

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-4171TTS

STACEY LANDAU,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) heard this case in Fort Myers, Florida, on December 12, 2013.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966-1012

For Respondent: Robert J. Coleman, Esquire
Coleman and Coleman
Post Office Box 2089
Fort Myers, Florida 33902-2089

STATEMENT OF THE ISSUE

Does Petitioner, Lee County School Board (Board or District), have just cause to terminate the employment of Respondent, Stacey Landau, from her position as a school teacher for submitting fraudulent medical documentation in support of applications for accommodations and benefits under the Americans

With Disabilities Act (ADA) and the Family Medical Leave Act (FMLA)?

PRELIMINARY STATEMENT

By petition dated September 3, 2013, the superintendent for the Lee County School District sought termination of Ms. Landau's employment. On October 22, 2013, the Board voted to suspend Ms. Landau's employment pending resolution of this proceeding. On October 24, 2013, the Board referred this matter to DOAH for conduct of a final hearing. The undersigned set the hearing for December 12, 2013. The hearing was conducted as scheduled.

The Board presented testimony from Christine Christensen, Ranice Monroe, and James Weiner. Board Exhibits 1 through 10 were accepted into evidence.

Ms. Landau testified on her own behalf and presented the testimony of Bonnie Landau and Britton Thorne. Ms. Landau's Exhibits 1 through 7 and 9 through 12 were accepted into evidence.

The Transcript of the proceeding was filed on January 10, 2014. The period for submitting proposed recommended orders was extended at the parties' request. The parties timely filed proposed recommended orders, which have been considered.

FINDINGS OF FACT

1. The Board owns and operates the public schools in Lee County, Florida. It is responsible for hiring, terminating, and overseeing all employees in the school district.

2. The District has employed Ms. Landau since January 19, 1998. Most recently, she was assigned to work as a teacher of students with disabilities at Patriot Elementary School.

3. Ms. Landau is an instructional employee and is governed by the Collective Bargaining Agreement between the Board and the Teacher's Association for Lee County (TALC). The District employs her pursuant to a professional services contract.

4. Ms. Landau holds a Florida educator's certificate. She is certified in elementary education, English for speakers of other languages, and exceptional student education.

5. Ms. Landau's performance assessments have always been satisfactory or better. The District has not previously disciplined her.

6. Ms. Landau submitted documents to the District in 2012 and 2013 to support her requests for accommodations under ADA and FMLA. The documents included three dated July 25, 2012; August 16, 2012; and June 24, 2013.

7. During a July 24, 2013, meeting of the District ADA Committee to review Ms. Landau's most recent request, members of the committee developed concerns about the authenticity of the

June 24, 2013, document. It was one of three documents submitted by Ms. Landau that bore the signature of James Weiner, M.D. The other two were dated July 25, 2012, and August 16, 2012, also purportedly signed by Dr. Weiner.

8. Ranice Monroe, the District's director of Professional Standards and Equity, contacted Dr. Weiner's office to determine the authenticity of the signature.

9. After Dr. Weiner's staff advised Ms. Monroe that neither the doctor nor his staff had completed or signed the form, the District had Dr. Weiner review the other two forms to determine their authenticity.

10. Dr. Weiner is a physician who works for the Sypret Institutes, a neurosurgical practice. He also worked, during the relevant period, for Southwest Florida Neurosurgical and Rehabilitation Associates.

11. Dr. Weiner practices anesthesia, pain management, and rehabilitative medicine. He treated Ms. Landau for several years. During all time periods relevant to this proceeding, Ms. Landau was Dr. Weiner's patient.

12. Ms. Landau was also the patient of an ophthalmologist, Dr. Elmquist, who was treating her for her deteriorating eyesight. Information provided by his office is not relevant to the issues in this proceeding.

13. Throughout his career, Dr. Weiner has consistently followed the same practice when completing forms, such as forms for workers' compensation patients, medical certifications for benefits, and medical certifications for accommodations. He personally completes the forms by hand, usually during the evening at home. He never signs the forms in blank. Ordinarily, Dr. Weiner's staff does not complete these types of forms for him.

14. Dr. Weiner's office does not have and has never had a typewriter. The forms that he completes for patients are never completed by typewriter or other mechanical printing device. Dr. Weiner keeps copies of forms that he completes in his patients' files, whether he provides them to the patient, an employer, or an insurance carrier.

July 25, 2012, Form

15. Ms. Landau submitted a form titled, Medical Certification of ADA Qualifying Impairment dated July 25, 2012, in support of her request for accommodations due to a disability. The form has four sections seeking identified information and provides room for physician-identifying information and the physician's signature.

16. "Cervical spasmodic torticollis" is handwritten in the section asking for the "[n]ature and severity of the employee's impairment." "Chronic" is handwritten in the section seeking

"[p]ermanent or long term impact." The handwriting for the responses in those two sections is the handwriting of Dr. Weiner. He completed those sections of the form.

17. Dr. Weiner also completed the section of the form providing the name and contact information for the attending physician, which is also in his handwriting.

18. The patient name on the form is in handwriting that Dr. Weiner says is not his.

19. Handwriting that Dr. Weiner says is not his provides the response called for by a section stating: "Major life activities substantially limited by impairment"

20. The response states that, among other things, Ms. Landau has a limited ability to engage in daily activities with her son, grocery shop, carry heavy objects, lift items out of the car, and walk.

21. The following section seeks "[w]ork related restrictions that necessitate a reasonable accommodation for this employee." The response, in handwriting that Dr. Weiner says is not his, states:

some physical restraint, deflecting aggressive attacks, [illegible] emotional stress that see daily and extend throughout the long [illegible]. Moving furniture to put classroom back together [illegible] has [illegible].

22. Dr. Weiner theorized that someone modified a form that he had completed changing the responses in the two sections quoted above. The physical evidence is not consistent with the theory. The form has lines on which to provide the responses. The lines on all sections in question are complete. There is nothing indicating that text on them was erased or pasted over. The writing is on the lines with the loops of letters such as "ys" and "fs" crossing below the lines in a natural manner.

23. There is also plausible testimony from Ms. Landau's mother, also a patient of Dr. Weiner, that on occasion, his staff has completed parts of forms that he signs.

24. Consideration of the persuasive and credible evidence does not result in the conclusion that it is more probable than not that Ms. Landau caused sections of the July 25, 2012, form to be altered after Dr. Weiner completed it. It is probable, accepting Dr. Weiner's testimony that he never signs blank forms, that in this instance, his staff assisted him in completing the form.

25. Comparing the copy of the July 25, 2012, Medical Certification form that Ms. Landau provided the school with the copy of the form, if any, in Dr. Weiner's records, would have demonstrated whether the form that Ms. Landau provided to the school was one that Dr. Weiner had prepared. The record does not contain evidence of a file copy.

August 16, 2012, Form

26. The responses on the Medical Certification form dated August 16, 2012, that Ms. Landau provided the District are typed or otherwise mechanically printed. Only the signatures of Dr. Weiner are in script.

27. The responses are typed or printed on pieces of paper that have been obviously pasted or taped over the lines on the form where responses are to be written. This includes the section for the address of the provider.

28. The response to the "[n]ature and severity of the employee's impairment" section is markedly different from that of the form dated July 25, 2012, less than a month earlier. The printed response states: "Positive cervical nodes with intra-abdominal metastases and tumor invasion."

29. The difference between the July 25 and August 16, 2012, response to the "[p]ermanent or long term impact" section is also marked. The printed response states: "Ms. Landau will require routine blood tests and pet scans to monitor for possible future growth. Ms. Landau requires monitoring and assistance with food consumption and nutrition."

30. The responses to the other two sections calling for narrative responses are also very different from the responses in the July 25, 2012, form.

31. These differences, the credible and persuasive testimony of Dr. Weiner that he has never used printed responses on these sorts of forms, and the fact that the responses are plainly added to the form over the lines provided, make it more probable than not that Ms. Landau altered the form intending to deceive the Board.

June 24, 2013, Form

32. This form is an acknowledged forgery. Britton Thorne, an unemployed family friend of Ms. Landau forged the responses on the four-page form and Dr. Weiner's signature on it.

33. Because he was unemployed and Ms. Landau needed assistance due to her vision impairment, Mr. Thorne was living with her, helping with household chores, providing transportation, and attending doctor appointments with her.

34. Mr. Thorne testified that he grew frustrated with his inability to have the form completed by Dr. Elmquist and was unwilling to leave the form at the doctor's office for completion. Consequently, he completed the form. He signed Dr. Weiner's name because he had a prescription from Dr. Weiner available with a signature to copy.

35. Mr. Thorne then sealed the forged form in an envelope. He drove Ms. Landau to the District office to deliver the envelope with the forged form.

36. Mr. Thorne did not tell Ms. Landau what he had done until Dr. Weiner's office advised Ms. Landau that he was discharging her because he had learned of the forgery from the District.

37. Mr. Thorne's demeanor while testifying and his acknowledged concern about possible criminal prosecution for his actions made his testimony credible and persuasive.

38. There is no credible, persuasive evidence that Ms. Landau knew of Mr. Thorne's forgery at the time she submitted the form to the District.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of the Petition pursuant to School Board Policy 1.16(6) (c); sections 1012.40(2) (c), 120.569, and 120.57, Florida Statutes (2013)^{1/}; and the contract between the Board and DOAH.

40. Sections 1012.22(1) (f) and 1012.40(2) (c) grant the School Board authority to terminate and/or suspend instructional personnel without pay and benefits.

41. Section 6.024 of the TALC Collective Bargaining Agreement and section 1012.33(1) (a) establish "just cause" as the standard for teacher discipline.

42. The Board must prove its charges by a preponderance of the evidence. § 120.57(1) (j), Fla. Stat.; McNeill v. Pinellas

Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996).

"Preponderance of evidence is defined as evidence 'which as a whole shows that the fact sought to be proved is more probable than not.' State v. Edwards, 536 So. 2d 288, 292 n.3 (Fla. 1st DCA 1988)." Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011); see also, Escambia Cnty. Elec. Light & Power Co. v. Sutherland, 61 Fla. 167, 193; 55 So. 83, 92 (1911).

43. The Board brought five charges against Ms. Landau. All rest on the Board's contention that Ms. Landau forged or knew of the forgery of the June 25, 2012; August 16, 2012; and July 24, 2013, forms.

Misconduct in Office--Rule 6A-5.056

44. First, the Board charges that Ms. Landau committed misconduct in office, as defined in Florida Administrative Code Rule 6A-5.056, by violating the Code of Ethics of the Education Profession in Florida (Code of Ethics), the Principles of Professional Conduct for the Education Profession in Florida (Principles of Professional Conduct), and School Board policy. Rule 6A-5.056 identifies several grounds for dismissal. Rule 6A-5.056(2) defines "misconduct," the offense charged here, as:

(2) "Misconduct in Office" means one or more of the following:

(a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;

(c) A violation of the adopted school board rules;

(d) Behavior that disrupts the student's learning environment; or

(e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

To the extent the Board proved any one of the five charges listed in the definition, it proved this charge. St. Lucie Cnty. Sch. Bd. v. Contoupe, Case No. 13-0410TTS (Fla. DOAH Nov. 7, 2013; Fla. St. Lucie Cnty. Sch. Bd. Jan. 15, 2014); Miami-Dade Cnty. Sch. Bd. v. McBride, Case No. 11-4933TTS (Fla. DOAH June 31, 2012; Miami-Dade Cnty. Sch. Bd. Sept. 25, 2012).

Failure to Sustain Highest Degree of Ethical Conduct--
Rule 6A-10.080(3)

45. Second, the Board charges that Ms. Landau failed to sustain the highest degree of ethical conduct as articulated by rule 6A-10.080(3). Rule 6A-10.80, formerly rule 6B-1.001, is the Code of Ethics. Rule 6A-10.80(3) provides:

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

46. The Board proved that Ms. Landau, by submitting the altered August 16, 2012, form did not sustain the highest degree of ethical conduct.

Failure to Maintain Honesty in all Professional Dealings--
Rule 6A-10.081(5) (a)

47. Third, the Board charges that Ms. Landau failed to maintain honesty in all professional dealings as mandated by rule 6A-10.081(5) (a), one of the Principles of Professional Conduct created by former rule 6B-1.006. Rule 6A-10.081(5) (a) obliges educational professionals to "maintain honesty in all professional dealings."

48. The Board proved this charge. Ms. Landau's forgery or alteration of the August 16, 2012, form was dishonesty in her professional dealings with the Board.

Submitting Fraudulent Information--Rule 6A-10.081(5) (h)

49. Fourth, the Board charges that Ms. Landau submitted fraudulent information or documentation in connection with professional activities which is prohibited by rule 6A-10.081(5) (h). Rule 6A-10.081(5) (h) requires that an educator "[s]hall not submit fraudulent information on any document in connection with professional activities."

50. Ms. Landau submitted fraudulent information, the August 16, 2012, form, in connection with her professional

activity, her employment as an educator with the Board. The Board proved this charge.

Failure to Obey School Board Policies--
School Board Policies 5.02 and 5.29

51. Fifth, the Board charges Ms. Landau violated School Board Policy 5.02, Professional Standards, and School Board Policy 5.29, Complaints Related to Employees. Among other things, Policy 5.02(2) requires Board faculty to demonstrate "[d]edication to high ethical standards." By submitting the forged or altered August 16, 2012, form, Ms. Landau failed to demonstrate the required dedication to high ethical standards. The Board proved that Ms. Landau violated Policy 5.02.

52. Policy 5.29(1) states that all employees "are expected to meet the specific standards described in the . . . Principles of Professional Conduct for the Education Profession in Florida as described by the State Board of Education Rule" Ms. Landau failed to meet standards established by the Principles of Professional Conduct, but Policy 5.29 does not establish standards or prescribe sanctions for violations of standards. It is only a procedural policy governing making complaints and the investigation of complaints.

Immorality--Rule 6A-5.056(1)

53. Section 1012.33(1)(a) identifies "immorality," as defined by State Board of Education rule, to be just cause for

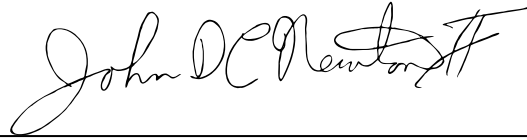
dismissal of instructional personnel on annual contract. Rule 6A-5.056(1) defines immorality. It states: "'Immorality' means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community."

54. Establishing this offense requires proving that community members knew of the offending conduct and that the conduct would bring the individual or the profession into public disgrace or impair the individual's service. The evidence does not establish this element. Consequently, the Board did not prove this charge.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order finding just cause to terminate the employment of Stacey Landau and dismissing her from her position as a teacher with the Lee County School District.

DONE AND ENTERED this 31st day of March, 2014, in
Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
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this 31st day of March, 2014.

ENDNOTE

^{1/} Unless otherwise noted, all statutory references are to
Florida Statutes (2013).

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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.