buttock area immediately began to burn, turn red, and become a whelp with the skin raised up from swelling.

20. After Respondent hit Ms. Brock with the cardboard tube, Respondent told Ms. Brock that Respondent was going to throw Ms. Brock's shoes in the garbage. Ms. Brock responded to Respondent, saying, "Please don't." Respondent then opened the door and threw Ms. Brock's shoes out the door of the Cafeteria.

21. Ms. Brock was very embarrassed to have been hit in front of her co-workers. Although shy and very embarrassed, Ms. Brock showed the mark to Ms. Florence Harmon, Ms. Pettis, and Ms. Evelyn Harmon. Ms. Pettis described a red streak that was as wide as the tube. Ms. Florence Harmon described a red mark and a good-sized whelp. Ms. Evelyn Harmon also saw the red mark and whelp.

22. Ms. Brock tried to show the red mark and whelp to Respondent. However, Respondent avoided Ms. Brock and would not look at the injury.

23. That evening, Ms. Brock looked in the mirror and saw the bruise. The following day, a bluish-green bruise was still on her hip.

24. These were not the only times that Respondent called Ms. Brock by demeaning and derogatory names and otherwise insulted her in the work environment. Respondent had a history of mistreating Ms. Brock, including calling Ms. Brock demeaning and derogatory names at work, like "dumb-dumb," "cry baby" and "whimp."

25. Ms. Brock always tried to be friends with Respondent and wanted Respondent to like her. Ms. Brock usually sat next to Respondent during lunch. Ms. Brock and Respondent would laugh and talk with the group. On one occasion after lunch, Ms. Brock and Respondent watched a DVD movie on Respondent's portable DVD player. On another occasion, Ms. Brock and Respondent met each other at Goodwill to shop. Nevertheless, Ms. Brock was fearful of Respondent.

26. After the incident on February 3, 2009, Respondent put the cardboard tube in her office. Later that day, Respondent called Ms. Brock into her office and asked Ms. Brock why she told Ms. Florence Harmon about the incident. Respondent then

threatened Ms. Brock, telling her that "if [she] did not behave that [Respondent] would give her some more of [the cardboard tube]."

27. The following day, Respondent threatened Ms. Brock again by asking Ms. Brock if she "wanted some more of what [Respondent] had given [her] yesterday." Ms. Brock saw the cardboard tube in Respondent's office on both of these days.

28. The day after the incident, Respondent also threatened to hit Ms. Florence Harmon with the cardboard tube. Respondent reached down under her desk, pulled out the cardboard tube, and told Ms. Harmon that she "was next." Ms. Harmon believed that Respondent was not joking or playing around when she made the threat.

29. Initially, Ms. Brock was afraid to report the incident. Ms. Brock had witnessed Respondent retaliate against other employees who had made complaints about Respondent. Ms. Brock feared that Respondent would retaliate against her if Ms. Brock reported the incident.

30. As time passed, Respondent continued to mistreat Ms. Brock by deliberately ignoring her and avoiding her. Respondent wouldn't talk to Ms. Brock. Ms. Brock eventually decided to report the incident.

31. On February 9, 2009, Ms. Brock called Dr. Cook to report the incident. Dr. Cook told Ms. Brock that Ms. Brock

would need to put her complaint in writing. Ms. Brock replied that she was afraid to go to the District's office to deliver her written complaint, because she feared that Respondent might find out and retaliate against her. Therefore, Dr. Cook told Ms. Brock that she could mail her complaint to Dr. Cook's home address.

32. Ms. Brock typed a letter to Dr. Cook, outlining the facts and circumstances. Ms. Brock mailed the letter on February 10, 2009.

33. When Dr. Cook received Ms. Brock's letter on February 11, 2009, she asked Deputy Superintendent Jayne Peel and Mr. Lee to investigate the matter. Dr. Cook believed that having two members of the District's staff listening to the employees and taking notes would ensure that the facts were accurately recorded.

34. Dr. Cook believed the matter was very serious, and she wanted it investigated the same day. Thus, Ms. Peel and Mr. Lee immediately went to the Cafeteria.

35. Mr. Lee and Ms. Peel first met with Respondent. They explained why they were there, and they asked Respondent to give her version of the incident. Respondent wrote out a statement in which she admitted that she "popped" Ms. Brock, but claimed she was just playing around and didn't mean to hurt her. Respondent wrote in her statement that Ms. Brock was "acting

like a baby" when the incident occurred. Respondent did not express any remorse over hitting Ms. Brock with the cardboard tube.

36. Ms. Peel and Mr. Lee then interviewed four other food service employees: Ms. Brock, Ms. Florence Harmon, Ms. Pettis, and Gladys Wagner. Among other things, these employees described how Respondent hit Ms. Brock with the cardboard tube and how the injury produced a red mark and whelp. They also related that Respondent's supervision of the Cafeteria created a hostile work environment.

37. Ms. Peel returned to the District's office on February 11, 2009. She reported the results of the investigation to Dr. Cook.

38. On February 13, 2009, Ms. Brock notified Dr. Cook that the cardboard tube was at the Cafeteria, if Dr. Cook needed it. Dr. Cook obtained the cardboard tube and placed it in a secure location.

39. The atmosphere in the Cafeteria changed on a day to day basis, depending on Respondent's mood. When Respondent was in a good mood, the work environment was friendly, even playful, as the staff joked around. On those days, the staff might pop each other with a dish cloth or brush at each other's feet with brooms.

40. When Respondent was not in a good mood, she was likely to call the staff, in addition to Ms. Brock, derogatory names. For instance, Respondent referred to another employee, Ms. Wagner, as "crippled" or "limpy" because Ms. Wagner had bad knees and walked with a limp.

41. Respondent also told Ms. Florence Harmon, on more than one occasion during the 2008/2009 school year, that Ms. Harmon "should have died when her husband died." Ms. Harmon's husband died five years ago.

42. Respondent would refer to herself at work as the "H-N-I-C," i.e., Head N_____ In Charge.

43. Both before and after the incident, Respondent would reprimand employees in front of their co-workers, teachers and students, including shouting at the employees. When employees requested time off or took time off, Respondent would ignore them and not speak to them. On one occasion, Respondent threatened to reassign Ms. Brock as punishment if Ms. Brock took time off.

44. Respondent sometimes used inappropriate punitive measures in response to employee performance issues. For instance, Respondent threatened to take Ms. Brock's stool away and make her stand when working as a cashier as punishment for accidentally missing a charge for a slice of pizza. Respondent did take Ms. Brock's stool away on at least one occasion.

45. Additionally, Respondent used the Cafeteria to cater a private function, for which she earned a profit. Petitioner did not request advance permission to use the facility for personal reasons in violation of Petitioner's policy. Respondent's testimony that she was not aware of Petitioner's policy regarding the use of school property for personal reasons, after seven years as Food Service Manager, is not credible.

46. Dr. Cook carefully considered the facts learned by Ms. Peel and Mr. Lee during their investigation. Even though the CRE Audit was scheduled for the following week, Dr. Cook decided to suspend Respondent with pay effective, February 12, 2009.

47. Ms. Peel and Mr. Boylen met with Respondent that afternoon and advised Respondent of Dr. Cook's decision. Ms. Peel also advised Respondent that she would have an opportunity for a pre-termination conference with Dr. Cook and that Respondent had the right to request a formal hearing on Dr. Cook's recommendation.

48. Petitioner subsequently gave Respondent written notice by letters dated February 13, 2009, regarding the following:

(a) Dr. Cook's recommendation, (b) the date of Respondent's pre-termination conference with Dr. Cook; (c) the date of Petitioner's meeting on March 9, 2009; and (d) Petitioner's right to request a formal hearing.

49. Superintendent Cook had a pre-termination conference with Respondent on February 19, 2009. At that time, Respondent gave her version of the events directly to Dr. Cook.

50. On February 23, 2009, Respondent provided Petitioner with a written request for a hearing.

51. In a letter dated March 18, 2009, Petitioner notified Respondent that Petitioner would meet on March 19, 2009, to decide whether it would conduct the hearing or refer the case to the Division of Administrative Hearings. The March 18, 2009, letter also advised Respondent that Petitioner would rely on additional information relating to inappropriate comments that Respondent allegedly made to employees to support Petitioner's decision to suspend Respondent without pay and terminate her employment.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

53. Petitioner has the burden of proving that it has cause to discipline Respondent and that Respondent's employment should be terminated. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2nd DCA 1996); Sublett v. Sumter County School Board, 644 So. 2d 1178, 1179 (Fla. 5th DCA 1995).

54. Section 1001.32(2), Florida Statutes (2008), gives district school boards authority to "operate, control, and supervise all free public schools in their respective districts . . . except as expressly prohibited by the State Constitution or general law."

55. Such authority extends to personnel matters and includes the power to suspend and dismiss employees. See §§ 1001.42(5), 1012.22(1)(f), 1012.23(1), Fla. Stat. (2008).

56. District school boards have authority to "adopt rules governing personnel matters." See § 1012.23(1), Fla. Stat. (2008).^{1/} Petitioner's Rule No. 6.35 sets forth grievance procedures for personnel. That rule does not place restrictions on Petitioner's ability to discipline employees for misconduct.

57. Complaints against employees must meet the requirements and follow the procedure set forth in Petitioner's Rule No. 6.36. Dr. Cook followed that procedure in this case.

58. Petitioner's Rule No. 6.37(7), entitled Suspension and Dismissal, states as follows in relevant part:

(7) Dismissal during the term of a contract of a staff member shall be for cause. Such dismissal shall include:

* * *

(d) For an employee holding an annual contract or its equivalent:
(i) Misconduct in office;
(ii) Incompetency;

* * *

(vi) Other actions which substantially impair the effectiveness of the employee.

(e) Other actions which substantially impair the effectiveness of any employee include but are not limited to the following:

* * *

(viii) . . . inappropriate method of discipline;

* * *

(xi) Using position for personal gain;

* * *

(xiii) Harassment or discrimination which interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive or oppressive environment;

* * *

(xvi) Inappropriate interactions with colleagues including, but not limited to physical or verbal altercation;

* * *

(xxii) Misconduct or misconduct in office;

(xxiii) Unauthorized use . . . of School Board property.

(xxiv) Failure to comply with School board policy, state law, or appropriate contractual agreement;

59. Respondent's action in striking Ms. Brock so hard as to cause her skin to whelp constitutes misconduct in office.

See Forehand v. School Board of Gulf County, 600 So. 2d 1187, 1191 (Fla. 1st DCA 1992) (Teacher's single act of striking a student with a candle "constitutes serious misconduct that impaired the teacher's effectiveness in the school system." Regardless of whether Respondent intended to cause bodily harm, she exhibited extremely poor judgment and incompetence when she hit Ms. Brock.

60. The preponderance of the evidence establishes that Respondent's behavior was so egregious and inexcusable as to substantially impair her effectiveness as Food Service Manager at the Cafeteria. Respondent's single act of battery against Ms. Brock is sufficient to conclude that Petitioner has just cause to discipline Respondent by terminating her employment.

RECOMMENDATION

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

RECOMMENDED:

That Petitioner enter a final order terminating Respondent's employment.

DONE AND ENTERED this 16th day of July, 2009, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of July, 2009.

ENDNOTE

^{1/} The record does not contain a copy of an applicable
collective bargaining agreement, if one exists.

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.