

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-3285

NIKKI BRYDSON,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, an evidentiary hearing was held on October 25, 2013, in Bradenton, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Erin G. Jackson, Esquire
Thompson, Sizemore,
Gonzalez and Hearing, P.A.
Post Office Box 639
Tampa, Florida 33601-0639

For Respondent: Nikki Brydson, pro se
320 12th Street West
Palmetto, Florida 34221-3962

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 July 16, 2013, accompanied by an Administrative Complaint (Complaint) issued on behalf of the Manatee County School Board (Petitioner), Respondent, Nikki M. Brydson (Respondent), was informed of Petitioner's intent to terminate her employment as a food service worker. The allegations in the Complaint were: (1) that Respondent violated School Board Policy 6.11 by engaging in a scheme to defraud in violation of a Florida statute, resulting in a felony charge to which Respondent pled nolo contendere, for which adjudication was withheld pending completion of probation terms; (2) that Respondent submitted a falsified timesheet in violation of Florida Administrative Code Rule 6A-10.081; and (3) that the first two alleged violations constitute "misconduct in office" within the meaning of Florida Administrative Code Rule 6A-5.056(2) (b) and (c).

Respondent timely requested an administrative hearing to contest the proposed termination. The case was forwarded to the Division of Administrative Hearings, where it was assigned to Administrative Law Judge Lynn Quimby-Pennock and set for hearing. Prior to the hearing, Petitioner filed a list of its proposed witnesses, as required by an Order of Pre-hearing Instructions. Respondent did not file a witness list. On October 22, 2013, the case was transferred to the undersigned.

At the hearing, Petitioner presented the testimony of Ben Pieper and Forest Moore. Petitioner's Exhibits 1, 2A through 2L, 3 through 5, 7, and 9 were admitted in evidence.

Respondent testified on her own behalf. In addition, despite Respondent's failure to comply with the Order of Pre-hearing Instructions regarding disclosure of witnesses, Respondent was allowed to present the testimony of Beverly Hawker and Mary Weeks, without objection by Petitioner. Respondent did not offer any documentary evidence.

The one-volume Transcript of the hearing was filed on November 7, 2013. The deadline for filing proposed recommended orders was November 18, 2013. Petitioner timely filed its proposed recommended order, and Respondent timely filed a letter summarizing her position. To the extent the submissions are based on the evidence of record, they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to this case, Respondent was employed by Petitioner as a food service worker in the cafeteria at Ballard Elementary School.

2. Respondent was hired by Petitioner on November 5, 1998. Prior to the incidents giving rise to the Complaint, Respondent had a relatively good employment record, with two disciplinary matters documented in her personnel file. On September 17, 2001,

Respondent was given a written reprimand for refusing to follow her supervisor's directions and giving inappropriate verbal responses. More recently, on April 16, 2012, Respondent received a verbal reprimand for not properly accounting for student meals.

3. Just days after Respondent received a verbal reprimand related to accounting for student meals, a vehicle in which Respondent was a passenger was stopped by a police detective. As described below, this traffic stop ultimately led to Respondent's arrest and subsequent third-degree felony charge for engaging in a scheme to defraud in an amount less than \$20,000, in violation of section 817.034(4)(a)3., Florida Statutes (2011).^{1/}

4. On February 21, 2013, Respondent pled nolo contendere to the charge. Adjudication was withheld, pending Respondent's successful completion of a five-year term of probation with specified conditions.

5. The circumstances giving rise to the criminal charge against Respondent were described in detail by the City of Bradenton Police Department detective who arrested Respondent. The detective testified that on April 20, 2012, he pulled over a vehicle for failing to stop at a stop sign. The detective approached the passenger side of the vehicle, where Respondent was seated. The detective observed a laptop computer on Respondent's lap, open and in use with a portable internet access

device, but Respondent quickly shut the laptop as the detective approached.

6. For reasons that are not germane to the Complaint in this case, the detective instructed Respondent to exit the vehicle, and he placed her in handcuffs. The detective asked for identification, and Respondent told him it was in her purse, which she had placed on the passenger seat when she exited the vehicle. The detective retrieved Respondent's purse and looked inside for her identification. In addition to Respondent's identification, the detective also found several Visa debit cards with different people's names on them. Also in the purse were written instructions for filing tax returns through TurboTax, along with ledgers containing names, social security numbers, dates of birth, and other personal identification information. Some of the names on the ledgers matched the names on the debit cards found in Respondent's purse. Respondent was arrested for an unrelated matter and transported back to the police station for questioning.

7. At the police station, Respondent was given her Miranda rights and then questioned about the laptop and material found in her purse. In her post-Miranda interview, Respondent told the detective that the laptop was hers, but she had sold it to a woman she knew only as "Tiffany" for \$200. Respondent told the detective that she and Tiffany entered into an arrangement

whereby Respondent would assist Tiffany in a scheme to file tax returns in other people's names using TurboTax. The TurboTax filings would direct that the tax refunds, issued on debit cards, be sent to Respondent's residence. For each debit card received pursuant to this scheme, Tiffany would pay Respondent \$500, with one exception: Respondent admitted to the detective that she gave her mother's personal information to Tiffany, who filed a tax return in Respondent's mother's name; for this debit card, the deal was that Respondent and Tiffany would split the amount of the tax refund 50-50.

8. Respondent gave information to the detective regarding where "Tiffany" could be found, but there was no "Tiffany" at the place Respondent identified.

9. The detective determined through a search of Respondent's laptop that TurboTax had been in use when he approached the vehicle and saw Respondent quickly closing the computer. However, Respondent admitted that she had already filed her own tax return, so there would be no reason for her to be using TurboTax, except in furtherance of the scheme to secure other people's tax refunds.

10. The detective traced the individuals whose names were on the debit cards found in Respondent's purse, and he discovered that they all were residents of a nearby retirement community. He interviewed the residents, who reported to the detective that

they did not know Respondent and that they had not authorized Respondent or "Tiffany" to file tax returns on their behalf.

11. Respondent admitted to the detective that she knew what she was doing was wrong and illegal.

12. At the hearing, Respondent provided only vague, general, and somewhat contradictory testimony regarding the circumstances giving rise to the criminal charge to which she pled no contest. On the one hand, she claimed that although she was charged, she "didn't have nothing to do with what went on[.]" She later admitted that she was wrong, but took the position that she already had been punished for her wrongdoing and deserved a second chance. The only specific fact Respondent disputed regarding her role in the debit card scheme was whether she was the one who actually filed the tax returns. Respondent did not deny that she took part in the scheme to defraud vulnerable people out of their tax refunds for her own financial gain. Respondent did not deny that she used her own mother's personal information for Respondent's financial gain. Overall, Respondent's testimony lacked credibility and did not effectively refute the detective's more credible testimony.

13. Respondent's court appearance at which her plea was made was on February 21, 2013, at 11:00 a.m. That day was a work day for Respondent, and the hours she was supposed to work were 7:00 a.m. to 9:45 a.m., and 10:15 a.m. to 1:30 p.m.

14. Respondent acknowledged that she left the cafeteria sometime between 10:00 a.m. and 10:30 a.m. for her court appearance and did not return to work that day. However, Respondent filled out her semi-monthly payroll sheet form to reflect that she was present and working from 7:00 a.m. to 9:45 a.m. and from 10:15 a.m. to 1:30 p.m., on February 21, 2013. Respondent signed the payroll sheet that she filled out to falsely reflect that she was working and should be paid for time that she was not actually at work.

15. Petitioner's food services department informed its employees that it considers the accurate completion of time records on the payroll sheet to be very important. A June 2012 written policy was circulated to food service employees to emphasize that each employee must take care to ensure that the time records are accurate, including "[a]ctual start and [a]ctual end times," verified by the employee's signature. As emphasis, a text box on the written policy contained the message that "[p]utting false or incorrect information on your timesheet is **Time Card Fraud** and is grounds for disciplinary action up to and including recommendation for termination."

16. Respondent acknowledged that she is aware that Petitioner expects employee time records to be accurate and truthful, and that falsification of a time sheet is considered time card fraud. Respondent also acknowledged that it was her

signature on the payroll sheet that was filled out inaccurately for February 21, 2013. Respondent testified that she did "not remember" putting down the wrong hours or signing the payroll sheet, but the fact remains that the record was submitted with her signature verifying that she worked hours that she admittedly did not work on February 21, 2013. The result of Respondent's signed submission was that she was paid for hours that she knows she did not work.

17. The credible evidence established that Respondent filled out her time records on the payroll sheet form to reflect that she worked a full day on February 21, 2013, which she knew was not true. Respondent signed the payroll sheet form, vouching for the false information that she knew would be used to pay her for hours she did not work.

18. Respondent did not dispute Petitioner's authority to terminate her for just cause, nor did Respondent dispute most of the facts alleged as the basis for establishing just cause. Instead, Respondent's position was that despite her wrongdoing, she should be given a second chance, having worked for Petitioner for 15 years. Essentially, then, Respondent's defense was an argument for mitigation of the penalty to be imposed.

19. In furtherance of her position, Respondent presented testimony from two character witnesses, but the witnesses knew little to nothing about the nature of the criminal charge to

which Respondent pled no contest. Neither witness offered any information about Respondent for the time period at issue in this case. One witness was a neighborhood acquaintance who has only known Respondent for three months. The other witness was a former cafeteria supervisor who was terminated by Petitioner five years ago. The former supervisor testified that during the time she and Respondent worked together, Respondent was a hard worker who had her difficult moments, but who complied with and followed instructions "most of the time." When Respondent asked her former supervisor whether she believed that everyone deserves a second chance, the witness responded as follows: "I believe everyone should have a second chance. Some people need more than two chances, and [Respondent] might be that person. There's been times that maybe she hadn't followed the rules entirely, but who does?"

20. Petitioner advocated against leniency based on the unrefuted evidence that a cafeteria worker, such as Respondent, has access to personal and financial information about students and their families. Accounts are established for students to draw on for their cafeteria purchases. Student account funds are deposited, withdrawn, and accounted for by food service workers. Family names, phone numbers, and addresses are included with the student account records. In addition, many account records reflect personal financial information of the student's family,

including information on applications submitted to qualify students for free or reduced-cost lunches and information from governmental programs that provide aid to students, such as the state-federal program to provide temporary assistance for needy families (TANF).^{2/}

21. It is reasonable for Petitioner to be concerned with the risk that would be presented by allowing Respondent to continue in her position where she has access to individual financial information of students and their families. It is not unreasonable for Petitioner to be unwilling to take that risk, given Respondent's very recent involvement in a scheme to defraud vulnerable people, including her own mother, for Respondent's financial gain.

CONCLUSIONS OF LAW

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

23. In this proceeding, Petitioner seeks to terminate Respondent's employment. There is no dispute that Petitioner has the authority to discipline Respondent, up to and including termination, for "just cause." Petitioner bears the burden of proving by a preponderance of the evidence that just cause exists to terminate Respondent's employment for the reasons charged in the Complaint, and that termination is an appropriate penalty.

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).

24. Petitioner's Policy 6.11, a rule promulgated by Petitioner, sets forth a non-exclusive list of acts that constitute "just cause," providing in pertinent part as follows:

Any employee of the School Board may be temporarily suspended, with or without pay, or permanently terminated from employment, for just cause including, but not limited to, immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policies and Procedures Manual of the School District of Manatee County, violation of any applicable Florida statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

25. The Complaint charges Respondent under Policy 6.11 with a violation of Petitioner's promulgated policies, based on Respondent's conviction within the meaning of Policy 6.16. Policy 6.16, Petitioner's employment standards rule, prohibits the employment of an individual who has been convicted of a felony for ten years after the conviction. This rule specifies that "conviction" shall include "a plea of nolo contendere (no contest)" for which the disposition is "adjudication withheld[.]" The evidence establishes that Respondent does not satisfy Petitioner's employment standards rule.

26. Petitioner also has met its burden of proving that Respondent violated the statute under which she was charged by engaging in a scheme to defraud. The unrefuted testimony was that Respondent admitted to her wrongdoing when she was caught with debit cards issued as tax refunds in the names of unsuspecting retirement community residents. Respondent agreed to participate in the scheme to defraud and to accept money for her participation. Respondent assisted in the fraudulent scheme by using her own mother's personal information for a tax return that would generate a tax refund, of which Respondent was to earn half. Respondent admitted these facts to the detective who arrested her and did not refute them at hearing.

27. Petitioner met its burden of proving that Respondent is guilty of "misconduct in office" as defined in rule 6A-5.056(2)(c) to include a "violation of the adopted school board rules." Petitioner has demonstrated that Respondent violated a Florida statute and Petitioner's promulgated policies by participating in a scheme to defraud and by being convicted of a third-degree felony contrary to Petitioner's employment standards. Each of these acts violates Policy 6.11 and provides just cause for terminating Respondent's employment.

28. The Complaint also charges Petitioner with violating one of the Principles of Professional Conduct for the Education Profession in Florida, codified in rule 6A-10.081 (formerly

6B-1.006). In particular, Respondent is charged with violating the principle prohibiting submission of "fraudulent information on any document in connection with professional activities."

Fla. Admin. Code R. 6A-10.081(5)(h). Petitioner met its burden of proving that Petitioner violated this rule by falsifying her time records on the payroll sheet form that she signed so that she would be paid for hours she did not work.

29. A violation of one of the principles of professional conduct codified in rule 6A-10.081 constitutes just cause for termination, pursuant to Petitioner's Policy 6.11 quoted above. In addition, a violation of one of the principles of professional conduct codified in rule 6A-10.081 constitutes "misconduct in office" as defined in rule 6A-5.056(2)(b).

30. Petitioner has met its burden of proving just cause to terminate Respondent's employment.

32. Petitioner has also met its burden of proving that termination is the appropriate penalty for Respondent's statutory and rule violations. Respondent pointed to her 15 years working for Petitioner and urged that she be given a second chance. By the testimony of Respondent's own witness, she has already been given second chances. More importantly, however, Petitioner established cause to be concerned with Respondent's continued employment because of the access she would have in her position

to the sort of personal and financial information that was at the heart of her recent wrongdoing.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Manatee County School Board enter a final order terminating the employment of Respondent, Nikki M. Brydson.

DONE AND ENTERED this 5th day of December, 2013, 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 5th day of December, 2013.

ENDNOTES

^{1/} Unless otherwise provided, statutory citations herein are to the Florida Statutes (2013). With regard to the criminal charge against Respondent, the 2011 statute is cited because that is the law that was in effect at the time of the alleged conduct giving rise to the criminal charge.

^{2/} The TANF program is considered a state program, defined by federal law and funded with federal dollars, to provide cash assistance to needy families. See generally § 414.045, Fla. Stat.

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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.