

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 10-10089
)
JOYCE TAYLOR,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 25, 2011, in Bradenton, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Scott A. Martin, Esquire
Manatee County School Board
Post Office Box 9069
Bradenton, Florida 34206

For Respondent: Peter J. Lombardo, Esquire
Law Office of Peter Lombardo
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

By letter dated October 4, 2010, the superintendent of Schools for Manatee County, Tim McGonegal (Superintendent), notified Joyce Taylor (Ms. Taylor or Respondent) that he intended to recommend her termination from employment as a cafeteria manager for the reasons set forth in an Administrative Complaint served with the letter. The Administrative Complaint, issued by the Manatee County School Board (School Board or Petitioner), alleged that Respondent failed to immediately report suspected abuse of a student; Respondent violated the confidentiality of a person working under Respondent's supervision who did report the suspected abuse of the student; and Respondent failed to fully cooperate with the investigation of these matters in violation of several cited statutes and rules. The Administrative Complaint asserted that these alleged violations provided just cause to terminate Respondent's employment.

Respondent timely requested an administrative hearing to contest the allegations in the Administrative Complaint. The case was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing requested by Respondent.

At a School Board meeting at which Respondent appeared, the School Board determined that Respondent would be suspended

without pay pending the outcome of the administrative hearing. Respondent's suspension without pay began on October 26, 2010.

Prior to the final hearing, the parties entered into a Joint Prehearing Stipulation in which they stipulated to several facts and legal conclusions. The parties' stipulations have been incorporated into this Recommended Order to the extent relevant.

At the final hearing, Petitioner presented the testimony of Beth Haisley, Monique Rhodes, Debra Horne, Tim McGonegal, Rusty Moore, and Respondent. Petitioner's Exhibits 1 and 2 were received into evidence. Respondent testified on her own behalf and also presented the testimony of Betty Farlow-Greene, Scott Taylor, and Mary Jane Cardarelle-Hermans. Respondent's Exhibits 1 through 13 were received into evidence.

The final hearing was recorded, but neither party arranged for a court reporter or transcript of the final hearing. Petitioner timely filed its Proposed Recommended Order, and Respondent timely filed a Proposed Order and Argument. These post-hearing submissions have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent has been employed by the School Board as a cafeteria manager at Lee Middle School. She was hired on August 17, 2009, at the beginning of the school year. In just

over one year of employment, Respondent has no disciplinary history and has one adequate performance evaluation.

2. In her managerial position, Respondent supervises several other employees who work in the cafeteria, including Beth Haisley (Ms. Haisley) and Monique Rhodes (Ms. Rhodes). Ms. Taylor's immediate supervisor is Ryan Beaman (Mr. Beaman), and Mr. Beaman's supervisor is food service specialist, Rusty Moore (Mr. Moore). Mr. Moore reports to Sandy Ford, who is the director of the food services department.

3. Near the end of the 2009-2010 school year, Ms. Rhodes was having some troubles with her foster daughter, who is known as "T." T., a 14-year-old student at Lincoln Middle School, was apparently caught having sex with an 18-year-old man. Ms. Rhodes kept T. out of school for several days and brought T. to work with her at the Lee Middle School cafeteria, where T. was permitted by Ms. Taylor to do some work as a volunteer.

4. Because of the troubles Ms. Rhodes was having with T., Ms. Taylor offered to keep T. at her home over the Memorial Day weekend, and Ms. Rhodes agreed.

5. While Ms. Taylor was helping T. put on a pair of earrings, she noticed a scar on T.'s neck. Ms. Taylor asked T. what had happened, and T. responded that her mother beat her.

6. Ms. Taylor said that T. told her that T. had spoken to her counselor about it and that the counselor had taken care of

it. Ms. Taylor did not know whether T. was referring to a school counselor or some other kind of counselor; Ms. Taylor did not ask T. anything more about it.

7. On the Monday after the Memorial Day weekend Ms. Taylor sought out Ms. Haisley the first thing that morning to tell Ms. Haisley about T.'s scar and about Ms. Taylor's conversation with T. about how it happened. Ms. Taylor also told Ms. Haisley that at the end of the weekend, T. got upset and was crying when it was time to leave to go back home to Ms. Rhodes.

8. Ms. Haisley asked Ms. Taylor if she was going to call the Child Protective Services (CPS) hotline to report the matter. Ms. Taylor responded that she was not sure that she wanted to call, because she was afraid of Ms. Rhodes.

9. Ms. Haisley followed up a few days later, calling Ms. Taylor and asking her again about calling the CPS hotline to report what she had observed and what T. had said. Ms. Taylor said she still had not decided whether she would call and that she would discuss it with her husband. Ms. Haisley expressed her concern to Ms. Taylor and told her that if Ms. Taylor did not make the call, she (Ms. Haisley) might have to.

10. Ms. Taylor never did place a call to the CPS hotline to report the suspected abuse of T.

11. In none of the conversations between Ms. Haisley and Ms. Taylor did Ms. Taylor ever say that she did not have a reasonable suspicion that T. may have been abused by Ms. Rhodes. Ms. Taylor never told Ms. Haisley that it was unnecessary or inappropriate to call the CPS hotline because the circumstances did not warrant a call.

12. The greater weight of the credible evidence is that Ms. Taylor had a reasonable suspicion that T. may have been abused by Ms. Rhodes, but did not call the CPS hotline for the sole reason that she was afraid to accuse Ms. Rhodes.

13. In approximately the second week of June, after Ms. Haisley tried twice but could not get Ms. Taylor to say she was going to call the CPS hotline, Ms. Haisley called the CPS hotline herself. Like Ms. Taylor, Ms. Haisley was concerned about making the call and sought immediate assurance from the hotline counselor that Ms. Haisley's identity would be kept confidential. Ms. Haisley told no one about the call, not even her husband.

14. Ms. Haisley did not call the CPS hotline sooner because she thought that it was Ms. Taylor's obligation to call, and Ms. Haisley hoped that Ms. Taylor would follow through.

15. Both Ms. Haisley and Ms. Taylor were made aware of the obligation to report suspected child abuse, as this obligation had been a priority and point of emphasis by the School Board.

The obligation is codified in a School Board rule in the Policy and Procedure Manual applicable to School Board personnel. In addition, the subject is emphasized in employee training sessions, seminars, and meetings. For example, Ms. Haisley described a meeting in October 2009 attended by both Ms. Haisley and Ms. Taylor, at which the Lee Middle School principal, Scot Boice, spoke of the CPS hotline and the obligation to call and report suspected child abuse of any student. Flyers were handed out at this meeting to repeat the message, providing the hotline number, and emphasizing that calls were confidential. Ms. Taylor confirmed that she was at this meeting and received a flyer. Although Ms. Taylor first stated that there was no discussion about the obligation to report suspected abuse to the CPS hotline, she later admitted that the subject was "mentioned."

16. After Ms. Haisley called the CPS hotline to report the suspected abuse of T., as it had been described to her by Respondent, CPS conducted an investigation of Ms. Rhodes and T. They examined the mark on T.'s neck, and both T. and Ms. Rhodes claimed to not know how it got there. Ms. Rhodes guessed that T. may have gotten the mark when T. had the sexual encounter with the 18-year-old in the spring of 2010, suggesting that the mark appeared to be recent.

17. Ms. Rhodes was incensed by the investigation and immediately jumped to the conclusion that Ms. Taylor must have called the CPS hotline, because T. had just spent the weekend with Ms. Taylor. Ms. Rhodes called Ms. Taylor, and in a profanity-laced tirade, accused Ms. Taylor of calling CPS. Ms. Rhodes wanted to know how Ms. Taylor could do that when they were friends. Respondent denied having made the call to the CPS hotline, but Ms. Rhodes did not believe her.

18. Ms. Taylor testified that she felt threatened by Ms. Rhodes' call. At the final hearing, Ms. Taylor testified that Ms. Rhodes said she would "kick her ass"; during the School Board's investigation, Ms. Taylor only said that Ms. Rhodes threatened to get back at Ms. Taylor for having called the CPS hotline. At the final hearing, Ms. Rhodes acknowledged that she was angry and hurt and that she thoroughly "cussed out" Ms. Taylor, but Ms. Rhodes adamantly denied having made any threats to Ms. Taylor, physical or otherwise.

19. Ms. Taylor admitted that after the phone call, she embarked on a campaign to find out who had placed the call to the CPS hotline and that she was determined to figure out who had made the call.

20. The first call Ms. Taylor made was to Ms. Haisley, who had told Ms. Taylor that she might have to call the hotline if Ms. Taylor would not make the call. Ms. Taylor asked

Ms. Haisley if she called the CPS hotline, and Ms. Haisley at first asked, "What if I did?" Ms. Taylor then told Ms. Haisley about Ms. Rhodes' profanity-laden accusations to Ms. Taylor. Ultimately, Ms. Haisley admitted that she had called the CPS hotline to report what Ms. Taylor had told her about T. Ms. Haisley credibly testified that she disclosed this information to Ms. Taylor at least, in part, because Ms. Taylor was her supervisor, and Ms. Haisley felt obliged to answer her supervisor's questions truthfully. Although Ms. Haisley did not expressly demand that Ms. Taylor keep this information confidential, Ms. Haisley believed that Ms. Taylor would not disclose the information to others, least of all to the suspected abuser.

21. Shortly thereafter, Respondent called Ms. Haisley again. This time, Respondent told Ms. Haisley that she needed to call Mr. Moore to tell him that Ms. Haisley, not Ms. Taylor, had called the CPS hotline to report suspected abuse by Ms. Rhodes. Ms. Haisley attempted to comply with what her supervisor asked. Ms. Haisley spoke to Mr. Moore on the phone and started to tell him what Ms. Taylor wanted her to tell him, but Mr. Moore cut off Ms. Haisley when she mentioned the CPS hotline and said he did not want to hear about it, because it was confidential.

22. The evidence was unclear regarding what prompted Ms. Taylor to try to get Ms. Haisley to disclose this information to Mr. Moore. According to Ms. Taylor, she knew that Ms. Rhodes had a meeting scheduled with Mr. Moore, and Ms. Taylor assumed that the meeting was about the CPS hotline call. Ms. Taylor was mistaken. The meeting was to address problems with Ms. Rhodes' job performance. Mr. Moore admonished Ms. Rhodes to be a better worker for Ms. Taylor, and he told Ms. Rhodes to talk to Ms. Taylor over the summer to apologize and clear the air. Mr. Moore and Ms. Rhodes testified consistently that the subject of the CPS hotline call and investigation did not come up at this meeting.

23. Over the summer, Ms. Rhodes tried to call Ms. Taylor, as suggested by Mr. Moore. When Ms. Rhodes could not reach Ms. Taylor on the phone, she had her cousin, Betty, contact Ms. Taylor to coordinate a meeting at a Taco Bell. At the Taco Bell meeting, Ms. Taylor, who by then had succeeded in her campaign to find out who had called the CPS hotline, brought up the subject and disclosed to Ms. Rhodes that Ms. Haisley was the one who called the CPS hotline.

24. At the final hearing, Ms. Taylor testified that it was Ms. Rhodes, not Ms. Taylor, who named Ms. Haisley as the one who called the CPS hotline and that Ms. Taylor only said in response that she would not deny that it was Ms. Haisley who called the

CPS hotline. Ms. Taylor's testimony that she was not the one who first identified Ms. Haisley was not credible. Ms. Rhodes credibly testified that Ms. Taylor was the one to name Ms. Haisley as the hotline caller. Ms. Rhodes' cousin, Betty, who was there at the beginning of the meeting, confirmed that Ms. Taylor was the one who first named Ms. Haisley. The greater weight of the credible evidence establishes that Ms. Taylor purposely disclosed Ms. Haisley's identity as the CPS hotline caller to Ms. Rhodes.

25. Ms. Taylor testified that at the Taco Bell meeting, after Ms. Rhodes came to understand that it was Ms. Haisley who had called the CPS hotline, Ms. Rhodes began threatening Ms. Haisley, saying she was "gunning for" Ms. Haisley. In other words, according to Ms. Taylor, Ms. Rhodes redirected to Ms. Haisley the sort of threatening remarks she had made to Ms. Taylor in the profanity-laced phone call earlier in the summer. Yet, Ms. Taylor did not say that Ms. Rhodes had been threatening her at the Taco Bell meeting before Ms. Taylor disclosed that Ms. Haisley was the real CPS caller. Instead, Ms. Taylor described the meeting, before she named Ms. Haisley, as calm and relaxed, with Ms. Taylor and Ms. Rhodes engaging in chit-chat. Perhaps because Ms. Rhodes was ultimately cleared of any wrongdoing in the CPS investigation, she had calmed down about it. According to Ms. Rhodes, the only thing she told

Ms. Taylor in reaction to learning it was Ms. Haisley who had made the call to CPS was that Ms. Rhodes would have "zero tolerance" for Ms. Haisley--that Ms. Rhodes was "done with her."

26. Ms. Taylor claims to have been "shocked" and "dumbfounded" by the threats Ms. Rhodes allegedly directed to Ms. Haisley. As a result, in August, shortly before school started, Ms. Taylor called Ms. Haisley to let her know that Ms. Taylor had disclosed her identity as the CPS hotline caller to Ms. Rhodes and to warn her that Ms. Rhodes said she was "gunning for" for Ms. Haisley. Ms. Haisley felt "thrown under the bus" by her supervisor and was very fearful because of the threats described by Ms. Taylor.

27. After school started in August 2010, work relations in the cafeteria were very strained. Ms. Rhodes would not talk to Ms. Haisley in keeping with her "zero tolerance" approach. Things were also very tense between Ms. Haisley and her supervisor. Respondent repeatedly criticized Ms. Haisley for having called the CPS hotline, saying both Respondent and Ms. Haisley would be fired because of it.

28. Ms. Haisley called Mr. Moore to request a meeting to discuss the situation because of the emotional pressure placed on her. A meeting was held between Ms. Haisley, Mr. Moore, and food services director, Sandy Ford. Ms. Haisley described the circumstances that led to her calling the CPS hotline; the

pressure from Ms. Taylor to tell her that Ms. Haisley had called the hotline; Ms. Taylor's disclosure to Ms. Rhodes that Ms. Haisley called the hotline; and Ms. Rhodes' threats, as described by Ms. Taylor. Mr. Moore told Ms. Haisley that by admitting that she had called CPS, that information was no longer confidential. Ms. Haisley responded that she had nothing to lose, because Ms. Rhodes already knew that Ms. Haisley called CPS.

29. Immediately after this meeting, Mr. Moore contacted the School Board's Office of Professional Standards (OPS) to investigate the alleged threats made by Ms. Rhodes^{1/} and to investigate Ms. Taylor's failure to call the CPS hotline and disclosure to the suspected abuser of the identity of the person who had called the CPS hotline.

30. Respondent was placed on paid administrative leave pending the School Board's investigation into this matter. As a result of the investigation, the action on the investigation by a panel of persons in Respondent's chain of command and the concurrence of the superintendent with the chain-of-command panel's recommendation, the Administrative Complaint was prepared. Following service of the Administrative Complaint on Respondent and her election to contest the allegations in an administrative hearing, the School Board voted to suspend

Respondent without pay as of October 26, 2010, pending the outcome of the administrative hearing.

31. The charges in the Administrative Complaint are primarily based on Ms. Taylor's failure to call the CPS hotline to report her reasonable suspicion of child abuse and also on Ms. Taylor's disclosure of Ms. Haisley's identity as the hotline caller to the suspected abuser.

32. Ms. Taylor offered an assortment of explanations for not calling the CPS hotline. The explanations are somewhat inconsistent with each other and some of the explanations were not provided by Ms. Taylor during the investigation. Ms. Taylor claimed that the scar she observed did not give rise to a reasonable suspicion of child abuse; or that she had in the past reported more severe signs of child abuse to CPS, which did not pursue an investigation (suggesting that she should be excused from reporting anything but very severe signs of child abuse because she could assume CPS would do nothing again); or that because T. said that she told a counselor all about it and the counselor had taken care of it, whatever child abuse may have occurred had been handled by someone else; or that because T. said that her mom beat her, and Ms. Taylor knew that T. did not refer to her foster mother as "mom," T. must have meant her biological mother and must have been referring to a long-past incident.

33. Ms. Taylor's explanations are not credible. The scar that Ms. Taylor observed on T.'s neck was at least significant enough to cause Ms. Taylor to ask T. how she got the scar. When T. responded that it was from where her mother beating her, it defies credibility that Ms. Taylor would have simply accepted that statement and assumed, without asking, that T. was talking about a long-past incident involving her biological mother. T.'s response, standing alone, is a clear indication of abuse, leaving only the questions of when and by which "mother"--years ago by the biological mother or within the past few years by the foster mother? These questions were neither asked nor answered. T.'s statement, standing alone, created at least a reasonable suspicion of child abuse by the foster mother with whom T. had been living for the past several years.

34. Ms. Taylor's alternative explanation that she did not think she needed to call the CPS hotline because T. stated that she had told a counselor and the counselor took care of it, is an inadequate rationale for not calling the CPS hotline. First, there was insufficient information to provide the reassurance that Ms. Taylor claimed to have drawn from T.'s statements. What kind of counselor did T. talk to, when did this occur, and what was the resolution? But more importantly, this explanation appears to acknowledge that there was a reportable incident. As such, the fact that someone else may have also reported it or

may have done something to "take care of it," does not excuse Ms. Taylor from reporting what she observed and what she was told by T. to the CPS hotline.

35. Ms. Taylor's explanations do not square with Ms. Haisley's testimony regarding Ms. Taylor's actions in the days and weeks following Ms. Taylor's Memorial Day weekend with T. Ms. Haisley credibly testified that first thing on Monday morning, Ms. Taylor brought up the incident, telling Ms. Haisley about T.'s scar and T.'s statement that her mother beat her, and also, about T. getting upset at the end of the weekend when it was time to go home to Ms. Rhodes. Ms. Haisley was left with the impression that Ms. Taylor was concerned about T. and suspected child abuse by her foster mother, an impression that was reasonable under the circumstances.

36. Ms. Taylor attempted to refute Ms. Haisley's testimony about the Monday morning conversation. Ms. Taylor testified that she did not bring up the incident, but rather Ms. Haisley was asking her questions, and she answered the questions by mentioning the scar and T.'s statement that her mother beat her. Ms. Taylor testified that the conversation was just a casual, every-day conversation, but she could not remember what questions were asked that would have caused her to casually refer to a scar and to T.'s explanation for the scar that her mother beat her. But a scar caused by being beaten by one's

mother is not the stuff of casual, every-day conversations; it is difficult to imagine a casual, every-day conversation in which a question would elicit such a response.

37. When Ms. Taylor was investigated by the School Board, she described the Monday morning conversation with Ms. Haisley differently:

After Memorial Day Weekend, Beth [Haisley] asked me a direct question. . . Beth asked, "Do you know anything about Monique, her children, or abuse?" Beth also said that she heard 'stuff' in the cafeteria worker's lounge during lunchtime. Beth told me the conversations disturbed her and that the conversations were in regard to Monique. . . I told Beth that I saw a mark on [T's] neck. . . . I told Beth that I asked the child what happened. The child told me her mom beat her. The child said that she had told her counselor this and the counselor took care of it.

This version, given by Ms. Taylor at an interview on August 25, 2010, refutes the notion that Ms. Taylor did not associate the scar or T.'s statement that her mom beat her, with T.'s foster mother, Monique Rhodes.

38. Ms. Taylor attempted to excuse her disclosure of Ms. Haisley's identity to the suspected abuser by asserting that Ms. Haisley volunteered her identity to Ms. Taylor as the hotline caller and never told Ms. Taylor to keep that information confidential. Ms. Haisley's ultimate admission to her supervisor, who pressed her for the information, was not

truly voluntary. Even though Ms. Haisley did not express to Ms. Taylor that the disclosure was for Ms. Taylor only and should be kept confidential, that condition should have gone without saying under the circumstances. Ms. Haisley certainly never gave Ms. Taylor permission to disclose her identity as the CPS caller to anyone else, least of all to the suspected abuser.

39. Ms. Taylor also seems to argue that her disclosure to Ms. Rhodes was justified because of Ms. Rhodes' threats to Ms. Taylor. While Ms. Taylor may have subjectively felt threatened by Ms. Rhodes, any fears she may have felt do not excuse her actions in embarking on a campaign to redirect the threats from herself to Ms. Haisley. Ms. Taylor knowingly and intentionally threw her subordinate under the proverbial bus: she admittedly made it her business to figure out who called the CPS hotline; she wrangled the information out of her subordinate; and then she proceeded to turn that information over to the person she thought would do harm as a result. And yet, she inexplicably claimed to be "shocked" and "dumbfounded" when Ms. Rhodes allegedly threatened Ms. Haisley after Ms. Taylor revealed who had made the call.

40. Inconsistencies, such as this, cast doubt on whether there really were fear and threats, but regardless, even if Ms. Taylor was legitimately concerned about threatening behavior, that would be even more reason to take seriously the

reasonable suspicions with regard to T., a young girl under the care of the supposedly threatening subject. Furthermore, fear of threatening behavior should have caused a supervisor to protect her subordinate, rather than take actions to redirect whatever threats actually existed to the subordinate and away from the supervisor. If Ms. Taylor's fears were genuine, the only appropriate action would have been to bring the matter to the attention of any and all supervisory personnel in the school system, and, if deemed necessary, law enforcement personnel.

41. Ms. Taylor claimed that she reported Ms. Rhodes' threats to Mr. Moore, although she was confused about when that was. The Administrative Complaint charges Ms. Taylor with providing misleading statements in the investigation on this subject, but the evidence was inconclusive in this regard.

42. Ms. Taylor seems to argue that she only acted to discover and disclose Ms. Haisley's identity as the CPS hotline caller after Ms. Haisley reported the threats to Mr. Moore and nothing was done. That argument is rejected as inconsistent with the facts and insufficient to justify Ms. Taylor's actions. Ms. Rhodes' profanity-laced call to Ms. Taylor occurred after school was out for the summer. Ms. Taylor immediately embarked on her campaign to identify the hotline caller and wrangled the information out of Ms. Haisley. Ms. Taylor met with Ms. Rhodes at Taco Bell and disclosed Ms. Haisley's identity as the hotline

caller, while school was still out for the summer. Ms. Taylor obviously was not waiting around to see if anything would be done through school channels about Ms. Rhodes.

43. Moreover, Mr. Moore was not Ms. Taylor's immediate supervisor. No explanation was provided regarding why Ms. Taylor did not report her claimed fears about Ms. Rhodes' threatening behavior to her supervisor, Mr. Beaman, or to the food services director, Sandy Ford, or to the school principal, Scot Boice.^{2/} Any and all of these actions would have been proper responses to alleged threats; throwing one's subordinate under the bus was not a proper or justifiable response.

44. The superintendent described the policy objectives at issue in this case. He explained that the School Board takes very seriously its role, standing in loco parentis, to protect and ensure the safety of Manatee County students. These policy objectives are so strongly implicated when it comes to suspected child abuse that the School Board adopted its own rule to emphasize to its employees that they are required to immediately call the CPS hotline to report suspected child abuse, even though Florida statutory law already imposes a similar obligation.

45. The superintendent was emphatic about the critical importance of the School Board insisting that its employees follow through on their obligation to report reasonable

suspicious of child abuse. He was equally emphatic about the serious nature of Respondent's actions in not immediately reporting suspected child abuse and then disclosing the identity of her subordinate to the suspected abuser as the one who made the call Respondent should have made.

46. Based on the extremely serious nature of these two charged violations, the superintendent did not hesitate to recommend the termination of Respondent's employment as the appropriate disciplinary response. The absence of other disciplinary problems during Ms. Taylor's brief tenure with the School Board and her single adequate performance evaluation, were not sufficiently weighty factors in her favor to overcome the seriousness of the violations. The superintendent credibly described how Ms. Taylor had done permanent harm to her ability to effectively manage within the school system, by throwing a subordinate under the bus and breaching the confidentiality of a CPS hotline call. If Ms. Taylor's actions were excused or subject to a lesser penalty, there would be a chilling effect on other employees following through on their obligation to report suspected abuse, because employees would have no assurance that their confidentiality would be honored and protected.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2010).^{3/}

48. In this proceeding, Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proof, and the standard of proof is by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

49. The School Board has the authority to "operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law." § 1001.32(2), Fla. Stat., implementing Art. IX, § 4(b), Fla. Const.

50. Pursuant to section 1012.27(5), Florida Statutes, the superintendent is authorized to recommend to the School Board that an employee of the School Board should be suspended or dismissed from employment. The School Board, in turn, has the authority to suspend or terminate School Board employees pursuant to section 1012.22(1)(f).

51. Pursuant to School Board Policy 6.11, "just cause" is the standard for disciplinary action against School Board employees, including Respondent.

52. The School Board has discretion in setting standards for what constitutes "just cause" for taking disciplinary action against employees, including suspension or termination. See Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217, 218 (Fla. 2d DCA (1994) (Blue, J. concurring); see also § 1012.23(1) (authorizing district school boards to adopt rules governing personnel matters, except as otherwise provided by law or the State Constitution).

53. Pursuant to School Board Policy 6.11(1) and 6.11(12)(c), just cause for termination from employment includes, among other things, "misconduct in office, . . . violation of the Policies and Procedures Manual of the School District of Manatee County, violation of any applicable Florida statute, [or] violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida."

54. The Administrative Complaint charges Respondent with violating sections 39.201 and 39.202, Florida Statutes, and School Board Policy 5.2, relating to the obligations to report suspected child abuse and to maintain confidentiality of the reporter.

55. Section 39.201 provides that any person who has "reasonable cause" to suspect child abuse is required to report that suspicion to the central abuse hotline, by calling the single statewide toll-free number that exists to field such calls. Section 39.202 requires that the name of the person making the call to the hotline be kept confidential.

56. To underscore the importance of this statutory obligation in the school setting, the School Board has adopted its own rule emphasizing these obligations to its employees. School Board Policy 5.2 provides in pertinent part:

All school employees have a serious affirmative duty to report suspected child abuse.

* * *

(1) Mandatory Duty to Report Suspected Child Abuse

All employees or agents of the district school board who have reasonable cause to suspect abuse have an affirmative duty to report it. . .

(2) Complaints of Child Abuse Reported to an Employee

An employee receiving a complaint or report of child abuse shall inquire of the reporting party as to the details of his/her concern but shall not investigate further. If the employee has reasonable cause to suspect that child abuse has occurred based upon the description by the reporting party, the employee must report.

* * *

(4) Employee Responsible for Reporting

It is the responsibility of the first employee who has "reasonable cause" to suspect abuse to report it to the hotline and to do so immediately. It is unacceptable and violation of the law to simply report suspicions to any other individual (including law enforcement or your supervisor) and ask or expect them to make the report to the hotline. After making a report, the school board employee must inform the principal, supervisor, or other building administrator. If the suspected abuser is a district employee, the supervisor of the reporter will notify his/her director who will notify the Office of Professional Standards.

* * *

(6) Penalties for Failure to Report

Any employee who is required to report and fails to do so may be found guilty of a misdemeanor . . . Failure to report child abuse as required will also subject the employee to disciplinary action.

(7) Duty to Cooperate with Investigations

Employees have a duty to cooperate with investigations. . . Names of persons reporting to the hotline will not be disclosed without their permission.

57. Petitioner met its burden of proving, by a preponderance of the evidence, that Respondent violated sections 39.201 and 39.202 and School Board Policy 5.2, by not immediately reporting suspected child abuse to the CPS hotline, despite reasonable cause for doing so and by breaching the

confidentiality of Ms. Haisley and disclosing her identity to the suspected abuser without Ms. Haisley's permission. Indeed, under the School Board's Policy 5.2(4), Ms. Taylor's obligation, upon learning that Ms. Haisley had called the hotline, was to report the call to the food services director so that an OPS investigation could be initiated. This is a limited reporting obligation within defined reporting channels, and it plainly does not negate the confidentiality that otherwise must be honored and protected absent clear permission by the hotline caller.

58. These violations of pertinent statutes and of a key policy in the School Board's Policies and Procedure Manual are sufficient in and of themselves to constitute "just cause" as defined in School Board Policy 6.11.

59. The Administrative Complaint charges that these same two violations also constituted misconduct in office. School Board Policy 6.11 uses, but does not define "misconduct in office." That phrase is defined for similar purposes in Florida Administrative Code Rule 6B-4.009(3), and that rule definition is instructive. "Misconduct in office" is defined as a violation of the Code of Ethics of the Education Profession or the Principles of Professional Conduct for the Education Profession in Florida, which is so serious as to impair the individual's effectiveness in the school system.

60. The referenced Code of Ethics is codified in Florida Administrative Code Rule 6B-1.001. The Principles of Professional Conduct of the Education Profession in Florida is codified in Rule 6B-1.006. Although these rules, by their terms, apply to instructional personnel, the School Board's Policy 6.11 extends the scope of these rules to apply to all personnel, including non-instructional personnel such as Respondent.

61. Petitioner has met its burden of proving that the violations found above are also violations of Rule 6B-1.001(2) of the Code of Ethics. This rule requires that the employee's primary professional concern will always be for the student and that the employee must exercise the best professional judgment and integrity. In this case, Respondent was shown to have acted with primary concern for her own well-being, not for the student. Moreover, her professional judgment suffered for the same reason when she breached the confidentiality of her subordinate.

62. Petitioner has also met its burden of proving that the violations found above are also violations of Rule 6B-1.006(3)(a) of the Principles of Professional Conduct, which requires that the employee make reasonable effort to protect students from conditions harmful to the student's mental or

physical health or safety. Respondent did not make reasonable efforts to protect T.

63. Petitioner met its burden of proving that the foregoing violations of the Code of Ethics and Principles of Professional Conduct were so serious as to impair Respondent's effectiveness in the school system, for the reasons explained by the superintendent, as found above. Thus, Petitioner met its burden of proving that Respondent engaged in "misconduct in office" within the meaning of School Board Policy 6.11.

64. The Administrative Complaint also charged Respondent with violating several provisions of the Code of Ethics and Principles of Professional Conduct by giving misleading statements during the investigation with regard to whether and when she reported Ms. Rhodes' alleged threats to Mr. Moore. The evidence was inconclusive on this point and insufficient to prove the charge by a preponderance of the evidence.

65. As explained by the superintendent, Respondent's violations in failing to report suspected child abuse and in disclosing Ms. Haisley's identity as the hotline reporter to Ms. Rhodes, the suspected abuser, were so serious that the appropriate disciplinary measure is termination of Respondent's employment. For the reasons found above, Petitioner has met its burden of proving the reasonableness of the proposed disciplinary action under the circumstances.

66. Petitioner has established by a preponderance of the competent, substantial, and more credible evidence that there is just cause for Respondent's termination.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

RECOMMENDED that Petitioner, Manatee County School Board, enter a final order terminating the employment of Respondent, Joyce Taylor.

DONE AND ENTERED this 25th day of February, 2011, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 2011.

ENDNOTES

^{1/} Debra Horne, a specialist with the OPS who conducted the investigation of Ms. Taylor, testified that she followed up on the allegations of threats by Ms. Rhodes in her questioning of Ms. Rhodes and others. Ms. Horne noted the conflicting statements given by Ms. Taylor, who was the only one asserting

that there were threats, and by Ms. Rhodes, who denied making any threats. Ms. Horne did not pursue the matter in a formal investigation. That judgment is beyond the scope of this proceeding, but tends to be supported by the limited information in this record.

^{2/} Ms. Taylor made a report, in writing, to Mr. Boice in August 2010, to complain that others had told her that Ms. Rhodes was inappropriately talking to custodial staff about "the situation between [Ms. Rhodes] and Beth Haisley." Mr. Boice followed up by calling Ms. Rhodes in for a meeting, at which he admonished her not to engage in such discussions, and she assured him she had not done so. Presumably, had Ms. Taylor similarly reported more serious concerns about Ms. Rhodes, such as the alleged physical threats to which Ms. Taylor testified, there would have been at least the same kind of swift follow-up as occurred in the wake of Ms. Taylor's complaint about inappropriate discussions.

^{3/} All statutory references are to Florida Statutes (2010), unless otherwise noted. It is noted that the events giving rise to this disciplinary action occurred at least, in part, when the 2009 statutes were still in effect, but there were no changes in 2010 to any of the statutory provisions relied on in the charges against Respondent.

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.