

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-1489TTS

CHRISTINE LINDSTRAND,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes, before Jessica E. Varn, a duly-designated administrative law judge of the Division of Administrative Hearings (DOAH). The hearing was held on July 30, 2013, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert McKee, Esquire  
1718 East Seventh Avenue  
Suite 301  
Tampa, Florida 33605

For Respondent: Adrian Alvarez, Esquire  
Deborah Klauber, Esquire  
Haliczer, Pettis, and Schwamm, P. A.  
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Fort Lauderdale, Florida 33394

STATEMENT OF THE ISSUE

Whether Ms. Lindstrand violated section 1012.67, Florida Statutes (2012), or whether there is just cause to terminate Ms. Lindstrand.

PRELIMINARY STATEMENT

On March 7, 2013, the Broward County School Board (School Board) notified Ms. Lindstrand of its intent to terminate her employment as a teacher at Cypress Bay High School. At a meeting held on March 18, 2013, the School Board voted to terminate Ms. Lindstrand. Ms. Lindstrand timely requested an administrative hearing, and the School Board referred the matter to DOAH on April 23, 2013. The final hearing was scheduled for July 30, 2013. On July 19, 2013, the School Board filed a Motion for Leave to File Administrative Complaint and Motion for Continuance. On the same day, Respondent filed a Memorandum in Opposition to Petitioner's Motion for Leave to File Administrative Complaint and Motion for Continuance.

On July 23, 2013, the undersigned entered an Order which denied the School Board's Motion for Continuance, and granted the Motion for Leave to File an Administrative Complaint. The Administrative Complaint charged Ms. Lindstrand with violations of section 1012.67, Florida Statutes (2012); Florida Administrative Code Rule 6A-5.056(2)(c), alleging that Ms. Lindstrand's acts constitute misconduct in office; rule 6A-5.056(3)(a), alleging

inefficiency as a result of excessive absences or tardiness; and rule 6A-5.065(5), alleging willful neglect of duty.

At the hearing, the School Board presented the testimony of Lorenzo Calhoun, Gracie Diaz, Marianela Estripeaut, and Rebecca Johnson. Ms. Lindstrand testified on her own behalf, and presented the testimony of Kathleen Lindstrand, and Tom Lindstrand. Petitioner's Exhibits 1-10 and Respondent's Exhibits 1-8 were admitted into evidence pursuant to stipulation of the parties.

The one-volume Transcript was filed with DOAH on September 20, 2013. Both parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2012).

#### FINDINGS OF FACT

1. The School Board is charged with the duty to operate, control and supervise all free public schools within Broward County, Florida.

2. At all times relevant to this matter, the School Board employed Ms. Lindstrand as a math teacher at Cypress Bay High School. Ms. Lindstrand had started her employment with the School Board in 1996.

3. In June 2011, Ms. Lindstrand was arrested for driving under the influence (DUI). She hired an attorney and contested the charge. Her trial was scheduled for February 27 and 28, 2013.

4. Ms. Lindstrand requested and had been approved for leave from February 26 through March 1. She requested the leave for February 26 through the 28th due to the trial, and the leave on March 1st was for the intended purpose of attending her grandfather's 90th birthday party. She never informed the school or her parents that she had a trial; rather, she requested the leave for "personal reasons."

5. Ms. Lindstrand did not anticipate that she would be found guilty of the DUI charge, or that she would, upon being found guilty, be sentenced immediately to a period of incarceration. She had made no plans for that possibility.

6. On February 28th, in the evening, Ms. Lindstrand called her father, Thomas Lindstrand, notifying him that she had been through the DUI trial, had been found guilty, and had been immediately incarcerated. Mr. Lindstrand informed his wife, and told her to call the school the next morning.

7. Ms. Lindstrand's mother called the school the morning of March 1st, and spoke with Ms. Estripeaut, an assistant principal at Cypress Bay High School. She informed Ms. Estripeaut that

Ms. Lindstrand was in jail, and would remain in jail for a period of six weeks.

8. Because Ms. Lindstrand was responsible for teaching seven math classes, which included classes where students are required to pass end-of-year tests in order to graduate, Ms. Estripeaut was tasked with the responsibility of finding a certified substitute teacher, with a math background, who could serve for a lengthy period of time.

9. Once a qualified substitute teacher was selected, Ms. Estripeaut and the substitute teacher met with parents and students in order to reconcile grades in the grade books. Students reported that they had turned in assignments that were missing from the grade books, and parents were concerned about the students' preparation for the end-of-year tests.

10. On March 5th, Mr. Lindstrand called the school and spoke with Rebecca Johnson, who works as a Leave Specialist for the School Board. Ms. Johnson sent Mr. Lindstrand a leave request form, which he properly completed and filed on March 6, 2013.

11. On approximately March 7th, Ms. Estripeaut contacted Mr. Lorenzo Calhoun, an Employee Relations Specialist for the School Board, and informed him that Ms. Lindstrand had been absent from work for three days without approved leave. Mr. Calhoun recommended that Ms. Lindstrand's name be sent to the

School Board for termination, because being absent from work for more than three days without approved leave constitutes abandonment under School Board policy.

12. Prior to making his recommendation to Ms. Estripeaut, Mr. Calhoun confirmed with the Leave Department that Ms. Lindstrand had not been approved for leave for the three or more days that she had already been absent from work. When he called the Leave Department, she had not been approved for any leave.

13. On March 7, 2013, a letter from the school, signed by the principal but prepared by Ms. Estripeaut, informed Ms. Lindstrand that her name was being forwarded to the School Board with the recommendation that she be terminated. It also informed her that her name would be placed on the meeting agenda for the School Board's meeting on March 18, 2013.

14. The letter was sent to the following address:  
"1408 NE 5 Ct. #4, Fort Lauderdale, Florida, 33301."  
Ms. Lindstrand had lived at this address until August of 2012, at which point she moved to a different address, but never informed the school. Although Ms. Lindstrand had asked the post office to forward her mail to her new address, she never received this letter.

15. On March 8, 2013, an almost identical letter was sent to Ms. Lindstrand from the Staffing Department, letting her know

that her name was being forwarded to the School Board for termination, and that the School Board would meet on March 18, 2013. This letter was also sent to the only address on record for Ms. Lindstrand--an address where she no longer resided. According to Ms. Lindstrand, she never received this letter either.

16. The Chief Human Resources Officer, Gracie Diaz, supervises the staffing department, leaves department, and employee relations department. On approximately March 7th, Ms. Diaz was informed that Ms. Lindstrand was incarcerated, and that the Cypress Bay High School principal and the staffing department were moving forward with the termination process. She was also informed that Ms. Lindstrand had requested personal leave.

17. Ms. Diaz spoke with the School Board's general counsel, and together they reviewed the collective bargaining agreement between the Broward Teachers Union and the School Board, which contained the following provision:

Length of Leave: An employee who has been employed for more than three (3) years in Broward County may be granted upon request, personal leave without pay for a period not to exceed two (2) years for reasons not provided elsewhere in this Agreement. The employee shall be returned to duty at the beginning of the next school year following the leave. Such leave shall require the approval of the Superintendent.

18. Ms. Diaz took the leave request form, as well as the letters from the principal and the staffing department regarding the termination process to the Superintendent. Given that the collective bargaining agreement leave provision is permissive in nature, Ms. Diaz recommended to the Superintendent that he deny the leave request, because she felt it was inappropriate to grant personal leave due to incarceration. She also recommended that the School Board go forward with termination.

19. The School Board met on March 18, 2013, and voted to terminate Ms. Lindstrand's employment.

20. By letter dated March 22, 2013, the Leaves Department notified Ms. Lindstrand that her request for personal leave had been denied by the Superintendent.

21. By letter dated April 9, 2013, Ms. Lindstrand was notified that the School Board had met and had approved the recommendation for her termination.

22. Ms. Lindstrand was released from jail on April 6, 2013. She received these final two letters at the post office, a few days after being released.

#### CONCLUSIONS OF LAW

23. 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.



24. In an administrative proceeding to dismiss a member of the instructional staff, the School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995). The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

25. In the Administrative Complaint, the School Board asserts that Ms. Lindstrand is guilty of abandoning her job, which, pursuant to section 1012.67, is a ground for termination. Section 1012.67 states as follows:

Absence without leave-Any district school board employee who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his or her employment shall be subject to termination by the district school board.

26. The School Board met its burden to prove that Respondent was absent without leave starting on March 4, 2013. In view of the fact that Ms. Lindstrand's absence was the result of her DUI arrest and subsequent imprisonment, termination is an appropriate remedy. See Lee County School Board v. Simmons, Case No. 03-1498 (Fla. DOAH July 15, 2003) (recommending

termination of a school board employee pursuant to section 1012.67, Florida Statutes, when absence was due to incarceration); Miami-Dade County School Board v. Holmes, Case No. 02-2820 (Fla. DOAH Dec. 10, 2002) (recommending termination of a school board employee who was absent without leave as a result of her incarceration); Stokes v. Choice, Case No. 89-2022 (Fla. DOAH Jan. 2, 1990) (rejecting school board employee's argument that his incarceration was not "willful" and therefore not a violation of the predecessor to Section 1012.67 because the employee "willed the series of acts which set in motion the chain of events which eventually resulted in his incarceration").

27. In light of the determination above that the School Board can terminate Ms. Lindstrand based on her absence without approved leave, it is unnecessary to determine whether the School Board can also terminate Ms. Lindstrand for "just cause" based upon misconduct, inefficiency for excessive absences, or willful neglect of her duties.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Broward County School Board issue a final order terminating Ms. Lindstrand's employment.

DONE AND ENTERED this 17th day of October, 2013, in  
Tallahassee, Leon County, Florida.



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JESSICA E. VARN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of October, 2013.

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.