

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-2019TTS

LAURA LICATA,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before Brian A. Newman, Administrative Law Judge of the Division of Administrative Hearings, on August 4, 2020, by Zoom video conference in Tallahassee, Florida.

APPEARANCES

For Petitioner: James Holloway, III, Esquire  
Brian Anthony Williams, Esquire  
Lee County School District  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012

For Respondent: Katherine A. Heffner, Esquire  
Robert F. McKee, Esquire  
Robert F. McKee, P.A.  
1718 East 7th Avenue, Suite 301  
Tampa, Florida 33605

STATEMENT OF THE ISSUE

The issue to resolve is whether just cause exists to terminate Respondent's employment as a classroom teacher.

PRELIMINARY STATEMENT

By letter dated February 1, 2020, Respondent, Laura Licata (Respondent), was notified that she was suspended without pay beginning February 24, 2020, and that a recommendation would be made for the termination of her employment. A Petition for Termination (Petition) issued on March 13, 2020, set forth the factual allegations and charges on which the proposed action is based, and gave notice to Respondent of her right to an administrative hearing.

Respondent timely requested an administrative hearing and on April 23, 2020, the Lee County School Board (Petitioner or School Board) referred the matter to the Division of Administrative Hearings for assignment of an administrative law judge to conduct the hearing requested by Respondent.

In consultation with the parties, the final hearing was set for August 4 and 5, 2020, in Naples, Florida. The hearing was later rescheduled to be held by Zoom video conference because of social distancing and travel limitations imposed due to the COVID-19 pandemic. The hearing proceeded as scheduled.

Prior to the hearing, the parties filed an Amended Joint Pre-Hearing Stipulation in which they agreed to several facts. The relevant stipulated facts are incorporated in the Findings of Fact below.

At hearing, Petitioner presented the testimony of Douglas Santini, Janelle Laux, Robert Butz, Linda Trainham, and Andrew Brown. Petitioner's Exhibits 1 through 25 were admitted in evidence. Respondent offered no witness testimony or exhibits.

The Transcript of the hearing was filed on August 24, 2020. Respondent requested an extension of the deadline to submit proposed recommended orders (PROs), which was granted. Both parties timely filed PROs by the extended deadline of September 11, 2020, and they have been considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is employed as a classroom teacher at Fort Myers High School in Lee County, Florida. Respondent taught the subjects of English and drama. Respondent was also the sponsor of the drama program at Fort Myers High School.

2. The parties stipulated that Respondent is considered “instructional personnel” as defined by section 1012.40(2)(d), Florida Statutes, and that Respondent’s employment can be terminated for “just cause” under the collective bargaining agreement between the Teachers Association of Lee County and the School Board (Collective Bargaining Agreement).

3. Florida Thespians is an Educational Theatre Association Affiliate, which provides students an opportunity to compete in a variety of drama competitions regionally and throughout the State of Florida.

4. District 6 is a chapter of the Florida Thespians organization that is charged with organizing and hosting festivals and competitions for students at Florida Thespians member high schools in Charlotte, Collier, Lee, Manatee, and Sarasota Counties. Fort Myers High School is a member of the District 6 chapter of Florida Thespians.

5. Respondent was the Chair of District 6. As the Chair of District 6, Respondent collected funds from District 6 students who participated in Florida Thespians events, and deposited those funds in the District 6 bank account. Respondent was a signatory on the District 6 bank account and had a debit card that allowed her to access funds deposited into the account. The

District 6 bank account funds were to be used to pay for Florida Thespians related activities and events only.

6. In May of 2019, the principal of Fort Myers High School removed Respondent from her position as a drama teacher for reasons unrelated to this case. Because she no longer taught drama at a District 6 high school, Respondent was ineligible to continue as Chair of District 6, and resigned from that position on May 31, 2019.

7. After Respondent resigned, Janelle Laux, another high school drama teacher in Lee County, was elected as Chair of District 6. After Ms. Laux became Chair, she reviewed the District 6 bank account statements and identified certain expenditures linked to Respondent that appeared to be unrelated to Florida Thespian activities or events, including debit card charges for medical expenses and repairs to a motor vehicle owned by Respondent.

8. The parties stipulated that while Respondent was District 6 Chair, she utilized the District 6 debit card to pay for personal medical expenses, including \$25 on September 14, 2016; \$158.34 on December 8, 2017; \$132 on July 25, 2018; and \$91.50 on October 30, 2018.

9. Respondent argues in her PRO that she mistakenly used the District 6 debit card to pay these personal medical expenses. At her pre-determination conference, however, Respondent and her attorney admitted that Respondent used the District 6 debit card to pay for these personal medical expenses because her personal credit card would not work at the time and she did not have any cash on hand.<sup>1</sup> Respondent, through her attorney, claims to have repaid the District 6 bank account for these personal medical expenses within

---

<sup>1</sup> Under the Collective Bargaining Agreement, Respondent is entitled to a pre-determination conference to contest proposed discipline and is entitled to be represented by counsel. Respondent's pre-determination conference was held on February 20, 2020. A transcript of Respondent's pre-determination conference was admitted in evidence without objection as Petitioner's Exhibit 6. The statements made by Respondent at her pre-determination conference are admissible as admissions. Likewise, the statements made by Respondent's attorney at the pre-determination conference are admissible as admissions because the transcript shows that he was acting as Respondent's agent at the time the statements were made. *See Fla. R. Evid. 90.803(18)(a) and (d).*

a year, but did not identify the date funds were deposited into the District 6 bank account to cover these expenses, and otherwise offered no proof to substantiate this claim.<sup>2</sup> But even if Respondent had proven that she reimbursed the District 6 bank account at a later date, she was not authorized to borrow money from the District 6 bank account to pay for personal medical expenses. The District 6 bank account funds were to be used for Florida Thespians activities or events only. The undersigned finds that Respondent knowingly used the District 6 debit card to pay for her personal medical expenses on four separate occasions, that the total of these payments is \$406.84, and that the use of District 6 funds in this manner was solely for Respondent's personal gain.

10. The parties stipulated that while Respondent was District 6 Chair, she used the District 6 debit card to pay for repairs to her personal motor vehicle, including \$284.06 on October 28, 2016; and \$433.54 on December 1, 2017. Respondent did not reimburse the District 6 bank account for these personal expenses.

11. Respondent argues in her PRO that the motor vehicle repair bills were legitimate District 6 expenses because she used the subject motor vehicle to travel to Florida Thespians related events and did not charge District 6 a mileage-based fee to do so. Respondent did not, however, testify at the final hearing, and did not prove that the subject vehicle was used to travel to Florida Thespians events or otherwise used to benefit District 6 in any way. But even if she had offered such evidence, the undersigned rejects the notion that the payment of Respondent's motor vehicle repair bills is the functional equivalent of paying Respondent a mileage-based fee for travel. The undersigned finds that Respondent knowingly used the District 6 debit card to pay for repairs to her personal motor vehicle on two separate occasions,

---

<sup>2</sup> The District 6 bank account statements admitted in this proceeding show that deposits were made at various intervals, but do not identify the source of the funds or the purpose for which they were deposited.

that the total of these payments is \$717.60, and that the use of District 6 funds in this manner was solely for Respondent's personal gain.

12. On September 26, 2019, Florida Thespians dissolved the District 6 chapter, citing the failure of District 6 to submit accurate financial documents for review, among other grounds. The dissolution of District 6 made it more difficult for District 6 students to participate in Florida Thespians events. The undersigned finds that the dissolution of District 6 was due in part to Respondent's misappropriation of District 6 bank account funds.

13. Petitioner alleged in its Petition that Respondent also misused District 6 bank account funds to pay for meals, gas, Amazon purchases, and a scholarship for her daughter, and that Respondent "conducted significant personal business and District 6 related business during contract hours using her District computer and email." These allegations were not proven.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 120.65(6), Fla. Stat.

15. In this proceeding, Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proof, and the standard of proof is by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.; *McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990).

16. Because Respondent is an "instructional employee" and employed by Petitioner pursuant to the terms of the Collective Bargaining Agreement, Petitioner may terminate Respondent's employment, but only for "just cause." § 1012.33(1)(a), Fla. Stat. (2019).<sup>3</sup> Section 1012.33(1)(a) provides as follows:

---

<sup>3</sup> The 2019 statute is cited for ease of reference, but the statute has not been amended since 2016, and, thus, was the law in effect at the time of Respondent's actions at issue.

Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. 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, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude. (emphasis added).

17. Under Florida Administrative Code Rule 6A-5.056, “misconduct in office” includes a violation of the Principles of Professional Conduct for the Education Profession in Florida (Principles of Conduct), promulgated as Florida Administrative Code Rule 6A-10.081.

18. Petitioner proved that Respondent committed misconduct in office by violating rule 6A-10.081(2)(b)3., one of the Principles of Conduct, which prohibits her from using “institutional privileges for personal gain or advantage.”

19. Respondent had access to the District 6 bank account as District 6 Chair because she was employed as a drama teacher and sponsor of the drama program at Fort Myers High School, a member of the District 6 chapter of Florida Thespians. Once she was removed as a drama teacher at Fort Myers High School, she no longer qualified to be the District 6 Chair and

had to resign. Respondent's access to the District 6 bank account was therefore an institutional privilege. Students enrolled in District 6 schools contributed money to the District 6 bank account to fund Florida Thespians activities and events, not to help Respondent pay her bills. Respondent used the District 6 funds for her personal gain by knowingly using the District 6 debit card to pay for personal medical expenses and repairs to her personal motor vehicle. Respondent's misappropriation of the District 6 bank account funds in this manner constitutes the use of an institutional privilege for personal gain.

20. Having proved that Respondent misappropriated District 6 bank account funds, Petitioner has also proven that Respondent failed to "maintain honesty in all professional dealings," another one of the Principles of Conduct found in rule 6A-10.81(2)(c)1. This too constitutes misconduct in office.

21. As to the appropriate penalty, Petitioner has "just cause" within the meaning of the Collective Bargaining Agreement to discipline Respondent for misconduct, up to and including termination of her employment. Termination is justified here because Respondent's repeated misappropriation of District 6 bank account funds was done knowingly, the total amount of funds misappropriated—\$1,124.84—is significant, and her misuse of the District 6 bank account funds was a factor that led to the dissolution of the District 6 chapter of Florida Thespians, which negatively affected District 6 students.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order finding Respondent guilty of misconduct in office and terminating her employment.



DONE AND ENTERED this 9th day of October, 2020, in Tallahassee, Leon County, Florida.



---

BRIAN A. NEWMAN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of October, 2020.

COPIES FURNISHED:

Brian Anthony Williams, Esquire  
Lee County School District  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012  
(eServed)

Robert F. McKee, Esquire  
Robert F. McKee, P.A.  
1718 East 7th Avenue, Suite 301  
Tampa, Florida 33605  
(eServed)

James Holloway, III, Esquire  
Lee County School District  
2855 Colonial Boulevard  
Fort Myers, Florida 33966-1012  
(eServed)

Katherine A. Heffner, Esquire  
Robert F. McKee, P.A.  
1718 East 7th Avenue, Suite 301  
Tampa, Florida 33605  
(eServed)

Dr. Gregory Adkins, Superintendent  
Lee County School District  
2855 Colonial Boulevard  
Fort Myers, FL 33966-1012

Richard Corcoran, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

Matthew Mears, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

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.