

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY SCHOOL BOARD,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )    Case No. 10-0266  
  )  
ROBERT JENNER,                            )  
  )  
      Respondent.                            )  
\_\_\_\_\_                                    )

RECOMMENDED ORDER

A final hearing was conducted in this case on March 3, 2010, in Tavares, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen W. Johnson, Esquire  
McLin & Burnsed, P.A.  
Post Office Box 491357  
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For Respondent: Thomas Doolan, Esquire  
Leigh Tucker, P.A.  
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STATEMENT OF THE ISSUE

The issue is whether Respondent's employment should be terminated by Petitioner.

PRELIMINARY STATEMENT

In a letter dated December 17, 2009, Susan Moxley, Ed.D., Superintendent of Lake County School District (the "District") advised Respondent, Robert Jenner (Respondent) that because he had not reported to his teaching position beginning December 2, 2009, and had not submitted a leave request, he was considered absent without approved leave in violation of School Board Policy 6.511. Dr. Moxley also stated in the letter that she intended to recommend the termination of Respondent's employment at the meeting of Petitioner Lake County School Board (School Board) scheduled on January 11, 2010.

In a letter dated January 11, 2010, Respondent requested an administrative hearing.

On or about January 19, 2010, the School Board referred the case to the Division of Administrative Hearings.

The undersigned entered a Notice of Hearing on January 28, 2010, scheduling the hearing for February 23, 2010. Pursuant to an ore tenus motion for continuance made during a telephonic motion hearing held on February 3, 2010, the final hearing was re-scheduled for March 3, 2010. The case was heard as scheduled.

At hearing, Petitioner presented the testimony of three witnesses: Gregory Smallridge, Linda Shepherd, and Laurie

Marshall. Petitioner offered Exhibits A through H which were admitted into evidence.

Respondent testified on his own behalf and presented the testimony of six other witnesses: Laurie Marshall, Gregory Smallridge, Tina Storr, Tina Rizzo, Gail Rager, and Sharon Gainesley. Respondent offered Exhibits A through K, which were admitted into evidence.

A two-volume Transcript was filed on March 18, 2010.

The parties timely filed Proposed Recommended Orders which were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

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

2. Respondent, Robert Jenner, began working as a technology education teacher for the School District in August 2004, and has held a professional services contract since 2007. Technology education is the current-day version of shop class or industrial arts.

3. At all times material to this proceeding, Respondent taught at Carver Middle School (Carver). Linda Shepherd is the principal and Greg Smallridge is the assistant principal of Carver.

4. While not a member of the local teachers' union, Mr. Jenner is an instructional employee and, therefore, a member of the collective bargaining unit between the School Board and the Lake County Education Association. Respondent is also subject to all School Board policies regarding instructional personnel.

5. All classrooms at Carver have a traditional classroom with a lab connected to it. Respondent's lab area contained several technology workstations for the students, and contained specialized equipment, e.g., a lathe and a robotic arm.

6. Typically, class would begin in the traditional classroom area, and then the class and Respondent would go into the lab area. Because of the configuration of the classroom and the lab, as well as the nature of the course, there were instances when Respondent could not see every student every minute of class.

7. During October and November 2009, three incidents occurred in Respondent's classroom involving a female student. These incidents involved inappropriate behavior, including behavior of a sexual nature with a male student. The female student received discipline for two of the three incidents ranging from an in-school suspension to an out-of-school suspension.

8. Two of the incidents were observed not by Respondent, but by a teacher who was teaching in an adjacent classroom. These incidents raised the issue of whether Respondent was adequately supervising his classroom.

9. Mr. Smallridge became aware of these issues and on November 23, 2009, he, Ms. Shepherd, and Respondent met and visited Respondent's classroom to discuss steps to correct the problems concerning supervision of students.

10. On November 30, 2009, a meeting took place which included Mr. Smallridge, Respondent, Dr. Maggie Teachout, and Dr. Teachout's assistant. The purpose of the meeting was for Dr. Teachout to visit Respondent's lab to make suggestions and recommendations as to ways in which supervision of the students could be improved in light of the configuration of the classroom and lab.<sup>1/</sup>

11. At some point, Mr. Smallridge determined that completing an Appraisal II for Respondent was the appropriate course of action. An Appraisal II takes place due to problems or concerns regarding a teacher that have arisen outside of an actual classroom observation. An Appraisal II is part of the Instructional Personnel Performance Appraisal System (IPPAS) for teachers, which is a policy adopted by the School Board. An Appraisal II notes deficiencies, places the teacher on notice

about these deficiencies, and gives direction to the teacher as to what steps should be taken to correct the deficiency.

12. On December 2, 2009, Ms. Shepherd, Mr. Smallridge, and Respondent met in Ms. Shepherd's office during Respondent's planning period for the purpose of completing the Appraisal II. During such a meeting, it is standard practice to complete the form during the course of the meeting. Mr. Smallridge had a blank Appraisal II form and intended to complete the form during the course of the meeting. However, during the meeting and before the Appraisal II form had been completed, Respondent stated that he would not sign the form. Mr. Smallridge informed Respondent that if he did not sign the form, it would be considered insubordination.

13. Blank signature lines appear at the bottom of the Appraisal II form for the signatures of the teacher and the person assessing the teacher. Underneath the blank for the teacher's signature appears the following: "Indicates receipt of appraisal and not necessarily agreement with the contents." Mr. Smallridge read this to Respondent, but Respondent still refused to sign the form and stated that he was going to quit.

14. Further, paragraph V (5) of the Appraisal II form provides a space for the teacher's response with the notation "Attach additional sheets if desired."

15. Ms. Shepherd and Mr. Smallridge asked Respondent to reconsider his announcement that he would quit. However, Respondent went back to his classroom, and collected his personal items. He returned to Ms. Shepherd's office, placed his keys on Ms. Shepherd's desk and left school. This was the last time Respondent worked at Carver.

16. While Respondent returned to Ms. Shepherd's office to turn in his keys, Ms. Shepherd spoke to Respondent again and said "Please, please don't do this." Despite this, Respondent left school during the school day. Ms. Shepherd instructed her secretary to call for a substitute. Ms. Shepherd stayed with Respondent's class until the substitute arrived so that the class would not be unattended.

17. At no time did Ms. Shepherd or Mr. Smallridge tell Respondent that he was terminated.

18. Respondent did not request leave prior to leaving school, or at any time thereafter.

19. Ms. Shepherd next saw Respondent on December 15, 2009, when he came to school on payday. She again asked him to reconsider his decision. He responded that he would let her know his decision that Thursday, but did not do so.

20. On December 16, 2009, Ms. Shepherd wrote a memorandum to Respondent which states as follows:

This letter is written to put you on notice that I am requesting the Superintendent to take your termination to the Board based on your absence without leave since December 2, 2009. This violates School Board Policy 6.511, Absence without Approved Leave.

I base this letter on the facts that on Wednesday, December 2, 2009 at 10:20am, we (Mr. Smallridge, you and I) were prepared to write an Appraisal II for the lack of supervision that occurred in your classroom on Wednesday, November 18, 2009. At that time, you stated that you were not going to sign the Appraisal II document and if we (Mr. Smallridge and I) were going to write you up for the incident that occurred in your classroom, you were handing in your keys.

I asked you to sign a resignation and you stated that people walk off the job everyday without signing a resignation. You handed in your keys and left campus approximately 12:15pm. You have not reported to work since that date.

21. On December 17, 2009, Superintendent Moxley sent a letter to Respondent informing him that he was considered absent without approved leave in violation of School Board Policy 6.511. The letter informed Respondent that she would be recommending his termination of employment to the School Board and gave him notice of his right to a hearing regarding his dismissal.

22. Respondent sent a letter to Dr. Moxley requesting a hearing on his termination, which gave rise to this proceeding.



23. At hearing, Respondent explained his reasons for not signing the Appraisal II: he refused to sign the Appraisal II because he did not want his name "besmirched"; he believes that the school administration has not adequately dealt with the female student's discipline regarding her inappropriate behavior in his class and felt he was somehow being made a scapegoat; he was concerned that there would be some type of criminal implications regarding the female student's behavior and, "if I signed that document, I would have been brought into it."

24. Prior to the events that transpired in November and December 2009, Respondent had received satisfactory evaluations in the area of classroom supervision.

#### CONCLUSIONS OF LAW

25. 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).

26. The superintendent of the School District has the authority to make recommendations for dismissal regarding school employees pursuant to Subsection 1012.27(5), Florida Statutes (2009).

27. The School Board has the authority to dismiss school board employees pursuant to Subsections 1001.42(5) and 1012.22(1)(f), Florida Statutes (2009).

28. The School Board has the burden of proof in this employee dismissal proceeding and must meet that burden by a preponderance of the evidence. 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).

29. District school boards have authority to "adopt rules governing personnel matters." See § 1012.23(1), Fla. Stat. (2009).

30. Petitioner's Rule No. 6.511, entitled "Absence without Leave", states as follows in relevant part:

(1) Administrative and instructional-  
Any member of the administrative or  
instructional staff who is willfully absent  
from duty without leave shall forfeit  
compensation for the time of the absence and  
the employee's contract shall be subject to  
cancellation by the School Board. . . .

31. This rule is consistent with Section 1012.67, Florida Statutes (2009), which states that any district employee who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his employment shall be subject to termination by the district school board.

32. The preponderance of the evidence establishes that Respondent was willfully absent from duty without leave in violation of School Board Rule 6.511. Respondent's subjective perception that he was being made a scapegoat or would somehow

be brought into a legal proceeding that did not exist does not justify walking out of school during a school day, leaving the school to find supervision for his students. Moreover, the Appraisal II form clearly indicates that a teacher's signature only signifies receipt, not agreement with its contents. Finally, the Appraisal II form provides space for a teacher to provide written reasons for disagreement.

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 30th day of April, 2010, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
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 April, 2010.

ENDNOTE

<sup>1/</sup> Dr. Teachout did not testify. The record is not clear as to Dr. Teachout's title or duties.

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.