

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FRANKLIN COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-1770TTS

DAVID MEYER,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final administrative hearing was conducted in this case on June 30 and July 1, 2015, in Apalachicola, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bob L. Harris, Esquire  
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For Respondent: H.B. Stivers, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists to impose discipline on Respondent, David Meyer, for violating

provisions of statutes, rules, and/or policies, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

Nina M. Marks, Superintendent of Franklin County Schools, issued a letter to Mr. Meyer dated February 23, 2015, that he was being suspended with pay pending an investigation into alleged misconduct. On March 3, 2015, Superintendent Marks recommended to the Franklin County School Board ("School Board") that Mr. Meyer's instructional contract be terminated immediately. At a specially-called meeting on March 12, the School Board voted unanimously to terminate the contract. Mr. Meyer requested a formal administrative hearing to contest the School Board action, resulting in the instant case.

At the final hearing, the School Board called the following witnesses: Kevin Ward, Eagle Tree Technologies, which served as internet technology ("IT") provider for the School Board; Richard Herrington, assistant IT technician; Al London, director of auxiliary services for the Franklin County Schools; Nina Marks, superintendent; Kris Bray, principal of Franklin County School; and Sean Reilly, offered and accepted as an expert in IT, school acceptable use policies, and computer forensics.<sup>1/</sup> School Board Exhibits 1, 4-16, 19, 22-26, 29-32, 34, 36-38, and 66-68 were admitted into evidence. Mr. Meyer testified on his own behalf. His exhibit 1 was admitted into evidence. The

parties also jointly asked that the testimony of Harilyn Walker be admitted by way of her deposition transcript. The transcript was read by the undersigned and considered in the preparation of this Recommended Order. (All hearsay evidence was admitted subject to corroboration by competent, non-hearsay evidence. To the extent such hearsay was not corroborated, it will not be solely used as a basis for any finding herein.)

The parties advised the undersigned that a transcript of the final hearing would be ordered. They were given 10 days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed on August 10, 2015. The parties subsequently filed a joint motion for additional time to file their proposed recommended orders; the motion was granted. Each party timely submitted a Proposed Recommended Order, and both parties' submissions were given due consideration in the preparation of this Recommended Order.

Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2015 codification.

#### FINDINGS OF FACT

1. The School Board is responsible for hiring, firing, and overseeing all employees within the Franklin County School system. There is one large public school in Franklin County: Franklin County School (the "School"), which contains grades pre-kindergarten through 12. There were approximately 1,220

students enrolled at the School in the 2014-2015 school year. There are approximately 170 employees working for the School Board. There is also a charter school and one private school in the county.

2. At all times relevant hereto, Mr. Meyer was a teacher at the School. At the time of his termination from employment by the School Board, Mr. Meyer was teaching an alternative education class (referred to as "SOAR") containing only a few students. His classroom was located in Building 8, Room 807, located just behind the School administrative building.

Mr. Meyer has been employed by the School Board since 1990 and has held various teaching positions. He also served as the IT director for the School Board for approximately 10 years, but returned to the classroom in the 2013-2014 school year when Eagle Tree Technologies took over IT responsibilities.

Mr. Meyer's teaching certification is in science. During his entire career with Franklin County schools, he was never disciplined before the events related to the present case.

3. Eagle Tree Technologies has a contract with the School Board to provide IT services to the School. Eagle Tree Technologies will be referred to herein as "the IT department." In August 2014, i.e., at the start of the 2014-2015 school year during which all events of the present action took place, Mr. Meyer was tasked with teaching students in the SOAR program,

a project intended to help children who were struggling with school for one reason or another, mostly behavioral or absentee issues. At the beginning of the school year, there were no students in Mr. Meyer's classroom. Because he had no students of his own to teach, Mr. Meyer would fill in for teachers who were out sick, in training, or otherwise absent from their classrooms. As the year progressed, a few students were assigned to SOAR. Mr. Meyer basically taught those students in all of the core subjects, i.e., math, science, reading, language arts, civics, and history. When the first SOAR students were assigned, Mr. Meyer had several computers in his classroom: his teacher workstation, two or three student computers, his personal computer, and at least one laptop.

4. At some undisclosed time in August 2014, Mr. Meyer was having trouble getting his teacher workstation to "come on right away." In order to remedy that problem, Mr. Meyer "wiped" his computer and re-installed Windows 7. He did not check with the IT department before doing so, but admits that he probably should have. As a result of Mr. Meyer's actions, the IT department could not access Mr. Meyer's computer by way of its "TeamViewer" remote access program. Herrington left Mr. Meyer a note on his classroom white board, telling Mr. Meyer to reconnect to the School network.

5. In December 2014, just prior to the School's winter break, the IT department sent out an email to all staff warning against non-School Board-issued computers (including laptops) being connected to the School network. There was at that time a concern at the State Department of Education of potential computer hacking in statewide test sites. Personal laptops were a potential source for hacking. Mr. Meyer had, in fact, issued a warning against the use of personal laptops on the School system when he was the IT director back in 2013.

6. Shortly after the IT department's email warning went out, Herrington went into Mr. Meyer's classroom and saw non-School Board computer equipment plugged into the School network portals. The equipment included a personal desktop computer, a laptop, and an external hard drive, among other items. Herrington notified an assistant principal, Ms. Walker, about what he had observed in the classroom.

7. On January 6, 2015, Herrington, Ms. Walker, and Patty Kramer (media specialist at the School) went to Mr. Meyer's classroom to confirm Herrington's observations. The equipment was just as Herrington had reported. Per Ms. Walker's direction, Herrington unplugged all the personal computer equipment from the School network. They stacked that equipment in one corner of the room and placed a sign saying "Personal" on top of the equipment. Before leaving the classroom, Herrington

made sure that only School-authorized equipment was plugged into the school network. Meanwhile, Ms. Walker organized the classroom, cleaning up superfluous papers and books.

8. The next day, January 7, Ms. Walker went back to Mr. Meyer's room to address her findings with him, but he was absent from work that day. She came back on January 8 and talked with Mr. Meyer about what she had done two days earlier in his classroom. Ms. Walker also reminded Mr. Meyer that students were to work only on student computers, not on Mr. Meyer's teacher workstation or on unauthorized laptops. She told him that the personal computer equipment should not be re-connected to the School system. About three weeks later, Ms. Walker went to see Mr. Meyer and saw a student sitting at the teacher workstation. She called Mr. Meyer outside the classroom and reminded him of their conversation earlier about students using his workstation.

9. In February 2015, Herrington noticed that an inordinate amount of the School's bandwidth was being used. He was able to track the use to Building 8 and then to Room 807, Mr. Meyer's classroom. When he went into the room to determine what was causing the bandwidth usage, he saw that the personal computer equipment was again plugged into the School network portals. Conversely, the School Board-issued computers were not plugged into the network and their keyboards were in various states of

disrepair. The teacher's workstation was also plugged into the network. Herrington reported his findings to his supervisor, Ward, but did not address the situation with Mr. Meyer directly.

10. On February 18, Herrington, Ward, and London went to Mr. Meyer's classroom at approximately 6:00 in the evening to further investigate the personal computer equipment situation. They took pictures of the room and inventoried all the equipment found there. A computer audit was conducted of the computers found in the room. Herrington made copies of the computer internet histories and files. He attempted to copy the external hard drive but its contents were too extensive, so he took the hard drive back to his office where he had better copying capability. He was able to copy much - but not all - of the hard drive. The hard drive was then returned to Mr. Meyer's classroom. Later, on or about February 24, Ward went back to Mr. Meyer's room for the purpose of confiscating all of the computer equipment. The hard drive was missing at that time and, as of the date of the final hearing, has not been located. Mr. Meyer did not shed any light on the status of the external hard drive in his final hearing testimony.

11. The computer audit showed that there were unauthorized computers and equipment connected to the School network, there were inappropriate internet sites visited on the computer and/or appearing on the hard drive, and there was some suspicious



software on the computer. It also appeared that Mr. Meyer had attempted to circumvent the School network security system by plugging a "switch" into one of the school portals. There were two portals in the classroom, one for the teacher workstation and one for the teacher's school-issued telephone. The switch gave Mr. Meyer the ability to allow other computers to access the teacher's portal. This connection would presumably give users the ability to surf the internet with fewer restrictions than a student would normally encounter. Unfettered internet usage would increase the possibility of allowing a virus into the school network. That access could potentially give students the ability to access confidential school information.

12. There was also a "bridge," which provides some sort of network connection, at Mr. Meyer's desk. He admits that he bought the bridge and brought it to the classroom. However, he was never able to figure out what it was to be used for and so he never connected it in the classroom. His explanation begs the question of why it was lying out on his desk, but that question was never answered at final hearing. The appearance of the bridge, in conjunction with the other devices, is - at the very least - suspicious.

13. One of the unauthorized items found in Mr. Meyer's classroom by the IT department was an external hard drive, which was connected to Mr. Meyer's personal computer, which was, in

turn, hooked up to the School District network. Mr. Meyer admitted bringing the hard drive to his classroom. He would transport it in his backpack and, on most days, take it home at the end of the school day. The hard drive contained a large amount of data and materials dating back several years.

14. Ward and Herrington found many unauthorized programs on Mr. Meyer's external hard drive, his teacher workstation, and/or his personal computers. On Mr. Meyer's laptop computer, for example, there were programs that should only be used by the school network administrator, i.e., Ward and Herrington. Some of the unauthorized programs and material found on Mr. Meyer's personal equipment by the IT department include:

- Windows Password Blocker - which could possibly have been used by Mr. Meyer to gain administrative privileges on his computer. This particular software can also help remove a password from a system so that an unauthorized person could access that system;
- IP Hider Pro - which is used most frequently to hide a user's history on the internet, or, as Mr. Meyer maintains, it could be used simply to avoid advertisers who rely on a user's history;
- A Hacker's Life - which included a chapter about how to create a computer virus;

- Virtual Machine (VM) software - which gave Mr. Meyer's laptop access to his teacher's workstation;
- Inappropriate YouTube videos - including sexually-related videos, various prank videos, and others;
- A how-to book on oral sex - which included provocative pictures and explicit sexual language; and
- A list of XXX-rated sex questions - which also included provocative photographs and content.

15. As to the Password Blocker, IP Hider Pro, Hacker's Life, and VM software, Mr. Meyer said those were things he was curious about and investigated. He said that despite his IT background, he was not able to successfully install the programs and never was able to use them. Mr. Meyer's explanation for the programs on his computer and hard drive is not persuasive and seems inconsistent with his IT background. There was also one instance when someone using Mr. Meyer's personal computer made a Google search entitled, "Like a hacker; five steps." If a student did that, it would be a problem; if Mr. Meyer made the search, it suggests more to the hacking issue than admitted by Mr. Meyer.

16. As to the books on oral sex and sex questions, Mr. Meyer's explanation seemed to change, depending on who asked him about them. In response to his counsel's question, Mr. Meyer said he downloaded the books "last year sometime."

When asked again on cross examination, Mr. Meyer said that it might have been someone else who downloaded those things, he just did not remember. Although Mr. Meyer said none of his students saw those books, his failure to adequately supervise students means that he could not be certain of that fact.

17. One concern of the School Board was that Mr. Meyer had a "TOR" browser installed on his computer. A TOR is generally used by people who are pirating movies and software and do not want to be detected. It is another tool, like the IP HiderPro, to help users avoid detection.

18. Mr. Meyer admits using the switch and bridge; he asserts that the only reason for doing so was to have enough portals for his laptop, a personal printer, and sometimes other devices. The fact that it also allowed his students access to the internet while using computers in the classroom seems to be lost on Mr. Meyer.

19. Mr. Meyer says he brought his personal computer and laptop into the classroom as a possible means of convincing his students not to destroy computer equipment. He reasoned that if he let the unruly students use his personal equipment instead of School-issued computers, they would be more likely to treat it properly. There is no credible support for this contention. The students had broken keyboards, mouse(s), and other equipment previously. And when they did so, Mr. Meyer did not contact the

IT department to have the equipment repaired or replaced. Instead, he came up with the idea of replacing the equipment with his own personal equipment. The use of his personal equipment, however, violated School policies concerning outside, unauthorized equipment being connected to the School network. It was also a violation of School policy to allow the students to use his teacher workstation (even if, as Mr. Meyer alleged, other teachers allowed that to happen as well).

20. The IT department did not find any actual harm to the school network caused by Mr. Meyer's actions, nor did they find that a major security breach had occurred. However, it is clear there was a strong potential for harm and for a breach. For example, students were using the teacher workstation and the laptop to access social media sites and surf the internet. Students potentially had access to Mr. Meyer's programs concerning hacking into a computer system.

21. At one point, it was clear that Mr. Meyer's teacher workstation and his personal computer were being used simultaneously. During that time, there were questionable and inappropriate internet websites being visited on the computers. For example, at least one person was accessing Facebook on the teacher workstation, a clear violation of School policy. Clearly, Mr. Meyer was not properly supervising students who were using the computers in his classroom. He, in fact, admits

his failure to adequately supervise his students. His supposition that perhaps his daughter was using one of the computers while he worked on the other is not very likely when looking at the kind of sites being visited during the simultaneous usage.

22. Mr. Meyer admits violating School policy regarding changing or altering a School computer by creating a second account on his workstation. He admits using the TOR browser on his personal computer when it was plugged into the School system. He admits putting a thumb-drive into his teacher workstation, but denies the IT department's finding that he did so 10 to 15 times a day. Mr. Meyer admits that plugging additional devices into the School system could increase the potential for risk.

23. Both the superintendent of schools and the principal at the School have serious reservations about allowing Mr. Meyer to hold any position at the School due to the fact that he could not be trusted to properly utilize the School computer system. While there could be ways to limit his access or restrict his usage, neither the Superintendent nor the Principal would be comfortable because Mr. Meyer could possibly find a way to circumvent the limitations or restrictions. There are essentially no teaching positions at the School which do not require some use of computers.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to a contract with the Franklin County School District. The proceedings are governed by sections 120.57 and 120.569, Florida Statutes.

25. The Superintendent of the School Board has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. § 1012.27(5), Fla. Stat. Superintendent Marks acted within her authority when recommending to the School Board that Mr. Meyer's employment be terminated.

26. The School Board has the authority to terminate the employment of or to suspend teachers without pay and benefits. See §§ 1012.22(1)(f) and 1012.40(2)(c), Fla. Stat. By unanimous decision, the School Board voted to exercise its authority to terminate Mr. Meyer's employment.

27. The burden of proof in this proceeding is on the School Board to prove by a preponderance of the evidence that just cause exists to suspend or terminate the employment contract of Mr. Meyer. McNeil v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996). Preponderance of the evidence is evidence that more likely than not tends to prove the

proposition set forth by a proponent. Gross v. Lyons, 763 So. 2d 276 (Fla. 2000).

28. There is no definition of "just cause" in the School's Employee Handbook, in the Collective Bargaining Agreement, or in School policies. In the absence of a definition, the School Board has discretion to set standards which subject an employee to discipline. See Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA 1994). Nonetheless, just cause for discipline must rationally and logically relate to an employee's conduct in the performance of the employee's job duties and be in connection with inefficiency, delinquency, poor leadership, and lack of role modeling or misconduct. State ex. rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948); In Re: Grievance of Towle, 665 A.2d 55 (Vt. 1995).

29. Just cause for purposes of discipline is discussed in section 1012.33, Florida Statutes:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education:  
immorality, misconduct in office,  
incompetency, gross insubordination, willful neglect of duty, or being convicted and found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

30. Black's Law Dictionary defines just cause as:

A cause outside legal cause, which must be based on reasonable grounds, and there must



be a fair and honest cause or reason,  
regulated by good faith.

31. The American Heritage Dictionary defines cause as:  
"Good or sufficient reason or ground."

32. Florida Administrative Code Rule 6A-5.056 states:  
"'Just cause' means cause that is legally sufficient."

33. From the totality of the definitions, it appears that  
just cause is cause that can be proven and which falls within  
the general parameters of immorality, misconduct in office,  
incompetency, gross insubordination, willful neglect of duty, or  
certain prescribed criminal activity.

34. Rule 6A-5.056 provides definitions and criteria for  
suspension or dismissal of teachers. Misconduct in office is  
defined in subsection (2) of that rule as a violation of the  
Code of Ethics for teachers, set out in rule 6A-10.080. Gross  
insubordination is defined in subsection (4) as the intentional  
refusal to obey a direct order, reasonable in nature, given by a  
person with proper authority. Willful neglect of duty is  
defined in subsection (5) as intentional or reckless failure to  
carry out required duties.

35. In the present case, the School Board proved that:  
Mr. Meyer is guilty of misconduct in office, gross  
insubordination, and willful neglect of duty. He did not  
properly supervise his students, he allowed students to access

prohibited internet sites, and he ignored directions concerning the use of unauthorized equipment. He also brought into his classroom materials that were not appropriate for students and failed to protect that information, not even having a password on his computer.

36. Just cause therefore exists to impose some discipline on Mr. Meyer. The question is whether there is sufficient cause in this case to impose the ultimate penalty, termination of Mr. Meyer's employment with the School.

37. The factors supporting termination are: Mr. Meyer caused unauthorized computer equipment to be plugged into the School's computer system. He exposed his students to inappropriate materials by allowing them access to his computers. He failed to properly supervise his students. He ignored computer-use policies of which he was intimately familiar. He also ignored direct orders from a superior who was authorized to issue such orders.

38. The factors militating against termination and in favor of a lesser sanction are: Mr. Meyer's intentions do not appear to be malicious, i.e., he used personal computers and expanded use of the portal to the benefit of his students who were undeniably the most challenging in the School; Mr. Meyer had never been sanctioned for bad behavior before the events at issue in this proceeding; and, it is always difficult to

terminate a person from their employment if other options are reasonable and acceptable.

39. Taking all of the evidence and testimony into consideration, it is clear that Mr. Meyer's effectiveness as a teacher has been severely decimated by his actions. He cannot be trusted in any position which would allow him access to computer equipment. He cannot be trusted to effectively monitor the students in his charge.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Petitioner, Franklin County School Board, upholding the termination of Respondent, David Meyer's, employment for the reasons set forth above.

DONE AND ENTERED this 14th day of September, 2015, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of September, 2015.

ENDNOTE

<sup>1/</sup> The School Board expert was accepted as tendered and allowed to testify as an expert. His testimony was based, in part, upon a virtual copy of Mr. Meyer's personal computer and related equipment. During the discovery process in this case, Mr. Meyer requested via legitimate discovery requests all information that the School Board would be relying upon in the presentation of its case. Neither the personal computer nor the virtual copy (which was made just days prior to final hearing) were produced to Mr. Meyer. As a result, Mr. Meyer moved to strike the testimony of the School Board's expert for failure to comply with the discovery request. It is hereby ordered that any testimony from Mr. Reilly, based exclusively on the virtual copy of Mr. Meyer's computer (tantamount to a copy of a written document), will not be relied upon to base a finding of fact in this Recommended Order.

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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.