

Petitioner for falsification of documentation and insubordination.

PRELIMINARY STATEMENT

On May 26, 2009, the Palm Beach County School Board (School Board) issued a Petition for Suspension without Pay and Dismissal from Employment (Petition) against Augustus Chappelle, a non-instructional employee, for falsification of documentation and insubordination. The Petition set forth allegations against Mr. Chappelle and asserted that just cause existed to suspend him for 15 days without pay and terminate his employment pursuant to Sections 1012.22(1)(f), 1012.27(5), and 1012.40, Florida Statutes; School Board Policies 1.013 and 3.27; and Article 3, Section C of the Collective Bargaining Agreement between the Association of Educational Sectaries and Office Professionals and the School Board. Mr. Chappelle challenged the action and requested a hearing. On May 28, 2009, this matter was referred to the Division of Administrative Hearings.

Based upon the School Board's response to the Amended Initial Order, to which Mr. Chappelle did not respond, this matter was scheduled for final hearing. The parties filed a joint request to re-schedule the hearing, which was granted, and the final hearing was re-scheduled.

At hearing, the School Board presented the testimony of four witnesses, which included Mr. Chappelle, and entered seven

exhibits (Petitioner's Exhibits numbered 4, 5, 19 (only page
bate stamped 56), 24, 26, 30, and 33) into evidence.

Mr. Chappelle testified in his own behalf and entered no
exhibits into evidence.

A transcript of the hearing was ordered. At the request of
the parties, the time for filing post-hearing submissions was
set for more than ten days following the filing of the
transcript. The Transcript, consisting of one volume, was filed
on March 9, 2010. Only the School Board filed a post-hearing
submission, which was timely filed and has been considered in
the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Chappelle has been employed with the School Board
since around August 2002. His supervisor was John Dierdorff.

2. At the time of the hearing, Mr. Chappelle had been a
communications technician with the School Board for
approximately five years.¹

3. No dispute exists that, at all times material hereto,
Mr. Chappelle was a non-instructional employee with the School
Board. Additionally, his supervisor for the entire time of his
employment in communications with the School Board was
Mr. Dierdorff.

4. Approximately one year after beginning his employment
with the School Board, Mr. Chappelle was having attendance

problems, i.e., absenteeism. Mr. Dierdorff attempted to assist Mr. Chappelle improve his attendance, but to no avail. At a point in time, Mr. Chappelle had exhausted all of his sick leave and had no available sick days. When Mr. Chappelle was absent due to illness, he was required to submit a doctor's excuse.

5. On December 17, 2007, Mr. Chappelle received a written reprimand for falsification of documentation from the School Board's Director of the Department of Employee Relations. He had submitted to Mr. Dierdorff a "fraudulent or false doctor's note that was purported to be from [his doctor]." Among other things, Mr. Chappelle was "directed to cease such conduct immediately" and "to desist from engaging in the same or similar conduct in the future" and was informed that his failure to do so would result in "further disciplinary action up to and including termination." Mr. Chappelle acknowledged receipt of the written reprimand by signing it on December 17, 2007.

6. The evidence demonstrates that the Director of the Department of Employee Relations had the authority to give Mr. Chappelle the directive. The evidence further demonstrates that the directive was reasonable in nature.

7. Regarding the written reprimand, at hearing, Mr. Chappelle admitted that he had falsified the doctor's note, submitted it to Mr. Dierdorff, and had received the written reprimand as disciplinary action. Moreover, Mr. Chappelle

admitted that he had self-reported the wrongful conduct to the School Board; the School Board had no knowledge that he had falsified the doctor's note. Mr. Chappelle further admitted that he engaged in the wrongful conduct because, at the time, he was suffering from health issues and having money problems, including no money to pay for a doctor's services, and his wife was having mental health issues.

8. Several months later, on or about September 29, 2008, Mr. Chappelle submitted a doctor's note to Mr. Dierdorff. Among other things, the note indicated that Mr. Chappelle was medically cleared for work starting September 29, 2008; and that he was not to work from September 17, 2008, through September 29, 2008.

9. Mr. Dierdorff believed that the doctor's note had been altered or falsified because the note had whiteout on it and the date of the note appeared to be "9/24/98," not "9/24/08." As a result, he referred the matter to the Department of Employee Relations for possible investigation.

10. Subsequently, Mr. Chappelle became the subject of an investigation by Employee Relations. The investigation was based upon the allegation that he had falsified the doctor's note and had acted in an insubordinate manner by engaging in the same or similar conduct for which he had been previously disciplined.

11. The doctor's note that was contained in the medical file at the physician's office was not the same as the doctor's note submitted to Mr. Dierdorff. Instead of indicating that Mr. Chappelle was medically cleared for work on September 29, 2008, the doctor's note in the medical file indicated September 25, 2008. Further, instead of indicating a period of time in which Mr. Chappelle was not to work, the doctor's note in the medical file was blank and, therefore, did not indicate a period of time. However, the doctor's note in the medical file did indicate that the date of the doctor's note was "9/24/08," the same as the doctor's note submitted to Mr. Dierdorff.

12. The evidence demonstrates that the doctor's note submitted to Mr. Dierdorff on or about September 29, 2008, was altered and falsified.

13. Mr. Chappelle denies that it was he who altered and falsified the doctor's note.

14. Mr. Dierdorff denies that he altered or falsified the doctor's note.

15. Mr. Chappelle does not deny that it was he who submitted the doctor's note to Mr. Dierdorff.

16. The evidence demonstrates that Mr. Chappelle altered and falsified the doctor's note that he submitted to Mr. Dierdorff on September 29, 2008.²

17. Mr. Chappelle's conduct on September 29, 2008, was the same as or similar to his previous conduct for which he was disciplined on December 17, 2007, by a written reprimand. Among other things, Mr. Chappelle was notified in the written reprimand that the same or similar conduct would result in further disciplinary action up to and including termination. The evidence demonstrates that Mr. Chappelle intentionally committed the same or similar conduct and intentionally failed to abide by the directive to no longer engage in such action.

18. By letter dated April 24, 2009, the Superintendent, Arthur C. Johnson, Ph.D., advised Mr. Chappelle, among other things, that sufficient just cause existed to impose disciplinary action pursuant to Sections 1012.22(1)(f) and 1012.27(5), Florida Statutes; School Board Policies 1.013 and 3.27; and Article 17, Section 6 of the Collective Bargaining Agreement between the Service Employees International Union, Florida Public Services Union, and the School Board. Further, Superintendent Johnson advised Mr. Chappelle that he (Superintendent Johnson) was recommending to the School Board, as discipline, suspension without pay and termination from employment. Mr. Chappelle acknowledged that he received the letter by signing and dating it on April 25, 2009.

19. Superintendent Johnson's recommendation was submitted to the School Board. The School Board agreed with the recommendation.

20. Mr. Chappelle timely requested an administrative hearing.

CONCLUSIONS OF LAW

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

22. Section 1012.40, Florida Statutes (2008), provides in pertinent part:

(1) As used in this section:

(a) "Educational support employee" means any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or district school board pursuant to s. 1012.39. This section does not apply to persons employed in confidential or management positions. This section applies to all employees who are not temporary or casual and whose duties require 20 or more hours in each normal working week.

(b) "Employee" means any person employed as an educational support employee.

(2)(a) Each educational support employee shall be employed on probationary status for a period to be determined through the appropriate collective bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.

(c) In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

There is no dispute that Mr. Chappelle is an educational support employee and is non-instructional.

23. The letter dated April 24, 2009, from Superintendent Johnson, notified Mr. Chappelle that, among other things, the suspension and termination were pursuant to Article 17, Section 6 of the Collective Bargaining Agreement between the Service

Employees International Union, Florida Public Services Union, and the School Board. However, the Petition cites to Article 3, Section C of the Collective Bargaining Agreement between the Association of Educational Secretaries and Office Professionals, and the School Board. At hearing, only Article 17, Sections 1 through 8, of the Collective Bargaining Agreement was entered into evidence as an exhibit, not Article 3, Section C of the Collective Bargaining Agreement.³ Furthermore, neither the exhibit nor testimony referred to the specific union, and, therefore, this Administrative Law Judge concludes that the union is the union that is referred to in the Petition. Consequently, this Administrative Law Judge concludes that the applicable article and collective bargaining agreement referred to in Superintendent Johnson's letter dated April 24, 2009, i.e., Article 17 of the Collective Bargaining Agreement between the Service Employees International Union, Florida Public Services Union, and the School Board is applicable in the instant case.

24. The Collective Bargaining Agreement between the Service Employees International Union, Florida Public Services Union, and the School Board (Agreement) at Article 17, titled "Discipline of Employees (Progressive Discipline)," provides in pertinent part:

1. Without the consent of the employee and the Union, disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence which supports the recommended disciplinary action.

2. All disciplinary action shall be governed by applicable statutes and provisions of the Agreement. . . .

* * *

5. Only previous disciplinary actions which are a part of the employee's personnel file or which are a matter of record as provided in paragraph #7 below may be cited if these previous actions are reasonably related to the existing charge.

6. Where just cause warrants such disciplinary action(s) and in keeping with provisions of this Article, an employee may be reprimanded verbally, reprimanded in writing, suspended without pay, or dismissed upon the recommendation of the immediate supervisor to the Superintendent and final action taken by the District. Other disciplinary action(s) may be taken with the mutual agreement of the parties.

7. Except in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable School Board rules and regulation, progressive discipline shall be administered as follows:

(A) Verbal Reprimand With A Written Notation. Such written notation shall be placed in the employee's personnel file and shall not be used to the further detriment of the employee, unless there is another reasonably related act by that same employee within a twenty-four (24) month period.

(B) Written Reprimand. A written reprimand may be issued to an employee when appropriate in keeping with provisions of this Article. . . .

(C) Suspension Without Pay. A suspension without pay by the School Board may be issued to an employee, when appropriate, in keeping with the provisions of this Article, including just cause and applicable laws. The length of the suspension also shall be determined by just cause as set forth in this Article. . . .

(D) An employee may be dismissed when appropriate in keeping with the provisions of this Article, including just cause and applicable laws.

25. The School Board has the burden of proof to show by clear and convincing evidence that Mr. Chappelle should be suspended for 15 days and terminated. See Agreement, Art. 17, § 1.

26. Upon the recommendation of the immediate supervisor to the Superintendent and final action taken by the School Board, an employee of the School Board may be disciplined where just cause warrants. See Agreement, Art. 17, § 6.

27. Section 1012.27, Florida Statutes (2008), provides in pertinent part:

The district school superintendent is responsible for directing the work of the personnel, subject to the requirements of this chapter, and in addition the district school superintendent shall perform the following:

* * *

(5) Suspension and dismissal. --Suspend members of the instructional staff and other school employees during emergencies for a period extending to and including the day of the next regular or special meeting of the district school board and notify the district school board immediately of such suspension. When authorized to do so, serve notice on the suspended member of the instructional staff of charges made against him or her and of the date of hearing. Recommend employees for dismissal under the terms prescribed herein.

The evidence fails to demonstrate that an emergency existed for the Superintendent to suspend or dismiss Mr. Chappelle without the School Board's approval and afterwards notify the School Board of the suspension or dismissal. The evidence demonstrates that the Superintendent recommended to the School Board the suspension of 15 days and dismissal to the School Board. Consequently, Section 1012.27(5), Florida Statutes (2008), is not applicable to the instant case.

28. Section 1012.22, Florida Statutes (2008), provides in pertinent part:

The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

* * *

(f) Suspension, dismissal, and return to annual contract status. --The district

school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

The School Board has the authority to suspend or dismiss Mr. Chappelle. See Agreement, Art. 17, § 6; § 1012.22(1)(f), Fla. Stat. (2008).

29. The evidence demonstrates that the Director of the Department of Employee Relations had the authority to give Mr. Chappelle the directive on December 17, 2007. The directive was to no longer engage in the same or similar conduct for which he (Mr. Chappelle) received the written reprimand for falsification of documentation, i.e., to no longer engage in the same or similar conduct of submitting to his (Mr. Chappelle's) supervisor a false or fraudulent doctor's note.

30. Also, the evidence demonstrates that the directive was reasonable in nature.

31. Further, the evidence demonstrates that, on September 29, 2008, Mr. Chappelle engaged in the same or similar conduct, i.e., submitted to his supervisor a false or fraudulent doctor's note.

32. Moreover, the evidence demonstrates that Mr. Chappelle's conduct on September 29, 2008, was intentional.

33. No document was presented by the parties in the instant case providing the definition of insubordination by the Agreement or School Board policy.

34. Insubordination has been characterized as "generally . . . persistent, willful or overt defiance of authority Inherent in a finding of insubordination, however, is a finding that the orders given were within the authority of the person giving them." McAllister v. Florida Career Service Commission, 383 So. 2d 940, 941 (Fla. 1st DCA 1980), citing Muldrow v. Board of Public Instruction of Duval County, 189 So. 2d 414, 415 (Fla. 1st DCA 1966).

35. The evidence demonstrates that Mr. Chappelle's conduct constituted insubordination.

36. Hence, the evidence demonstrates that the School Board established just cause to take disciplinary action against Mr. Chappelle.

37. The School Board alleges and argues that Mr. Chappelle violated reasonable School Board rules and regulations, citing specifically School Board Policies 1.013 and 3.27 in Superintendent Johnson's letter dated April 24, 2009, and in the Petition. However, no School Board policies, including School Board Policies 1.013 and 3.27, were entered into evidence; and neither was official recognition requested to be taken of School Board policies.⁴ Without the School Board Policies, this

Administrative Law Judge is unable to determine that the policies were violated.

38. Consequently, the School Board failed to establish that School Board policies were violated.

39. Further, by failing to establish a violation of School Board policies, the School Board failed to establish that the disciplinary steps in progression discipline should not be followed. See Agreement, Art. 17, § 7.

40. Hence, the evidence demonstrates that the School Board established just cause for the suspension of Mr. Chappelle for 15 days, but failed to establish just cause for his termination from employment. Further, the evidence demonstrates that Mr. Chappelle should be reinstated effective at the expiration of the suspension.

RECOMMENDATION

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

RECOMMENDED that the Palm Beach County School Board enter a final order suspending Augustus Chappelle for 15 days and reinstating him at the expiration of the suspension.

DONE AND ENTERED this 10th day of May 2010, in Tallahassee,
Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of May, 2010.

ENDNOTES

^{1/} The official title of his position was Tech Communications II, as set forth in the Petition.

^{2/} Mr. Chappelle self-reported the first "fraudulent or false" doctor's note to the School Board, which resulted in a written reprimand. He denies that he altered or falsified the doctor's note at issue. He does not deny that he submitted the altered or falsified doctor's note to his supervisor, Mr. Dierdorff. Mr. Chappelle was the only person who benefited from submitting the altered or false doctor's note. No other person has been asserted to have altered or falsified the doctor's note or benefited from such alteration or falsification.

^{3/} The School Board set forth in its post-hearing submission Article 3, Section C, which is substantially the same as Article 17, Section 7. Additionally, Article 3, Section 3 was included in the School Board's exhibits, but was not offered into evidence.

^{4/} School Board Policies 1.013 and 3.27 were included in the School Board's exhibits, but were not offered into evidence.

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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.