

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-0498

TARLISHA DAVIS,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Ft. Myers and Tallahassee, Florida, on March 10, 2016, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Tarlisha Davis, pro se
Apartment 208
1162 Hancock Creek Boulevard South
Cape Coral, Florida 33909

STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent from her employment with the Lee County School Board.

PRELIMINARY STATEMENT

By correspondence dated December 17, 2015, Tarlisha Davis (Respondent) was informed by Gregory K. Adkins, superintendent of Lee County Schools (Superintendent), that a recommendation seeking the termination of Respondent's employment would be submitted to Petitioner, Lee County School Board (Petitioner/School Board), for appropriate action. In response to the correspondence of December 17, 2015, Respondent timely filed a Request for Administrative Hearing. By correspondence dated January 28, 2016, the matter was forwarded to the Division of Administrative Hearings for a disputed-fact hearing.

Petitioner offered the testimony of Andrew Brown, the director of professional standards and equity. Respondent testified on her own behalf and called no other witnesses to testify. Petitioner's Exhibits 1 through 9 were admitted into evidence. Respondent's Exhibits 1 and 2 were also admitted into evidence.

A Transcript of the disputed-fact hearing was filed with the Division of Administrative Hearings on April 4, 2016. The parties timely filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is responsible for hiring, terminating, and overseeing all employees in the school district.

2. Respondent has been employed by Petitioner since December 13, 2010. She is currently assigned as a school bus attendant in Petitioner's transportation department.

3. Respondent's employment is governed by the collective bargaining agreement between the Support Personnel Association of Lee County (SPALC) and the School Board.

4. The Petition for Termination alleges that on July 6, 2015, Petitioner's Department of Professional Standards and Equity was notified that Respondent was arrested on June 26, 2015, and charged with four felony counts of public aid fraud in excess of \$200.00.

5. Andrew Brown testified that he received a "hit" notification from the Florida Department of Law Enforcement informing the District that Respondent had been arrested.

6. Respondent obtained public assistance of \$200 or more through false statements, misrepresentation, impersonation or other fraudulent means. The offenses were committed from: December 1, 2011, to May 31, 2012; October 1, 2012, to May 31, 2013; October 1, 2013, to September 30, 2014; and August 1, 2013, to December 31, 2013.

7. All of the foregoing offenses occurred during Respondent's period of employment with Petitioner.

8. Respondent was arrested for the foregoing offenses on June 26, 2015.

9. On November 24, 2015, Respondent pled guilty to four counts of engaging in public aid fraud, all felonies, and was sentenced to 36 months of probation and ordered to pay \$8,483.29 in restitution to the Florida Department of Children and Families.

10. The evidence demonstrates that Respondent, on November 24, 2015, knowingly pled guilty to public aid fraud.

11. School Board policy 5.04 permits Petitioner to terminate the employment of an employee who commits a crime during their employment, if the crime would otherwise disqualify the employee from initial employment with the School Board. Public aid fraud is such a crime. Paragraph (7)(a) and (b) of policy 5.04 provides that the School Board will not hire an individual who has committed welfare and/or unemployment fraud within 10 years of the offense.

12. Policy 5.04 also provides that an individual who is on probation may also be ineligible for employment.

13. School Board policies 5.02, 5.03, and 5.29 all include language that mandate compliance with applicable laws, and require that employees maintain high ethical standards and good moral character. Respondent has failed those mandates.

14. The credible evidence establishes that Petitioner has just cause to terminate Respondent's employment with the School Board.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2015).^{1/} Petitioner seeks to terminate Respondent's employment.

16. Petitioner bears the burden of proving by a preponderance of the evidence that just cause exists for the termination of Respondent's employment. 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).

17. The Superintendent for the School Board has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. §§ 1012.22(1)(f) and 1012.33(6), Fla. Stat.

18. Provision 7.10 of the SPALC agreement states, "[a]ny discipline during the contract year, that constitutes a verbal warning, letter of warning, letter of reprimand, suspension, demotion or termination shall be for just cause."

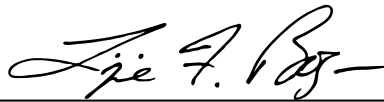
19. Respondent's actions constitute misconduct in office pursuant to section 1012.33(1)(a), Florida Statutes, as defined by Florida Administrative Code Rule 6A-5.056(2). Respondent's actions violate School Board policy 5.02, Professional Standards, which requires dedication to high ethical standards.

Respondent's actions violate School Board policy 5.03, General Requirements for Appointment and Employment, which requires that an employee be of good moral character. Respondent's actions violate School Board policy 5.04, Fingerprinting and Background Screening, by violating the School Board's Hiring/Employment Guidelines. Respondent's actions violate School Board policy 5.29, Complaints Relating to Employees, which requires all employees exemplify conduct that is lawful and professional. Due to the foregoing violations, just cause exists for the termination of Respondent's employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lee County School Board enter a final order terminating Respondent's employment.

DONE AND ENTERED this 21st day of April, 2016, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of April, 2016.

ENDNOTE

^{1/} All subsequent references to Florida Statutes will be to 2015,
unless otherwise indicated.

COPIES FURNISHED:

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Lee County School Board
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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.