STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-3191TTS
	)	
JANICE HILL,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by webcast video teleconference at sites in Tallahassee and Miami, Florida, on September 13, 2011, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

For Respondent: Janice Hill
4811 Northwest Fifth Avenue
Miami, Florida 33127

STATEMENT OF THE ISSUE

Whether Respondent committed the acts alleged in the Notice of Specific Charges and, if so, the discipline, if any, that should be imposed against Respondent's employment.

PRELIMINARY STATEMENT

At times relevant to this proceeding, Janice Hill (Respondent) was a school secretary within the school district of Miami-Dade County, and was assigned to Lindsey Hopkins Technical Education Center (Lindsey Hopkins).

At its regularly scheduled meeting on June 5, 2011, the School Board of Miami-Dade County, Florida (Petitioner) voted to suspend and to terminate her employment, subject to her right to request a formal administrative hearing. Respondent timely requested a formal administrative hearing to challenge the School Board's action, the matter was referred to DOAH, and this proceeding followed.

On August 9, 2011, Petitioner filed a Notice of Specific Charges which set forth the factual allegations against Respondent. Based on those factual allegations Petitioner alleged that Respondent was guilty of gross insubordination and had violated School Board's Rule 6Gx13-4A-1.21 pertaining to Responsibilities and Duties of Petitioner's employees. Petitioner cited sections 1001.32(2), 1012.22(1)(f), 1012.40, and 447.209, Florida Statutes, in support of its allegations. All statutory references are to Florida Statutes (2011).

All witnesses called by the parties were either school administrators or had been a co-worker of Respondent at Lindsey Hopkins. Robert Gornto's office was not at Lindsey Hopkins. He

was (and presumably still is) Petitioner's Administrative Director of the Office of Adult, Vocational, and Community Education.

At the final hearing, the School Board presented the testimony of Nyce Daniel, Esteban Sardon, Drusilla Sears, Donna Wallace, Shundra Hardy, Cassandra Johnson, Charles Johnson, Thomas G. Nunn, Sophia Hall, Erinn Gobert, and Mr. Gornto. The School Board offered 33 consecutively-marked Exhibits, each of which was admitted into evidence by stipulation of the parties.

Respondent testified on her own behalf, and presented the additional testimony of Rose Goodman, Joyce Rowe, Antoinette Scott, Ann Marie McCrank, Gayle Williams, and Beverly Carter-Remy. Respondent offered pre-marked Exhibits I-XIX, each of which was admitted into evidence by stipulation.

A Transcript of the proceedings, consisting of one volume, was filed on September 11, 2011. Each party filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order. Respondent's Statement filed September 29, 2011, has been deemed to be her Proposed Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. At all times relevant to this proceeding, Petitioner employed Respondent as a secretary at Lindsey Hopkins

3. Prior to 2010, school administrators at Lindsey Hopkins had received numerous complaints from school employees that Respondent had verbally harassed them.

4. On February 8, 2010, Esteban Sardon was working as Assistant Principal of Lindsey Hopkins. On that date he was in one of the school's administrative offices and Respondent was also present. Mr. Sardon coughed while in the office. Almost immediately, Respondent accused Mr. Sardon of having spit on her.

5. Respondent sent Dr. Rosa Borgen, the principal of Lindsey Hopkins, a letter on February 10, 2010, that alleged that Mr. Sardon had deliberately twice spit and coughed in her face. In her letter, Respondent described "[t]wo big huge cough breath [sic] rate were [sic] about 70 to 80 wind speed with a [sic] some saliva." Respondent also sent Mr. Sardon a memorandum calling his behavior "unprofessional" and alleging that she was going to contact "CRC" (the Civil Rights Compliance Office).

6. Mr. Sardon denied, credibly, that he spat on Respondent. The more credible evidence established that he did cough twice in Respondent's presence, but the coughs were dry coughs and not in the direction of Respondent. Respondent

fabricated the allegation that Mr. Sardon had purposefully spat on her.

7. In an attempt to resolve the issues related to Respondent's allegations that Mr. Sardon had spat on her, Mr. Gornto, a district administrator, decided that the school administrators should meet with Mr. Sardon and Respondent. On March 9, 2010, Pamela Johnson, an instructional supervisor, from Mr. Gornto's office, met with Mr. Sardon, Respondent, Dr. Borgen, and another assistant principal of Lindsey Hopkins. At the meeting, Respondent presented a document entitled "What Would Make Me Happy" and asked Mr. Sardon to sign it. The "demands" were as follows:

> 1. I will never ever to [sic] use you're [sic] inside waste on me [sic]. Meaning neither your breath, nor your saliva. I am not a toilet. I am Human [sic]. A Human Being [sic].
>
> 2. Not to try to embarrass me in front of my co-workers.
>
> 3. Not to retaliate against me after this incident.
>
> 4. Big apology.

8. Mr. Sardon offered an apology to put the matter at rest, but he refused to sign the document.

9. Shortly after the "spitting" accusation, Respondent had conflicts with Drusilla Sears and Donna Wallace, both of whom worked closely with Mr. Sardon.

10. On March 2, 2010, Ms. Sears, a school account clerk, asked Respondent if she was finished using a copy machine. Respondent told her that she had asked a "stupid question," thereby starting a verbal altercation that included finger-pointing by Respondent and by Ms. Sears. The greater weight of the credible evidence established that Ms. Sears did not threaten physical harm to Respondent. This run-in upset Ms. Sears.

11. On March 3, 2010, Respondent sent another letter to Dr. Borgen claiming that Ms. Sears had tried to beat her up. In the letter Respondent also stated, in all capital letters, the following: "I AM NO FOOL. I KNOW SOMEONE TOLD DRUSILLA TO DO THIS TO ME."

12. There was no credible evidence that anyone had instructed Ms. Sears to do anything to Respondent. To the contrary, the greater weight of the credible evidence established that Respondent provoked the incident with Ms. Sears.

13. On March 5, 2010, Respondent wrote another letter to Dr. Borgen. That letter referenced the incidents with Mr Sardon and Ms. Sears and also asserted that someone had placed child pornography on her school computer. There was no credible evidence that anyone had placed pornography on Respondent's computer.[1]

14. On March 16, 2010, Mr. Gornto sent Respondent a memorandum related to an earlier correspondence he had received from Respondent. In the letter Mr. Gornto told Respondent that any future complaints regarding employees should be made to Dr. Borgen, to the CRC, or to the school police department.

15. Despite this directive from Mr. Gornto, Respondent continued to contact Mr. Gornto. These contacts (Petitioner's Exhibits 9, 12, and 17-21) were in the form of emails that contained false (and often nonsensical) allegations of employee wrongdoing against her. Each of these emails constituted separate and distinct acts that contradicted Mr. Gornto's directives to Respondent. A recurring theme in those emails was that Dr. Borgen and other school employees were trying to "destroy" her or make her "miserable." In one email, Respondent alleged that one of Mr. Gornto's subordinates had been impersonating Mr. Gornto.

16. In April 2010, Respondent approached school clerk Donna Wallace and accused her of saying something about Respondent to a school counselor. Ms. Wallace denied, credibly, that there was a factual basis for the allegation. Respondent told Ms. Wallace to "watch her back" and threatened to sue her for slander. The incident made Ms. Wallace feel uncomfortable and embarrassed.

17. On April 13, 2010, Respondent engaged in a verbal altercation with Shundra Hardy, a data input specialist. Ms. Hardy worked in the student registration department. When Mr. Sardon was made aware of this incident, Mr. Sardon told Respondent that she was only to visit the registration area as long she did not disturb other employees. This directive caused Respondent to yell and confront Mr. Sardon in his office, As a result of that confrontation, Mr. Sardon called school security.

18. On May 18, 2010, a conference for the record (CFR) was held with Respondent. Dr. Borgen, Mr. Gornto, and Dr. Anna Rasco (Administrative Director of Petitioner's Office of Professional Standards) represented Petitioner. The recent conflicts involving Respondent prompted a decision that she would have to undergo a fitness for duty evaluation. During the time the evaluation was to be completed, Respondent was placed on alternate assignment at her home. Respondent was directed to refrain from engaging in the behaviors that had prompted the need for the evaluation, and she was directed not to contact the school (other than through the principal's office to report her attendance) while on alternate assignment.

19. By letter dated August 10, 2010, Stephen Kahn, M.D., advised Dr. Rasco that Respondent was not fit for duty due to her mental status.[2]

20. By letter to Dr. Rasco dated September 4, 2010, Richard S. Greenbaum, Ph.D., a psychologist, opined that Respondent could return to work if she continued to see a psychotherapist.[3]

21. On October 4, 2010, Respondent called Lindsey Hopkins and spoke with two employees. These contacts were in direct violation of the directives that had been issued to her.[4]

22. On October 14, 2010, a CFR was held with Respondent. Ms. Nyce Daniel (who had replaced the retired Dr. Borgen as Principal of Lindsey Hopkins), Mr. Gornto, and Dr. Brasco represented Petitioner. This CFR was held to address Respondent's non-compliance with the terms and directives given to her while on alternate assignment. Respondent was directed to refrain from engaging in the behaviors that had prompted the need for a fitness evaluation.

23. Respondent was also advised that she would not be permitted to return to work because of the conflicting opinions between Drs. Kahn and Greenbaum. Respondent selected Joseph W. Poitier, Jr., M.D., to conduct her third evaluation.

24. By letter to Dr. Rasco dated March 14, 2011, Dr. Poitier opined that within a reasonable medical certainty Respondent was able to return to work without restriction.[5]

25. On March 30, 2011, a CFR was held with Respondent. Ms. Daniel, Mr. Gornto, and Dr. Brasco represented Petitioner.

Based on Dr. Poitier's opinion, Respondent was advised that she could return to work on April 4. Respondent was again given directives that included explicit directives to refrain from the behaviors that had caused the need for her fitness for duty evaluations. Specifically, Respondent was instructed to avoid altercations with school staff.

26. On April 5, 2011, with people present in the office, Respondent, using vulgar language, told Cassandra Johnson (a teacher at Lindsey Hopkins) that her husband, Charles Johnson (the head custodian) had engaged in a sexual affair with Dr. Borgen and that Dr. Borgen had been "doing all the guys in school." Ms. Johnson attempted to distance herself from Respondent, but Respondent pursued Ms. Johnson down the hall and continued her verbal tirade. Ms. Johnson was humiliated and upset by the incident. Respondent's actions disrupted Ms. Johnson's ability to perform her duties that day. Mr. Johnson was very upset by Respondent's accusation and denied, credibly, that he had ever had a sexual relationship with Ms. Borgen. Mr. Johnson was concerned that the accusations could hurt his marriage, and he was concerned because his wife was very upset.

27. On April 7, 2011, Respondent confronted Thomas Nunn (an automotive instructor at Lindsey Hopkins) and implied that he had been in an intimate relationship with Dr. Borgen.

Mr. Nunn was not offended by Respondent's comments. However, Ms. Daniel learned of Respondent's comments to Mr. Nunn. On April 8 Ms. Daniel directed Respondent to refrain from such conduct. At the time Ms. Daniel gave those directions to Respondent, Ms. Daniel did not know about the incident involving Mr. and Ms. Johnson.

28. On April 8, 2011, Respondent called Mr. Gornto's office to ask permission to take half-day leave. This call was in violation of the directives Mr. Gornto had given to her as to how she was to communicate with her supervisors.

29. On April 11, 2001, Ms. Daniel learned of the incident involving Mr. and Mrs. Johnson.

30. On or about April 28, 2011, Respondent complained to the CRC that Erinn Gobert (the ESOL chairperson at Lindsey Hopkins) and Sophia Hall (an assistant principal at Lindsey Hopkins) had been harassing her. She stated that they were mumbling things about her, taunting her, and teasing her. She further reported that Ms. Gobert and Ms. Hall made gestures that they wanted to fight with Respondent. Respondent's accusations of harassment triggered an investigation. Respondent's accusations were complete fabrications. Neither Ms. Gobert nor Ms. Hall had any meaningful contact with Respondent.

31. On May 18, 2011, a CFR was held with Respondent to address her gross insubordination and violation of other school

board rules. Ms. Daniel, Mr. Gornto, and Dr. Rasco represented Petitioner.

32. As a result of her behaviors, Ms. Daniel had to constantly give Respondent specific tasks to minimize Respondent's interaction with other employees. Despite Ms. Daniel's efforts, Respondent's run-ins with co-workers were throughout the school and reached outside of Respondent's assigned work area. Many of her co-workers were not comfortable working with or near Respondent. The efforts to shield co-workers from Respondent created extra work for Ms. Daniel.

33. Respondent's repeated contacts with Mr. Gornto and her baseless accusations towards co-workers disrupted his work and consumed an inordinate amount of his time.

34. Respondent's behavior negatively impacted employee morale at Lindsey Hopkins and disrupted its operations.

35. Respondent repeatedly refused to obey administrative directives that were reasonable in nature and given with proper authority.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

37. Because the School Board seeks to terminate Respondent's employment and does not involve the loss of a

license or certification, the School Board has the burden of proving the allegations in its Administrative Complaint by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So.2d 883 (Fla. 3d DCA 1990).

38. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000)(relying on Am. Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. U.S., 483 U.S. 171, 175 (1987)).

39. Section 1001.32(2) provides as follows:

> The district school system must be managed, controlled, operated, administered, and supervised as follows:
>
> * * *
>
> (2) DISTRICT SCHOOL BOARD. — In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall 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.

40. Section 1012.22(1)(f) authorizes a school board to suspend and/or terminate the employment of an employee.

41. Respondent is an educational support person. Section 1012.40 provides as follows:

> (1) As used in this section:
> (a) "Educational support employee" means any person employed by a district school system who is employed as a . . . secretary, or a clerical employee . . . .
>
> (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.

42. Section 447.209 provides as follows:

> 447.209 Public employer's rights.— It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

43. The collective bargaining agreement between the United Teachers of Dade and Petitioner applies to support personnel such as Petitioner. Any such employee may be suspended or dismissed at any time during the school year, provided that the charges against him/her are based on Florida Statutes. Respondent's violation of School Board Rule 6Gx13-4A-1.21 and being guilty of gross insubordination separately or collectively would constitute sufficient cause for the termination of Respondent's employment.

44. Petitioner has charged Respondent with violation of School Board Rule 6Gx13-4A-1.21, which sets forth policy

pertaining to the responsibilities and duties of School Board employees. As a School Board employee, Respondent is expected to comply with the rule, which provides as follows:

> All persons employed by The School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system. Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

45. Petitioner's behaviors described herein violated the standard of conduct for school employees set forth in School Board Rule 6Gx13-A-1.21. Respondent used profane language in addressing Ms. Johnson. Respondent repeatedly lodged false accusations against co-workers, which certainly did not reflect credit on Respondent or on the school system within the meaning of the rule.

46. Respondent's repeated violations of School Board Rule 6Gx13-A-1.21 constitute grounds for the termination of her employment.

47. Petitioner has charged Respondent with gross insubordination. Florida Administrative Code Rule 6B-4.009(4) defines gross insubordination or willful neglect of duty as follows:

> [A] constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given with proper authority.

48. Respondent's conduct, as described herein, constituted intentional and flagrant refusal to obey the direct orders of school administrators, reasonable in nature, and given by and with proper authority.

49. Respondent's conduct constitutes gross insubordination within the meaning of Florida Administrative Code Rule 6B-4.009(4) and constitutes grounds the termination of her employment.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order terminate Respondent's employment.

DONE AND ENTERED this 17th day of October, 2011, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2011.

ENDNOTES

1 In making this finding, the undersigned has considered the testimony of Rose Goodman, a friend of the Respondent, who testified that she had seen pornography on Respondent's computer. While Ms. Goodman corroborated many of Respondent's assertions, the undersigned finds that her testimony lacks credibility due to her friendship with Respondent and her desire to help her friend keep her job. Moreover, school administrators had Respondent's computer checked without finding any evidence of pornography.

2 Dr. Kahn's opinion letter is part of Respondent's Exhibit II. To protect Respondent's privacy, the opinions expressed in that letter and other such letters will not be discussed in detail.

3 Dr. Greenbaum's letter is part of Respondent's Exhibit III.

4 These contacts have been given no consideration by the undersigned because the contacts were made at a time that Respondent's mental status was in question.

5 Dr. Poitier's letter dated March 14, 2011, is part of Respondent's Exhibit IV.

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.