

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,)
)
Petitioner,)
)
vs.) Case No. 10-1525
)
RICHARD RAHEY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge Eleanor M. Hunter of the Division of Administrative Hearings held a final hearing in this case, as previously scheduled, by video teleconference between sites in West Palm Beach and Tallahassee, on September 2, 2010.

APPEARANCES

For Petitioner: Corey M. Smith, Esquire
Palm Beach County School Board
3318 Forest Hill Boulevard, Suite C-302
West Palm Beach, Florida 33406

For Respondent: Richard Rahey, pro se
4339 Willow Pond Road, Unit B
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to suspend Respondent from work without pay and to terminate his employment.

PRELIMINARY STATEMENT

In a Notice of Suspension Without Pay and Recommendation for Termination From Employment dated February 12, 2010, the Superintendent of Schools for the School District of Palm Beach County notified Respondent Richard Rahey that he intended to recommend that the Palm Beach County School Board suspend him without pay from his position as a school monitor effective March 4, 2010, and to terminate his employment effective March 18, 2010, or, alternatively, following an administrative hearing if timely requested. The Superintendent based his recommendation on Respondent's admitted guilt to conversion of School Board District funds, fraud, and grand theft. The Board accepted the Superintendent's recommendation at a special meeting on March 3, 2010. Respondent timely requested an administrative hearing. On March 22, 2010, the matter was referred to the Division of Administrative Hearings for the assignment of an administrative law judge. At the request of Petitioner's counsel, considering conflicts in counsel's schedule and staff unavailability during the summer break, the case was set for September 2, 2010.

At the hearing, Petitioner presented the testimony of Richard Rahey; Dr. Ruth Ann Miller, Principal, Benoist Farms Elementary School; Detective Sergeant Robert Walton of the School District Police Department; and Sonia Hill-Howard,

Director of Employee Relations for the School District.

Petitioner's Exhibits 3 through 13, 15, 16, 18, 19, 22, and 23 were received into evidence. Official recognition was taken of the documents marked as Petitioner's Exhibits 14 (Palm Beach County Fifteenth Judicial Circuit Pretrial Intervention Program Deferred Prosecution Agreement); 20 (Section 817.034, Florida Statutes (2009), the Florida Communications Fraud Act); and 21 (Section 812.014, Florida Statutes (2009), Theft).

Respondent testified on his own behalf. Without objection, Respondent's late-filed Exhibit 1 was received into evidence.

Petitioner and Respondent agreed to file Proposed Recommended Orders on September 30, 2010, which they did. Through an apparent oversight, however, the Transcript was not filed at the Division of Administrative Hearings until October 27, 2010.

FINDINGS OF FACT

1. Respondent Richard Rahey "Respondent" or "Mr. Rahey" was employed by the Palm Beach County School District "Petitioner" or the "District" as a school monitor and behavior intervention associate at Benoist Farms Elementary School (Benoist) during the 2008-2009 school year. He also served as a parent liaison and the President of the Parent Teacher Organization (the "PTO").

2. In January 2009, District Police began an investigation of bank accounts associated with Benoist when a check that was sent by an organization that subsidizes after school care was not received by the director of Benoist's after school program. Detective Robert Walton found that the check in the amount of \$2,314.47 was deposited in an account at a different bank from the one used for Benoist school accounts. Only Mr. Rahey had access to the other account called the "Benoist Farms Elementary PTO" account (the "PTO account"). When asked about the check intended for the after school program, Mr. Rahey said he found it in his school mailbox, so he deposited it.

3. Detective Walton had investigated Mr. Rahey for PTO bank account irregularities in 2005. At that time, Mr. Rahey was an employee and PTO President at Seminole Trails Elementary School ("Seminole Trails"). Although the evidence was insufficient to refer the matter for criminal prosecution, Mr. Rahey was found to have failed "to safeguard money designated for children." A letter of reprimand dated June 15, 2005, warned him as follows:

You are directed to familiarize yourself with the established procedures and protocol for handling funds and deposits. You are further reminded that the district's best practices with regard to the collection and deposit of money must be followed. You are advised that any future failure to follow the aforementioned direction will result in

further disciplinary action up to and including termination.

4. Detective Walton had more reasons to investigate Mr. Rahey's finances further after finding in public records that Mr. Rahey's home was in foreclosure and that he had filed for bankruptcy. At Detective Walton's request, a subpoena was issued for records from the PTO account and from Mr. Rahey's personal bank account. A number of checks from the PTO account were written to Sam's Club, so Detective Walton requested and received an itemized printout of purchases made using a tax-exempt Benoist PTO Sam's Club membership. When Detective Walton examined the accounts and purchases, he found what appeared to be unauthorized and unexplained purchases, and checks made to cash that totaled in excess of \$3,600.00 over a period of time from January 2008 to April 2009.

5. When questioned in May 2009, Mr. Rahey told Detective Walton that he did not remember or was not sure about some of the purchases. He insisted, however, that they were legitimate expenditures for the school, but his records were insufficient to support his claims. Mr. Rahey only had his handwritten ledger to show the purposes of the expenditures. During the questioning, he also acknowledged that Detective Walton had told him in 2005 that the same kind of record-keeping was inadequate for a school organization. This time Detective Walton

determined that there was sufficient evidence to refer the case for criminal prosecution.¹

6. Dr. Ruth Ann Miller was the Principal at Benoist. Detective Walton questioned her about certain items, including a PTO account check written for a "microwave for Dr. Miller." Dr. Miller had not authorized Mr. Rahey to buy a microwave and did not have the microwave. When she confronted Mr. Rahey, he initially denied having used funds from the account for his personal use.

7. The District provided Mr. Rahey a copy of the Detective Walton's investigative report and invited Mr. Rahey to attend a Pre-disciplinary Meeting that was held on October 2, 2009, which he did. At the meeting and during the hearing, Mr. Rahey admitted his mistakes, apologized, and blamed his actions on his difficult financial situation as a single parent whose former spouse had stopped paying child support.

8. Superintendent Arthur C. Johnson, by letter dated February 12, 2010, notified Mr. Rahey that he would recommend to the Board at its meeting on March 3, 2010, that he be suspended without pay and that his employment be terminated. As grounds for his action, the Superintendent listed conversion of District funds and/or property, ethical misconduct, failure to exercise best professional judgment, failure to properly control District funds, falsification of documentation, and theft. The following

specific policies and statutes were also cited: School Board Policies 1.013 - Responsibilities of School District Personnel and Staff; 2.32 - Personal Business on School Time; 2.16 - Fund Raising Activities by School; 3.27 - Suspension and Dismissal of Employees; and Florida Statutes Section 817.034(4)(a)3. - Organized Fraud; and Section 812.014 - Grand Theft.

9. As a result of budget cuts at Benoist, Mr. Rahey transferred to Bear Lakes Middle School where he was employed as a school monitor until he was dismissed from employment in April 2010. He has continued to serve as a volunteer parent liaison and business partner coordinator at Bear Lakes Middle School where he has the full support of the principal, Dr. Anthony Lockhart. His effectiveness has been compromised. Dr. Lockhart, for example, monitors Mr. Rahey's activities to make sure that he does not handle any money.

10. Although he has confessed to committing the violations of policy and the crimes as charged, Mr. Rahey maintains that his employment should not be terminated because he has done so many worthwhile things to assist the schools. He has increased the number of volunteers and business partners at Bear Lakes. He was instrumental in having one business partner donate \$10,000.00 for computers. Over the ten years that he has worked for and volunteered in District schools, Mr. Rahey has received excellent evaluations. He has been volunteer of the year once

and has been nominated employee of the year four times.

Mr. Rahey helped solicit school supplies and uniforms for new students in the District who were evacuated from Haiti following the earthquake. He has received absolution from his church pastor.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2010).

12. As Petitioner, the District has the burden to prove, by a preponderance of the evidence, the charges contained in the Petition for Suspension Without Pay and Dismissal from Employment and that it has just cause to discipline Respondent, as provided in Article 3, Section C, of the Collective Bargaining Agreement. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); and Sublett v. Sumter County School Board, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995).

13. Given Respondent's confession, the charges have unquestionably been proven by more than a preponderance of the evidence.

14. Respondent, a school monitor and behavior intervention associate, is a non-instructional "educational support employee" within the meaning of Section 1012.40(1)(a), Florida Statutes

(2010). The District has followed the applicable statutory procedures to discipline Respondent and has the authority if it has "just cause" to do so. See Art. IX, §4, Fla. Const.; and §§ 1012.22(1)(f) and 1012.40(2)(c), Fla. Stat. (2010).

15. Among the causes for which suspension and termination are just are those listed in Section 1012.32, Florida Statutes (2010), which provides, in relevant part, that:

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school must, upon employment or engagement to provide services, undergo background screening as required under s. 1012.465 or s. 1012.56, whichever is applicable.

* * *

Fingerprints shall be submitted to the Department of Law Enforcement for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation for federal criminal records checks. A person subject to this subsection who is found ineligible for employment under s. 1012.315, or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students².

16. The State Board of Education has promulgated Subsection (6) of Rule 6B-4.009, Florida Administrative Code, giving the following definition:

Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

17. "Theft" is defined in Section 812.014, Florida Statutes (2009), as follows:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

* * *

- (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:
 - 1. Valued at \$300 or more, but less than \$5,000.

18. Section 817.034(4)(a)3., Florida Statutes (2009), defines fraud as follows:

Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:

* * *

- 3. If the amount of property obtained has an aggregate value of less than \$20,000, the

violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

19. Theft and fraud are crimes involving moral turpitude, within the meaning of Section 1012.32(2)(d), Florida Statutes (2009). See School District of Palm Beach County v. Woessner, Case No. 97-2582, 1997 Fla.Div.Adm.Hear. LEXIS 5632 (R.O. July 30, 1997) (teacher terminated for crime involving moral turpitude after breaking into a trailer and "trashing it" and stealing a credit card and using it to make purchases in excess of \$ 300.00); Matala v. Department of Banking and Finance, Case No. 93-5603, 1994 Fla.Div.Adm.Hear. LEXIS 5448 (R.O. January 27, 1994) ("As a general rule it may be said that almost all crimes involving fraud, larceny, or dishonest dealing involve moral turpitude."); Morgan v. Latcham, Case No. 93-0019 (Fla. DOAH September 2, 1993) (teacher engaged in immoral conduct by attempting to steal generator from home improvement store); School Board of Palm Beach County v. Kenny, Case No. 88-1441 (Fla. DOAH February 6, 1989) (burglary and grand theft constitute "conduct . . . inconsistent with public conscience and good morals"); Kimble v. Worth County R-III Board of Education, 669 S.W. 2d 949, 953 (Mo. Ct. App 1984) ("The taking of property belonging to another without consent, notwithstanding its return when confronted with such wrongdoing, breaches even the most relaxed standards of acceptable human behavior, particularly so

with regard to those who occupy positions which bring them in close, daily contact with young persons of an impressionable age."); Lesley v. Oxford Area School District, 420 A. 2d 764, 766 (Pa. Commw. Ct. 1980) ("The term immorality, while not defined in the Code has been judicially defined as 'a course of conduct [that] offends the morals of the community and is a bad example to the youth . . . Clearly, shoplifting falls squarely within this definition).

20. There is no doubt, therefore, that Petitioner has just cause to discipline Respondent. The only remaining issue is the nature of the discipline that is appropriate. Article 3, Section C, of the Collective Bargaining Agreement provides for progressive discipline. The next step authorized, following a written reprimand, is suspension without pay with Board approval; and, after that, dismissal with Board approval. An exception exists for "cases of a real immediate danger to the District or other flagrant violation."

21. In light of the numerous policy violations, and the criminal acts involving moral turpitude, Petitioner had just cause to suspend Respondent without pay. Given, (1) the nature of the warning in Respondent's written reprimand; (2) his flagrantly ignoring the warning when he transferred and took control of the PTO's finances at a different school; and (3) his continuing to serve as a volunteer in a position that brings him

into direct contact with students, volunteers, and donors,³
Petitioner has just cause to terminate Respondent's employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order that suspends Respondent from employment without pay and terminates his employment with the District.

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



ELEANOR M. HUNTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of November, 2010.

ENDNOTES

1/ Detective Walton referred the matter to the State Attorney and, on January 27, 2010, as a part of a Pretrial Intervention Program Deferred Prosecution Agreement, Mr. Rahey signed an admission of guilt to two felonies: (1) having an organized scheme to defraud in violation of Section 817.034, Florida Statutes (2009); and (2) having committed grand theft in

violation of Section 812.014, Florida Statutes (2009). As a part of the Agreement, Mr. Rahey has made restitution in the amount of \$3,683.00.

2/ Section 1012.32, Florida Statutes (2010), provides for suspension of those "otherwise found through background screening to have been convicted of any crime involving moral turpitude." Because he entered into the Deferred Prosecution Agreement, Mr. Rahey was not "convicted." The agreement provides that "[I]f you comply with these conditions during the period of Deferred prosecution, no criminal prosecution concerning this charge will be instituted . . ." It is illogical to think that the Legislature intended discipline for those convicted but not for those who committed or confessed to having committed the same acts, or who, like Respondent did both.

3/ Section 1012.32, Florida Statutes (2010), also provides that persons who are not eligible for employment, should also not "serve in any position that requires direct contact with students," as Respondent apparently still does.

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.