

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 10-9244
)
MONICA MAHTANI,)
)
 Respondent.)

)

RECOMMENDED ORDER

On January 25, 2011, a formal administrative hearing was conducted by video teleconference in Tallahassee and Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: John C. Palmerini, Esquire
Orange County School Board
445 West Amelia Street
Orlando, Florida 32801

For Respondent: Derek B. Brett, Esquire
Egan, Lev & Siwica, P.A.
Post Office Box 2231
Orlando, Florida 32802

STATEMENT OF THE ISSUE

The issue in this case is whether the Orange County School Board (Petitioner) has just cause to terminate the employment of teacher, Monica Mahtani (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated September 8, 2010, the Petitioner alleged that, in June 2010, the Respondent failed to return from previously-approved medical leave, submitted false documentation to justify the unapproved absence, and was untruthful when the Petitioner inquired as to the origin of the documentation.

The Respondent denied the allegations and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits 1 through 10 admitted into evidence. The Respondent testified on her own behalf and had Exhibits 1 through 6 admitted into evidence.

A Transcript of the hearing was filed on February 10, 2011. The Respondent's Unopposed Motion for Extension of the deadline for filing Proposed Recommended Orders was granted on February 18, 2011. Both parties thereafter filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was employed as a first grade classroom teacher at Shingle Creek

Elementary School (SCES) by the Petitioner under a professional services contract.

2. According to performance evaluations, the Respondent has been considered as an effective teacher.

3. The Respondent was on authorized medical leave from May 3, 2010, through June 4, 2010.

4. The Respondent did not return to work on June 7, 2010, and was absent from that date through June 11, 2010.

5. Attempts by school personnel to contact the Respondent during June 7 through June 11, 2010, and to determine her whereabouts were unsuccessful.

6. By letter to the Respondent dated June 11, 2010, the SCES principal noted that the Respondent's approved leave had expired on June 4, 2010. The letter advised the Respondent that, because school personnel had been unable to contact the Respondent and no documentation to support the unapproved absence had been submitted, the unapproved absence was being classified as unauthorized leave without pay.

7. In response to the principal's letter, the Respondent submitted a document dated June 23, 2010, purporting to be authored by "The Providers at Orlando Behavioral Healthcare," which stated that the Respondent had been under the care of doctors and therapists at the facility for a period of time

including June 7 through June 11, 2010. The document was not printed on letterhead paper and bore no signature.

8. Upon review of the document and after contacting officials at Orlando Behavioral Healthcare (OBH), the Petitioner determined that the document dated June 23, 2010, was not generated by OBH.

9. Upon inquiry at a predetermination meeting conducted on August 18, 2010, the Respondent insisted that the document was genuine and had been provided by OBH.

10. At a termination meeting conducted on August 31, 2010, the Respondent admitted that she had generated the document. No one from OBH was involved in the creation of the June 23, 2010, document.

11. At the time the Respondent falsified the document, she knew the difference between right and wrong and knew that creating the document was wrong.

12. At the hearing, the Respondent asserted that she submitted a written request for leave for the period of June 7 through June 11, 2010, but there was no documentation or additional testimony offered in support of the assertion, and it has not been credited.

13. The Respondent testified that certain medications may have affected decisions underlying the circumstances at issue in this proceeding, but there was no credible medical or

pharmacological evidence offered in support of the assertion, and the testimony has not been credited.

14. Because the Respondent falsified the document and then insisted upon inquiry that the document was authentic, the SCES principal testified, without contradiction, that she did not believe that the Respondent could be trusted. The principal testified that she would be "very uncomfortable" were the Respondent returned to teach in the SCES classroom. The testimony has been credited.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

16. The Petitioner has the burden of proving by a preponderance of the evidence the allegations set forth in the Administrative Complaint underlying the proposed termination of the Respondent's employment. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990). In this case, the burden has been met.

17. At all times material to this case, the Respondent was employed as a first grade teacher through a professional services contract with the Petitioner.

18. Section 1012.33(1)(a), Florida Statutes (2010), provides as follows:

Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude. (Emphasis supplied)

19. Florida Administrative Code Rule 6B-4.009 provides the following relevant definitions:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

20. The Code of Ethics of the Education Profession in Florida is set forth at Florida Administrative Code Rule 6B-1.001 and provides, in relevant part, as follows:

6B-1.001 Code of Ethics of the Education Profession in Florida.

* * *

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

21. The Principles of Professional Conduct for the Education Profession in Florida are set forth at Florida Administrative Code Rule 6B-1.006 and provides, in relevant part, as follows:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

* * *

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

* * *

(h) Shall not submit fraudulent information on any document in connection with professional activities.

22. The evidence established that by falsifying the document referenced herein and then by insisting that the document had been provided by OBH and that the document was

authentic, the Respondent committed misconduct in office by violating the cited provisions of the Code of Ethics and the Principles of Professional Conduct for the Education Profession.

23. The evidence further establishes that the Respondent's misconduct was so serious as to impair her effectiveness in the school system. At the hearing, the SCES principal testified, without contradiction, that she did not believe that the Respondent could be trusted because the Respondent falsified the OBH document and then insisted upon inquiry that the document was authentic and that she would be "very uncomfortable" if the Respondent returned to teach in the SCES classroom.

24. Orange County School Board Policy GCC states as follows:

Any employee who is willfully absent from duty without leave shall forfeit compensation from the time of the absence and shall be subject to suspension or dismissal from employment.

25. The evidence establishes that the Respondent was willfully absent without approved leave for the period of June 7 through June 11, 2010.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Orange County School Board enter a final order, terminating the employment of Monica Mahtani.

DONE AND ENTERED this 6th day of April, 2011, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of April, 2011.

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.