

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-2441

CRYSTAL EDWARDS,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 9, 2016, by video teleconferencing sites in Tallahassee and West Palm Beach, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Helene Kalvin Baxter, Esquire  
School Board of Palm Beach County  
Office of General Counsel  
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For Respondent: Crystal Edwards, pro se  
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STATEMENT OF THE ISSUE

The issue in this case is whether there is just cause to terminate Crystal Edwards' employment as a school bus driver with

the Palm Beach County School Board based upon the allegations made in its Petition.

PRELIMINARY STATEMENT

By letter dated April 13, 2016, Crystal Edwards ("Respondent" or "Edwards") was notified that Palm Beach County School Board ("Petitioner" or "School Board") took action to suspend Respondent without pay for 15 days and initiate termination proceedings. The superintendent's April 13, 2016, letter alleges that Respondent had policy violations related to "failure to maintain background screening standards, failure to self-report an arrest or conviction, ethical misconduct, and failure to follow policy, rule, directive, or statute." On the basis of that conduct, Petitioner alleged that Respondent violated "School Board Policies 3.02(4)(b), Code of Ethics; 3.02(5)(h)(iii), and (5)(h)(iv), Code of Ethics; 3.10(6), Conditions of Employment with the District; 3.12(3), Criminal Background Checks; 3.13(2), Self-Reporting of Arrests and Convictions by School District Employees; 1.013(1), Responsibilities of School District Personnel and Staff; Chapter 435.04(2)(jj), F.S., Level 2 Screening Standards."

Respondent timely elected to dispute the reasons for the termination and requested a hearing. Because she requested a formal proceeding, the matter was referred to the Division of

Administrative Hearings ("DOAH"). A final hearing was originally scheduled for July 13, 2016. After a continuance for good cause the matter proceeded as rescheduled on November 9, 2016.

At hearing, the School Board presented the testimony of three witnesses: Crystal Edwards; Howard Brown, north area team leader; and Brenda Johnson, human resource specialist.

Petitioner's Exhibits 9 through 12 and 14 were admitted into evidence. Respondent testified on her own behalf. Respondent's Exhibits 1 through 4 were admitted into evidence.

The undersigned took official recognition of policies 3.02, 3.10, 3.12, 3.27 and 1.013 and sections 827.04 and 435.04, Florida Statutes.

The proceedings were recorded and transcribed. The one-volume Transcript of the final hearing was filed with DOAH on December 15, 2016. Petitioner availed itself of the right to submit a timely proposed recommended order after the filing of the Transcript, which has been considered in the preparation of this Recommended Order. The Respondent did not submit a proposed recommended order.

Unless specifically stated otherwise herein, all references to Florida Statutes and rules shall be to the 2016 codification.

#### FINDINGS OF FACT

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise all free public

schools within Palm Beach County, Florida. Petitioner has the authority to hire, discipline, and terminate employees.

2. Edwards started her employment with the School Board on July 22, 2013.

3. Edwards was employed as a School Bus Driver I. She transported school-age children to and from school safely.

4. As a School Board employee, Edwards was expected to comply with School Board policies. As part of the new hire orientation, Edwards received training on policy 3.02. She was also given a copy of the Transportation Handbook and trained on the procedures of the handbook. Edwards also signed the Self-Reporting of New Arrests and Convictions, policy 3.13.

5. On March 24, 2014, Edwards was arrested by Riviera Beach Police Department and charged with criminal trespass. On June 6, 2014, she went into a pre-trial diversion program to resolve the criminal charge.

6. Edwards failed to self-report the arrest and disposition of the criminal trespass charge to the School Board as required by School Board policies.

7. On July 7, 2014, the School Board gave Edwards a written reprimand for violation of School Board policies 3.02, 3.13, and 1.013 for failing to self-report the arrest and disposition of her March 24, 2014, criminal charge.

8. The written reprimand directed Respondent to refrain from violations of School Board policies and Florida state laws. The reprimand further stated that "failure to do so can result in appropriate disciplinary action being taken, up to and including termination."

9. On or about October 24, 2014, Edwards attended her son's football game. At the time, Edwards did not have custody of her son but was allowed to attend his games. After talking to her son, Edwards decided that he was in danger and took him away from his guardian to the police station to report her concerns about his safety.

10. On February 7, 2015, Edwards was arrested by Palm Beach County Sherriff's Office and charged with two felony counts of Family Offense—Interference with Custody of Minor Incompetent Person for her actions of removing her son from the football field location on October 24, 2014, and taking him to the police station. Edwards' actions were in violation of the court order, which prohibited Edwards from visiting with her son without supervision.

11. On February 9, 2015, Edwards self-reported her February 7, 2015, arrest to the School Board. The same day, the Office of Professional Standards ("OPS") opened an investigation

into the criminal allegations. Brenda Johnson ("Johnson"), OPS human resources specialist, was assigned to investigate the matter.

12. An administrative open-case letter was issued to Edwards informing her that OPS was opening an investigative case regarding the off-duty criminal activity and arrest of February 7, 2015.

13. In the February 9, 2015, letter, OPS instructed Edwards to report any subsequent conviction in accordance with policy 3.13 and stated:

This self-report must be completed within forty-eight (48) hours of the final judgment being entered. Failure to report your conviction or plea as described could result in disciplinary action, up to and including termination of employment. In addition, as a result of a conviction/plea you may be subject to disciplinary action for violations of School Board Policies that prohibit criminal activity.

14. On January 20, 2016, Edwards self-reported her next arrest of domestic battery on the School Board Self Reporting of Arrest Information Template form.

15. Edwards was incarcerated from February 9, 2016, to Friday, February 19, 2016.

16. On February 12, 2016, the State Attorney's Office dismissed Edwards' battery charge by filing a no-file document while Edwards was incarcerated.

17. Johnson was monitoring Edwards' criminal court cases and she discovered the battery charge was dismissed by looking at the court docket on the website.

18. By letter dated February 18, 2016, the OPS issued an administrative closure letter because of the no-file dismissal of Edwards' battery case.

19. On February 19, 2016, Edwards' February 7, 2015, felony case was reduced to a misdemeanor, and she pled guilty to a one-count misdemeanor charge of contributing to the delinquency of a child, a violation of section 827.04(1)(a). The other felony count was nolle prossed. Edwards was adjudicated guilty, sentenced to 14 days jail with credit for 14 days served, and standard court costs were imposed. She had a lawyer who represented her in the matter, case number 2014CF013245AMB.

20. On February 23, 2016, Edwards self-reported the conviction of the final judgment.<sup>1/</sup> She provided her supervisor, Howard Brown, a copy of the battery no-file paperwork and the misdemeanor conviction in person.

21. On February 23, 2016, Johnson discovered that Edwards had been convicted of contributing to the delinquency or dependency of a child.

22. Since Edwards' conviction was a disqualifying offense, Johnson directed the reassignment of Edwards to a non-student contact position. By letter dated February 23, 2016, Edwards was

re-assigned to a temporary duty location at North Transportation Facility pending the outcome of the investigation.

23. Johnson continued the investigation of Edwards' allegations to determine if Edwards met the level II background screening criteria to maintain her eligibility for employment. School Board employees are required to meet the requirements for level II background screening under section 435.04.

24. On March 7, 2016, a predetermination meeting was held with the OPS and Edwards, who was represented by a union representative. The purpose of the predetermination meeting was to allow Respondent the opportunity to respond to the allegations and provide any additional information supportive to the case or to rebut any information.

25. Johnson completed Edwards' investigation and determined that Edwards' conviction for contributing to the delinquency or dependency of a child under section 827.04 is a disqualifying offense. As such, Johnson concluded that Edwards is ineligible for employment and Edwards' actions and conviction violated the self-reporting of arrest policy 3.13; Code of Ethics 3.02 and 3.106; criminal background check policy 3.12; and section 435.04.

26. Johnson testified that based on the investigation, the superintendent recommended that Edwards be terminated because her conviction of a disqualifying offense made her ineligible for employment.



27. Superintendent Robert Avossa has consistently terminated employees who no longer are qualified for their position based on them not meeting the background policy 3.12 and section 435.04. The School Board terminates employees who are convicted of disqualifying offenses enumerated under section 435.04.

28. On April 13, 2016, by letter, the School Board notified Edwards of the recommendation of suspension without pay and termination.

#### CONCLUSIONS OF LAW

29. DOAH has jurisdiction over the parties and subject matter in this proceeding pursuant to Article 17 of the Collective Bargaining Agreement ("CBA") between the School District of Palm Beach County, Florida, and the Service Employees International Union, as well as sections 120.57(1), 120.65(9), 1012.33(1)(a), and 1012.40, Florida Statutes (2016).

30. The School Board is seeking to terminate Respondent from employment. Normally, the burden of proof in an employment case such as this one would be a preponderance of the evidence standard. Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); § 120.57(1)(j), Fla. Stat. However, the CBA, Article II, requires Petitioner to prove its case by clear and convincing evidence.

31. The Supreme Court of Florida has ruled that:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts at issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

32. In the Petition filed in this proceeding, the School Board charges that Edwards violated "School Board Policies 3.02(4)(b), Code of Ethics; 3.02(5)(h)(iii), and (5)(h)(iv), Code of Ethics; 3.10(6), Conditions of Employment with the District; 3.12(3), Criminal Background Checks; 3.13(2), Self-Reporting of Arrests and Convictions by School District Employees; 1.013(1), Responsibilities of School District Personnel and Staff; Chapter 435.04(2)(jj), F.S., Level 2 Screening Standards."

33. Respondent is an educational support employee as defined in section 1012.40(1)(a). Section 1012.40(2)(c) provides:

(c) In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to appeal the termination. The appeals process shall be determined by the appropriate collective

bargaining process or by district school board rule in the event there is no collective bargaining agreement.

School Board Policy 3.02

34. The Petition alleges that Respondent violated several provisions within the School Board's Code of Ethics Policy. The relevant portions of policy 3.02 are as follows:

4. Accountability and Compliance  
Each employee agrees and pledges:

\* \* \*

b. To obey local, state and national laws, codes and regulations.

\* \* \*

5. Ethical Standards

\* \* \*

h. Criminal Acts-We are committed to reporting criminal conduct, and other conduct that damages the integrity or reputation of the School district. Employees should abide by federal, state and local laws. Unethical conduct includes but is not limited to:

\* \* \*

iii. Failing to report the arrest or conviction for criminal acts as provided in School Board Policy 3.13 (Self Reporting of Arrests and Convictions by School District Employees); or

iv. Committing or being convicted of criminal acts as provided in School Board Policy 3.13 (Self Reporting of Arrests and convictions by School District Employees).

35. By pleading to the criminal charge, Edwards violated the Ethics Code as alleged in the Petition by failing to obey the laws and obtaining a conviction.

School Board Policy 1.013

36. The School Board also charged Edwards with violating policy 1.013(1), entitled "Responsibilities of School District Personnel and Staff," which provides in relevant part:

1. It shall be the responsibility of the personnel employed by the district School Board to carry out their assigned duties in accordance to federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules.

37. Violation of policy 1.013(1) is dependent on the School Board establishing a violation of federal or state law or rule, another school board policy or rule, or superintendent's administrative directive. As found above in paragraph 35, the School Board has proven such a violation.

38. By Edwards violating the Ethics Code as alleged in the Petition, Respondent also violated policy 1.013(1).

School Board Policy 3.13

39. The Petition also alleges that Respondent violated policy 3.13(2), entitled "Self-Reporting of Arrests and Conviction by School District Employees," which provides in relevant part:

2. All district employees will self-report in writing with the appropriate documentation any arrests and/or criminal charges, including criminal traffic violations, to the employee's immediate supervisor/designee within forty-eight (48) hours of said arrest and/or criminal charges. In addition, all district employees shall self-report in writing and conviction, finding of guilt, guilty in your best interest, or Nolo Contendere for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment has been entered.

40. The credible evidence demonstrates Edwards' self-reported arrests and dispositions after her criminal trespass case. Hence, Petitioner failed to prove Edwards violated policy 3.13(2).

School Board Policy 3.10

41. The School Board also charged Edwards with violating 3.10(6), entitled "Conditions of Employment with the District," which provides in relevant part:

6. The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy.

42. As in paragraphs 35 and 38 above, the record demonstrates Edwards violated the law and policies. By doing so, she also violated policy 3.10(6).

43. Edwards claimed that the incident that led to her conviction of contributing to the delinquency of a child was a personal family matter where she was protecting her son and had nothing to do with students. Her argument is not persuasive because it fails to change her conviction status of a disqualifying offense, which makes her ineligible for employment with the School Board.

44. The School Board seeks to terminate Edwards' employment rather than implement the steps set forth in the progressive discipline provision of the CBA.

45. While the School Board's CBA provides for progressive discipline, there is authority for termination where the conduct for which discipline is sought "constitutes a real and immediate danger to the District."

46. Section 435.04 provides parameters for eligible employees and reads in relevant part:

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

\* \* \*

(jj) Section 827.04, relating to contributing to the delinquency or dependency of a child.

47. The School Board demonstrated by clear and convincing credible evidence that Edwards was convicted of contributing to the delinquency of a child. Edwards' conviction is a disqualifying offense enumerated in section 435.04(2)(jj). The Legislature mandated that an individual with a conviction of section 827.04, such as Edwards, is not fit for hire in the school district. Accordingly, an employee also could not maintain employment in such an ineligible status. Hence, Edwards' status prohibits her from working for the School Board. Accordingly, the School Board has established "just cause" for termination as alleged in the Petition.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Palm Beach County School Board, enter a final order suspending Respondent, Crystal Edwards,' employment for a period of 15 days without pay and terminating her employment from the School District of Palm Beach County, Florida.

DONE AND ENTERED this 24th day of January, 2017, in  
Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of January, 2017.

ENDNOTE

<sup>1/</sup> The undersigned finds Edwards' testimony credible that she self-reported the two criminal dispositions to her supervisor. The no-file paperwork, Respondent's Exhibit 1, is date-stamped by the clerk February 23, 2016; the same day Edwards contends she submitted the paperwork. Such evidence is both persuasive and plausible, as well as supportive of Edwards' testimony that she provided the disposition paperwork to her supervisor in person that date.

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.