

FILED

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

2009 OCT 23 A 10:56

JAMES W. BROWDER, Ed.D.,)
SUPERINTENDENT OF SCHOOLS)
FOR LEE COUNTY,)

Petitioner,)

v.)

CHARLES BERGSTRESSER,)

Respondent.)

Case No. 09-0010
DOAH Case No. 09-2414

DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came to be heard on this the 20th day of October, 2009, before the School Board of Lee County, Florida, and said School Board finds as follows:

1. Charles Bergstresser ("Respondent"), is employed by The School Board as a Custodian at Lehigh Senior High School. Respondent is an "educational support employee," as defined by §1012.40(1)(a), Florida Statutes, and is governed by the collective bargaining agreement between the School Board and the Support Personnel Association of Lee County ("SPALC"). The standard for the discipline of support personnel is "just cause" pursuant to Article 7 of the SPALC Agreement. The Superintendent has authority to recommend dismissal of Respondent, and the School Board has authority to dismiss

Respondent from his employment. §§1012.27(5) and 1012.22(1)(f), Florida Statutes.

2. During the 2007-2008 school year, the Respondent was issued a letter of reprimand by the District's Director of Professional Standards and Equity, for making inappropriate and threatening comments, which included the use of inappropriate language towards co-workers.

3. On January 16, 2009, the Respondent was provided a written reprimand from Doug McKeever, Assistant Principal at Lehigh Senior High School, entitled "Inappropriate Behavior in the Workplace". The letter outlined concerns regarding the Respondent's failure to follow instructions, his interactions with school administration and other aggressive behavior. The Respondent was directed to complete his job performance directives in the timeframe specified and that his inappropriate and disrespectful comments towards others "will not be tolerated."

4. During the 2008-2009 school year the administration of Lehigh Senior High School along with the School District's Director of the Department of Professional Standards and Equity, the Staff Attorney and representatives of the Support Personnel

Association of Lee County met with the Respondent to address continuing concerns regarding his behavior on the job.

5. On or about March 4, 2009, the following incident was reported to the Department of Professional Standards and Equity:

6. A teacher heard the Respondent inform a co-worker that if he were to get fired, "I'm gonna kill McKeever (Doug McKeever, Assistant Principal) and Spiro (Jeff Spiro, Principal)."

7. When the teacher questioned the Respondent about his statement he repeated the above statement and added, "I will be the supervisor of buildings." The teacher and the Respondent then walked back into the maintenance room area and the Respondent stated, "If I get fired, they are gonna die and then I will sue the District, shut it down, until I become Superintendent."

8. In addition to the above incident, a fellow custodian of the Respondent informed the Department of Professional Standards and Equity that the Respondent harasses her daily. The custodian reported that the Respondent follows her to the restroom and often watches where she is going. He attempted to change her work schedule by removing it from the wall and attempted to change her lunch breaks and start time.

9. The Respondent repeatedly refused to follow directives and created a hostile work environment for others. The Respondent was counseled by school administration on numerous occasions which included a review of provision 7.13 of the SPALC Agreement which addresses workplace civility.

10. On March 4, 2009, the Respondent was suspended with pay and benefits pending the outcome of the District's investigation into the alleged misconduct.

11. In accordance with provision 7.10 of the SPALC Agreement, a predetermination conference for Respondent was held on March 23, 2009 where the Respondent was advised that the purpose of the conference was to give him an opportunity to respond to the allegations.

12. On March 24, 2009, the School District concluded its investigation and determined that probable cause existed to impose discipline on the Respondent and termination of his employment was recommended.

13. The School Board suspended the Respondent without pay pending the results of an administrative hearing on May 5, 2009.

14. The final hearing took place on July 17, 2009, before Administrative Law Judge R. Bruce McKibben.

15. The ALJ issued his Recommended Order on September 25, 2009.

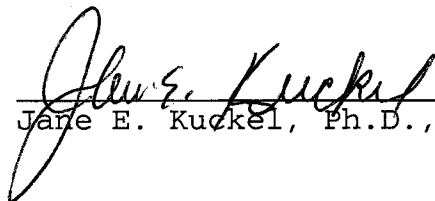
16. The ALJ found in his Recommended Order that the School Board established by a preponderance of the evidence that Respondent's actions were sufficiently egregious to warrant termination of his contract.

It is ORDERED as follows:

17. Respondent's employment with the School District of Lee County is terminated effective end of the day October 20, 2009.

18. This Order may be appealed to the District Court of Appeal of Florida, Second District, P.O. Box 327, 1005 E. Memorial Boulevard, Lakeland, Florida 33802, telephone number (863) 499-2290. The appeal must be filed within thirty (30) days of the date of this Order by filing a Notice of Appeal with the School Board and a second copy with the District Court of Appeals. For further information, contact Robert Dodig, Jr., Staff Attorney, 2855 Colonial Boulevard, Fort Myers, Florida 33966, telephone number (239) 335-1447.

ENTERED on this the 20th day of October 2009.



Jane E. Kuckel, Ph.D., Chairman

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Copies to:

Robert Dodig, Jr., Staff Attorney
Robert J. Coleman, Attorney for Respondent
Division of Administrative Hearings
Personnel File