

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE SCHOOL BOARD OF OSCEOLA COUNTY,
FLORIDA,

Petitioner,

Case No. 20-4804

vs.

LORI STRECKER-TATTOLI,

Respondent.

RECOMMENDED ORDER

On December 17, 2020, Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH) conducted a disputed-fact evidentiary hearing via Zoom conference from Tallahassee, Florida.

APPEARANCES

For Petitioner: Frank C. Kruppenbacher, Esquire
Frank Kruppenbacher, P.A.
817 Beck Boulevard, Building 1000
Kissimmee, Florida 34744

For Respondent: Lori Strecker-Tattoli, pro se¹
2336 Deer Creek Boulevard
St. Cloud, Florida 34772

STATEMENT OF THE ISSUE

¹ The hearing was called to order at approximately 9:00 a.m., Respondent (and her husband) voluntarily removed themselves from the hearing at approximately 10:09 a.m. A recess was taken from 10:22 a.m. to 10:30 a.m. Neither Respondent nor her husband returned to the hearing.

The issue in this case is whether Petitioner, the School Board of Osceola County,² Florida (the Board), has just cause to terminate Respondent's employment as an educational support employee pursuant to section 1012.40(2), Florida Statutes (2020).

PRELIMINARY STATEMENT

By letter dated August 20, 2020, Debra Pace, the Superintendent of the Board, informed Respondent, Lori Strecker-Tattoli (Ms. Strecker-Tattoli or Respondent), that she was suspended without pay, and that the Board would consider a recommendation to terminate her as an employee at its September 22, 2020, Board meeting. The letter provided in pertinent part:

In accordance with the authority set forth in School Board Policy 6.37,^[3] Articles X and XI of the contract between the School Board of Osceola County, Florida and the Education Staff Professionals,^[4] as well as section 1012.40 Florida Statutes, this letter is your official notice of the determination of your abandonment from your position with the Osceola School District. Allowing you the information and rights contained herein, please note your position will be officially terminated on September 22, 2020, on the basis of your willful neglect of duty evidenced by your failing to report to work since August 17, 2020. Your school administration and Human Resources office has tried to contact you with no response. Your school requested a well check by St. Cloud Police on August 19, 2020 in which they did make contact with you and provided to the school that you were alive and well at your residence.

² The Board's official name is The School Board of Osceola County. § 1001.40, Fla. Stat. (2020). The case style has been amended accordingly.

³ School Board Policy 6.37 was not offered as an exhibit.

⁴ Articles X and XI of the contract between the Board and the Education Staff Professionals were not offered as an exhibit.

You did not appear for work on August 17, 2020, and continuing thereafter.

Violation of School Board Rule 6.511 Absence Without Leave:

II. Professional Support- Any other employee who is willfully absent from duty without leave shall be subject to dismissal from employment and shall forfeit compensation for the time of the absence.

III. Three (3) working days of failure to report for duty or be on approved leave will be determined abandonment of position and employee will be subject to termination.

I find that the abandonment of your position constitutes willful neglect of duty and constitutes just cause pursuant to section 1012.67, Florida Statutes

On September 1, 2020, Ms. Strecker-Tattoli filed a request for a “formal hearing” with the Superintendent’s office. The Board’s clerk referred this matter to DOAH on October 28, 2020.

On November 6, 2020, the Notice of Hearing by Zoom Conference (Notice), and the Order of Pre-hearing Instructions (Order) were eServed on both parties. The Notice scheduled the hearing for December 17, 2020, and provided information as to the method of connecting with the Zoom conference. The Notice also provided specific directions on when (“on or before December 10, 2020,” and “at least seven days before the hearing”), and how to submit exhibits (“by mail or hand-delivery”) to the undersigned.

On November 17, 2020, Ms. Strecker-Tattoli filed a Motion to Compel (Motion) regarding certain documents and other information she had previously requested from the Board. The Board responded to the Motion on

November 20, 2020. On November 23, 2020, an Order on the Motion was entered. On November 23, 2020, “Respondent's Response to Petitioners Response and Second Motion to Compel with a Motion for Sanctions against Opposing Counsel for Denying Production of Surveillance Video” (Second Motion) was filed.

On December 1, 2020, a duly noticed telephone conference was held regarding the Second Motion. Following the telephone conference, an “Order on Second Motion” was entered. On December 3, 2020, the Board filed its exhibit and witness lists. On December 4, 2020, the Board filed its supplemental response to the Second Motion. On December 10, 2020, the Board’s proposed exhibits were filed at DOAH.

On December 16, 2020, at 4:55 p.m. “RESPONDENT’S NOTICE OF FILING TESTIMONY AND EXHIBIT LIST with EVIDENTIARY SUPPORT,” an 88-page pleading, was filed. Before the hearing started on December 17, 2020, the Board filed a one-page document. As explained at the beginning of the hearing, and pursuant to the Notice (page 4, paragraph E), each party’s exhibits were to be provided to the undersigned on or before December 10, 2020. Both parties were told these late filed exhibits would not be admitted into the record. The Board’s counsel acknowledged its one-page exhibit was late, and it would not be used. The hearing was completed on December 17, 2020.

At the hearing, the Board called: Bernard J. Brosam, of the Saint Cloud Police Department; Tammy Cope-Otterson, the Board’s chief human resource officer; Edward Murphy, the Board’s Office 365 administrator and network specialist; Bronsky Bryant, Osceola High School’s assistant principal; and Doris Rodriguez, Osceola High School’s executive secretary. The Board’s

Exhibits 1 through 3, 6, and 9 through 15 were admitted into evidence without objection. The Board's Exhibits 4, 5, and 8 were admitted into evidence over Respondent's objections. Ms. Strecker-Tattoli (and her husband) voluntarily removed themselves from the hearing before Ms. Strecker-Tattoli could testify on her own behalf or offer any exhibits.

At the conclusion of the hearing, the Board's counsel was informed of the ten-day deadline provided by rule for filing proposed recommended orders (PROs) after the final hearing transcript is filed with DOAH. The Board's counsel provided that the Board's winter-holiday break was beginning on Monday, December 21, 2020, and requested additional time, specifically ten days from January 4, 2021, in which to file its PRO. Ms. Strecker-Tattoli voluntarily removed herself from the hearing, and without hearing an objection to the request, it was granted.

The one-volume Transcript was filed with DOAH on January 13, 2021. Later that same day, a Notice of Deadline for Filing Proposed Recommended Orders was issued advising the parties that the Transcript had been filed and their respective PROs were to be filed before 5:00 p.m. on January 25, 2021.⁵ The Board timely submitted its PRO, which has been considered in the preparation of this Recommended Order. To date, Ms. Strecker-Tattoli has not submitted a PRO. To the extent the Board's PRO contained hearsay evidence not supported by direct testimony or evidence, that information has not been considered.

⁵ According to Florida Administrative Code Rule 28-106.103, when the last day of the period falls on a Saturday, Sunday, or legal holiday, "the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday." In this instance, January 23, 2021, fell on the weekend, thus the Notice established Monday, January 25, 2021, for the filing.

Any references to Florida Statutes, administrative rules, or the Board's policies are to the versions in effect at the time of the allegations, except as otherwise indicated.

FINDINGS OF FACT

Based on the competent substantial evidence adduced at the final hearing, the following Findings of Fact are made:

I. The Parties

1. The Board is responsible for operating the public schools in the Osceola County School District and for hiring, firing, and overseeing both instructional employees and paraprofessional employees within Osceola County, Florida.

2. At all times pertinent to this case, Ms. Strecker-Tattoli was employed by the Board as an exceptional student education (ESE) paraprofessional. During the 2019-2020 school year, Ms. Strecker-Tattoli was assigned to one student in an ESE class at Osceola High School (OHS).

II. The Board's Policy

3. The Board's Policy 6.511 covers "ABSENCE WITHOUT LEAVE." Specifically, section II provides: "Professional Support – any other employee who is willfully absent from duty without leave shall be subject to dismissal from employment and shall forfeit compensation for the time of the absence." Section III provides: "Three (3) working days of failure to report for duty or be on approved leave will be determined abandonment of position and employee will be subject to termination."

III. The Board's Process

4. Ms. Rodriguez has been the executive secretary⁶ for OHS since 2017. Prior to the 2020-2021 school year, Ms. Rodriguez sent an e-mail to everyone employed at OHS with the starting dates and other pertinent information for the upcoming school year. Ms. Rodriguez testified that OHS does not send letters to OHS faculty, staff, or other employees, but uses e-mail to conduct Board business.

5. Ms. Otterson, the Board's chief human resource officer with 34 years of experience, testified the Board "actually frown[s] upon sending mail through the U.S. postal service. It's a waste of the taxpayer dollars when every employee has e-mail to communicate Any notification goes through e-mail to employees."

6. Ms. Otterson also testified about what happens when she is notified of an employee being absent without leave. Ms. Otterson talks with the employee's administrator and inquires of the attempts made to contact the employee. That administrator provides to Ms. Otterson the dates and times on which those attempted contacts were made and the outcome of each attempt.

7. Ms. Otterson will then direct the administrator to have a "well check" of the employee conducted by local law enforcement. If law enforcement is able to contact the employee, and the employee does not timely contact their administrator, Ms. Otterson will also attempt to contact the employee. Ms. Otterson will use the employee's phone number listed in the Board's official employee record. If all attempts to establish contact with the employee are unsuccessful, Ms. Otterson will submit a letter to the Board's Superintendent with the details of all the attempted contacts. Ms. Otterson

⁶ Ms. Rodriguez used the term "executive secretary" interchangeably with the terms "designated secretary" and "principal's secretary."

will also prepare, for the Board's Superintendent, a job abandonment-termination letter to the employee.

8. The Board provides "access to a variety of electronic resources to assist students and teachers including but not limited to: Moodle, Office 365, [and] Discovery Education." If anyone has difficulty accessing the various resources, the employee is directed to either their school's library media specialist or the "Media & Instructional Technology Department at extension 67200." Further, "district business conducted by e-mail must be done using the e-mail account that the District supplies."

9. Mr. Murphy is the Board's Office 365 administrator and network specialist. He testified that every Board employee has an e-mail account which can be accessed using a cell phone or the internet. For security reasons and data retention, Board employees are required to conduct Board business through their active e-mail accounts because the Board does not have control over "external hardware."

10. Mr. Murphy confirmed Ms. Strecker-Tattoli had an active Office 365 account, including e-mail, from 2019 through September 2020, and had not reported any issues with her account to the information technology (IT) department.

IV. August 3, 2020 through September 4, 2020

11. On August 3, 2020, Ms. Rodriguez sent the following e-mail, with attachments, to all the OHS faculty, including the paraprofessionals, via their individual e-mail addresses:

Hello team,
Please find attached the new calendars with your
work dates.

* * *

Paraprofessionals and 9 month office assistants return on August 17th and are off on the 8/20 & 8/21

Students return to school 8/24
I will be emailing the Pre-planning schedule soon.
Regards,
Doris D. Rodriguez

One of the attached calendars reflected that OHS paraprofessionals were to begin work on Monday, August 17, 2020, but could stagger their work schedule until the students returned to school on August 24, 2020.

12. Mr. Bryant has been an assistant principal at OHS since 2011. He is in a management and supervisory role, and served as Ms. Strecker-Tattoli's supervisor. During the 2020-2021 school year, Ms. Strecker-Tattoli was to be assigned as a one-on-one paraprofessional to the ESE student with whom she had worked with during the 2019-2020 school year.

13. Ms. Strecker-Tattoli did not report to OHS for work in August 2020. Mr. Bryant called Ms. Strecker-Tattoli and left a voice message. When he did not receive a return call from Ms. Strecker-Tattoli, Mr. Bryant sent a text message to Ms. Strecker-Tattoli, asking her to respond. Mr. Bryant did not get a response to either his voice or text messages.

14. After failing to get any response from Ms. Strecker-Tattoli, Mr. Bryant contacted Ms. Otterson about Ms. Strecker-Tattoli's absence. Ms. Otterson and Mr. Bryant discussed the steps that he had taken to communicate with Ms. Strecker-Tattoli. Per the process, Ms. Otterson asked Mr. Bryant to contact a local law enforcement agency to conduct a wellness check on Ms. Strecker-Tattoli. When he received the wellness check information regarding Ms. Strecker-Tattoli, Mr. Bryant was to inform Ms. Otterson of the results.

15. On or around August 19, 2020, Mr. Bryant contacted the Saint Cloud Police Department (PD), and requested a wellness check be performed to determine if Ms. Strecker-Tattoli was alright.

16. Officer Brosam, a certified law enforcement officer, conducted the wellness check on Ms. Strecker-Tattoli. Officer Brosam was greeted by Ms. Strecker-Tattoli at her front door. After explaining that “members of the school district had concerns” for her well-being, Officer Brosam determined that Ms. Strecker-Tattoli was fine.

17. The PD contacted Mr. Bryant and confirmed that Ms. Strecker-Tattoli was fine. Mr. Bryant, then again, attempted to contact Ms. Strecker-Tattoli to no avail.

18. Once Mr. Bryant informed Ms. Otterson that Ms. Strecker-Tattoli was located and fine, Ms. Otterson attempted to contact Ms. Strecker-Tattoli. Ms. Otterson used the Board’s employee record to contact Ms. Strecker-Tattoli, however Ms. Strecker-Tattoli did not respond to Ms. Otterson’s call.

19. Ms. Otterson submitted the information to Dr. Pace detailing the multiple attempts to contact Ms. Strecker-Tattoli. Ms. Otterson then prepared the termination letter for Dr. Pace’s signature. The August 20, 2020, termination letter was issued. On September 1, 2020, Ms. Strecker-Tattoli’s response and request for hearing were received by the Board.

20. Based on information within Ms. Strecker-Tattoli’s request for hearing, Ms. Otterson sent Ms. Strecker-Tattoli an e-mail on September 4, 2020. This e-mail asked Ms. Strecker-Tattoli for the name of the OHS employee to whom she spoke with after Officer Brosam conducted the wellness check. Ms. Strecker-Tattoli did not respond to the requested information.

21. Ms. Strecker-Tattoli's request for hearing, entered as the Board's Exhibit 12,⁷ made requests for copies of various files and records, and alluded to issues different than those set forth in Dr. Pace's termination for abandonment of position letter. Even the last paragraph of Ms. Strecker-Tattoli's request for hearing simply recited that she "did not receive any such letter or any other such communication notifying [her] of the date/time to return to [her] position at OHS," yet it failed to offer any explanation as to why she did not show up for work after the multiple attempted contacts by OHS personnel and the local PD.

22. The un rebutted evidence is that Ms. Strecker-Tattoli was contacted numerous times by OHS staff and once by the local PD. After the repeated attempted contacts, Ms. Strecker-Tattoli did not respond to the various messages left for her. Further, the un rebutted evidence is that Ms. Strecker-Tattoli did not report for work at OHS and she was absent from work for three or more days without notifying her administrator.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 1012.33, Florida Statutes.

24. The Board is a duly constituted school board charged with the duty to operate, control, and supervise all free public schools within the school district of Osceola County, Florida. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.33, Fla. Stat.

25. The Board's superintendent has the authority to recommend to the Board that an employee be terminated from employment. § 1012.27(5), Fla. Stat.

⁷ The Board's Exhibit 12 was entered into evidence while Ms. Strecker-Tattoli was still present for the hearing.

The Superintendent issued the termination for abandonment of position letter on August 20, 2020. The Board is, therefore, limited to seeking discipline only for the violations outlined in the termination letter. Discipline for any other conduct or infractions would not be authorized. *Christian v. Dep't of Health, Bd. of Chiropractic Med.*, 161 So. 3d 416 (Fla. 2d DCA 2014), and cases cited therein.

26. The Board seeks to terminate Ms. Strecker-Tattoli's employment and has the burden of proving its allegations by a preponderance of the evidence, as opposed to the higher standard of clear and convincing evidence. *See McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476 (Fla. 2d DCA 1996); *Allen v. Sch. Bd. of Dade Cty.*, 571 So. 2d 568, 569 (Fla.3d DCA 1990); and *Dileo v. Sch. Bd. of Dade Cty.*, 569 So.2d 883 (Fla. 3d DCA 1990).

27. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," *Black's Law Dictionary*, 1344 (7th ed. 1999), or 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) (relying on *American Tobacco Co. v. State*, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) (quoting *Bourjaily v. United States*, 483 U.S. 171, 175 (1987)).

28. In proceedings at DOAH, the matter is considered de novo⁸ by the Administrative Law Judge (ALJ). There is no presumption of correctness that attaches to the Board's decision. *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So 2d 778 (Fla. 1st DCA 1981).

29. "Just cause" is defined in section 1012.33(1)(a), in pertinent part as:

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

⁸ De novo means "anew; afresh; a second time," *Black's Law Dictionary*, 483 (4th ed. 1968).

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.

30. In pertinent part, section 1001.41, Florida Statutes, provides the following:

General powers of district school board.—The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

(1) Determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.

(2) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it to supplement those prescribed by the State Board of Education and the Commissioner of Education.

31. Pursuant to section 1001.41, the School Board has adopted Policy 6.511 which provides in pertinent part:

I. Administrative and Instructional - Any member of the administrative or instructional staff who is willfully absent from duty without leave shall forfeit compensation for the time of the absence and the employee's contract shall be subject to cancellation by the School Board. In addition, such absence without leave shall interrupt continuity of service.

II. Professional Support - Any other employee who is willfully absent from duty without leave shall be subject to dismissal from employment and shall forfeit compensation for the time of the absence.

III. Three (3) working days of failure to report for duty or be on approved leave will be determined abandonment of position and employee will be subject to termination.

32. The Board satisfied its burden and proved by a preponderance of the evidence that Ms. Strecker-Tattoli violated Board policy 6.511, by her failure to report for duty for three working days or be on approved leave, which constituted an abandonment of her position, and subjected her employment to termination. Having considered all of the facts set forth above, the undersigned concludes that termination of employment is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Osceola County affirm its decision to terminate Ms. Strecker-Tattoli's employment as a paraprofessional employee for the Board.

DONE AND ENTERED this 1st day of February, 2021, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of February, 2021.

COPIES FURNISHED:

Frank C. Kruppenbacher, Esquire
Frank Kruppenbacher, P.A.
Building 1000
817 Beck Boulevard
Kissimmee, Florida 34744

Lori Strecker Strecker-Tattoli
2336 Deer Creek Boulevard
St. Cloud, Florida 34772

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

Dr. Debra P. Pace, Superintendent
The School District of Osceola County,
Florida
817 Bill Beck Boulevard
Kissimmee, Florida 34744-4492

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.