

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-4471

ERNEST CURRY,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Jodi-Ann V. Livingstone of the Division of Administrative Hearings (DOAH), on December 3, 2020, by Zoom Conference.

APPEARANCES

For Petitioner: Robert K. Robinson, Esquire
Rob Robinson Attorney, P.A.
500 Washington Boulevard, Suite 400
Sarasota, Florida 34236

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether Petitioner, Sarasota County School Board (Petitioner or School Board), had just cause to terminate Ernest Curry (Respondent) for misconduct in office.

PRELIMINARY STATEMENT

By letter dated September 15, 2020, Brennan W. Asplen, III, Ed.D., superintendent of the Sarasota County School District (School District),

notified Respondent that just cause existed to terminate his employment (Termination Letter). The Termination Letter stated that just cause was based on a failed reasonable suspicion drug screen, which amounted to “misconduct in office,” among other offenses. The Termination Letter notified Respondent that the superintendent would recommend Respondent be terminated and that the recommendation of termination would be considered at an October 6, 2020, School Board meeting. The Termination Letter further informed Respondent that he could contest the recommendation by submitting a written request for hearing within 21 calendar days of the date of the letter. Respondent timely requested a hearing.

The School Board transmitted the matter to DOAH on October 7, 2020, for the assignment of an administrative law judge to conduct the hearing requested by Respondent.

Pursuant to a Notice of Hearing by Zoom Conference, the undersigned conducted a final hearing on December 3, 2020, utilizing the Zoom Conference platform. Although the Notice of Hearing clearly stated that the hearing was to commence at 9:30 a.m., no one appeared on behalf of Respondent at the starting time. The undersigned’s assistant contacted Respondent by telephone to advise that the hearing was scheduled to begin at 9:30 a.m. and to provide him with assistance to connect to the Zoom Conference, if needed. Respondent indicated he did not desire to participate in the final hearing. At approximately 9:53 a.m., the undersigned convened the final hearing, without the appearance of Respondent.

Petitioner presented the testimony of Alfred R. Harayda, William John Grant, Patricia Ann Folino, and Crystal Komis. Petitioner's Exhibits 1 through 7 were admitted into evidence.¹

At the close of the hearing, Petitioner was advised of a ten-day timeframe following DOAH's receipt of the hearing transcript to file a proposed recommended order. A one-volume Transcript of the final hearing was filed with DOAH on December 17, 2020. Petitioner submitted a timely Proposed Recommended Order, which was reviewed in preparation of this Recommended Order. Respondent did not file a post-hearing submittal.

All references to the Florida Statutes and the Florida Administrative Code are to the 2020 versions.

FINDINGS OF FACT

1. Petitioner is responsible for operating, controlling, and supervising the public schools in the School District. *See* § 1001.32(2), Fla. Stat.
2. At all times material, Respondent was employed as a groundskeeper for the School Board. Groundskeepers are educational support employees.
3. On September 2, 2020, while at work at Tuttle Elementary School, Respondent submitted to a reasonable-suspicion urine drug screen. The final test results returned positive for marijuana.
4. As an educational support employee, Respondent's employment with the School District is governed by the Collective Bargaining Agreement.

¹ Petitioner's Exhibit 1 is a copy of an excerpt of the Classified Bargaining Unit Collective Bargaining Agreement between the Sarasota Classified/Teachers Association and the School Board of Sarasota County, FL (Collective Bargaining Agreement). The undersigned takes official recognition of the entire Collective Bargaining Agreement, which may be accessed at <https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/143/2019-20%20Classified-Final-Rev%20052620.pdf>. (Last visited Jan. 6, 2021).

CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the parties and the subject matter of this cause pursuant to Article XX of the Collective Bargaining Agreement, School Board Policy 6.37, and sections 1012.40(2)(c), 120.569, and 120.57(1), Florida Statutes.

6. Because this case is a proceeding in which Petitioner seeks to terminate Respondent's employment with the School Board and does not involve the loss of a license or certification, the School Board has the burden of proving the factual basis for termination by a preponderance of the evidence.

Cisneros v. Sch. Bd. of Miami Dade Cty., 990 So. 2d 1179 (Fla. 3d DCA 2008); *McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476 (Fla. 2d DCA 1996).

7. Petitioner is authorized to terminate Respondent, subject to the requirements of chapter 1012. § 1012.22(1)(f), Fla. Stat.

8. An educational support employee is "any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, a member of the transportation department, a member of the operations department, a member of the maintenance department, a member of food service, a secretary, or a clerical employee, or any other person who by virtue of his or her position of employment is not required to be certified by the Department of Education or district school board pursuant to s. 1012.39." § 1012.40(1)(a), Fla. Stat. Respondent is an educational support employee.

9. Section 1012.40(2) provides that educational support employees may be terminated for reasons set forth in the Collective Bargaining Agreement. It provides in pertinent part:

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective

bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.

(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 formally 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.

10. Article XX of the Collective Bargaining Agreement provides that action may not be taken against an employee except for just cause, and this must be substantiated by sufficient evidence which supports the recommended disciplinary action.

11. Pursuant to section 1012.33(1)(a), “just cause” includes “misconduct in office.”

12. Florida Administrative Code Rule 6A-5.056 sets forth criteria for suspension and dismissal of school personnel. Subsection (2) defines “misconduct in office,” as follows:

(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 6A-10.080, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, 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. (emphasis added).

13. The School Board’s Alcohol and Drug-Free Workplace policy (School Board Rule 6.33) provides that “no employee shall unlawfully manufacture, distribute, dispense, possess, use, or be under the influence of, on the job or in the workplace, any narcotic, drug, amphetamine, barbiturates, marijuana, or any other controlled substance as defined in the Controlled Substances Act (21 USC 812) and as further defined by the regulations at 21 CFR 1300 or Florida Statutes, Chapter 893, without a valid prescription.”

14. Respondent violated School Board Rule 6.33 when he tested positive for marijuana while at work, indicating he had used the substance.

15. The School Board proved, by a preponderance of the evidence, that it has just cause to terminate Respondent for misconduct in office based upon a positive drug screen.

RECOMMENDATION

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

DONE AND ENTERED this 7th day of January, 2021, in Tallahassee, Leon County, Florida.



JODI-ANN V. LIVINGSTONE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 2021.

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.