

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5245

CARL CARRALERO,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge ("ALJ") Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings ("DOAH") on April 29, 2021, by Zoom conference.

APPEARANCES

For Petitioner: V. Danielle Williams, Esquire
School District of Palm Beach County
Office of the General Counsel
3300 Forest Hill Boulevard, Suite C-331
West Palm Beach, Florida 33406

For Respondent: Carl Carralero, pro se
6705 Lytle Court
West Palm Beach, Florida 33405

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists for Palm Beach County School Board ("Petitioner" or "School Board") to terminate Carl Carralero's ("Respondent" or "Mr. Carralero") employment for the reasons set forth in the Administrative Complaint.

PRELIMINARY STATEMENT

In correspondence dated October 20, 2020, Petitioner's Superintendent issued a letter informing Respondent that the Superintendent would recommend suspension without pay and termination of his employment at the November 4, 2020, meeting of the School Board. The stated basis for the Superintendent's action was that just cause existed to warrant Respondent's termination for: (1) Violations related to Inappropriate Interaction with a CoWorker/Threats of Violence; (2) Ethical Misconduct and Insubordination; and (3) Failure to Follow Policy, Rule, or Directive(s). On November 4, 2020, the School Board adopted the Superintendent's recommendations to suspend Respondent without pay and to terminate his employment. Thereafter, Respondent timely requested a hearing at DOAH.

The final hearing took place on April 29, 2021. At the hearing, Petitioner offered the live testimony of Respondent; Chester Ripple ("Mr. Ripple"), Maintenance Technician II; Barry Hedges, Maintenance Technician II; Director of Environment & Conservation Services Kesta James; and Human Resources Manager Carol Stewart Martin. Petitioner's Exhibits 1 through 25 were admitted into evidence. Respondent testified on his own behalf and did not introduce any exhibits. The one-volume hearing Transcript was filed with DOAH on May 20, 2021. Petitioner submitted a Proposed Recommended Order, which was timely in accordance with an agreed-upon deadline of 30 days following the filing of the Transcript. Petitioner's Proposed Recommended Order was duly considered in the preparation of this Recommended Order.

All references to Florida Statutes are to the 2019 codification in effect at the time of the matters relevant to these proceedings.

FINDINGS OF FACT

1. Respondent was hired by the School Board on December 16, 2013.
2. Respondent was employed as a Maintenance Technician II in the Plant Operations Department.
3. Respondent's last day of work with the School District was November 2, 2020.
4. Respondent was aware of the School Board's Code of Ethics and knew that the same applied to him as an employee.
5. Respondent's employment was governed by the collective bargaining agreement between the School District and Service Employees International Union/Florida Public Services Union ("Collective Bargaining Agreement").

Respondent's Conduct

6. In March of 2020, Respondent and Mr. Ripple mistakenly reported to a school that was the incorrect location based on their assigned work order. The two men had a disagreement as to how the mistake was handled.

7. Based on the unrefuted evidence, the disagreement escalated into a verbal altercation wherein Respondent screamed at Mr. Ripple, saying "fuck you" and calling him a "mother fucker." Mr. Ripple acknowledged that he responded to Respondent by repeating the same profanities back to him. During the altercation, Mr. Ripple was standing in the bed of a truck that was used to transport materials to work sites. Respondent, who was standing on the ground, told Mr. Ripple to come down from the truck so that Respondent could "kick his ass," and made other threats of physical violence. Mr. Ripple, however, remained standing in the truck bed until Respondent left. Other employees witnessed the altercation.

Progressive Discipline

8. The Collective Bargaining Agreement includes a provision that outlines steps in progressive discipline of employees. The progressive discipline steps are: 1) a verbal reprimand with a written notation; 2) written notation; 3) suspension without pay; and 4) termination.

9. Human Resources Manager Carol Stewart Martin ("Ms. Martin"), testified credibly that, based on her investigation, Respondent's conduct during the March 2020 incident was part of a recurring behavioral pattern and that other employees were concerned.

10. Respondent has received prior discipline throughout his employment with Petitioner.

11. The investigation of the March 2020 incident, which is the subject of the present case, was Ms. Martin's third investigation involving Respondent either being violent or making threats of violence against his coworkers.

12. In 2016, Respondent received a Notice of Ten-Day Suspension Without Pay based on a physical fight between Respondent and a coworker.

13. On another occasion, Respondent was investigated by Petitioner after a coworker complained that Respondent hit him.

14. Respondent was directed, in writing, by Petitioner, not to engage in similar conduct in the future.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the subject matter and the parties. §§ 120.569 and 120.57, Fla. Stat.

16. The School Board is responsible for the operation, control, administration, and supervision of all free public schools within the district. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.32, Fla. Stat. The School Board's powers and duties include providing for the termination of employees. § 1012.22(1)(f), Fla. Stat.

17. The default standard in this case would require Petitioner to bear the burden of proving the allegations against Respondent by a preponderance, or greater weight, of the evidence. *See McNeil v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996). Instead, the parties have contracted to be bound by the clear and convincing standard through a provision in the Collective Bargaining Agreement. Clear and convincing evidence "requires

more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). In the present case, however, the applicable burden is immaterial, because Petitioner sufficiently proved its case by either measure.

18. Pursuant to Article 17, Section 1 of the Collective Bargaining Agreement: "Without consent of the employee and the Union, disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence which supports the recommended disciplinary action."

19. Pursuant to Article 17, Section 7 of the Collective Bargaining Agreement:

Except in cases which clearly constitute a real and immediate danger to the District, a District employee and/or a child/children or the actions/inactions of the employee constitute such clearly flagrant or purposeful violations of reasonable School Board rules and regulations, progressive discipline shall be administered as follows:

- a. Verbal Reprimand with a Written Notation;
- b. Written Reprimand;
- c. Suspension without Pay; and
- d. An employee may be dismissed when appropriate in keeping with provisions of this Article, including just cause and applicable laws.

20. The record in this case establishes that there is just cause to terminate Respondent's employment, in support of the first charged violation, Inappropriate Interaction with a Co-Worker/Threats of Violence, in violation of School Board Policy 3.02(4)(d), (4)(e), (5)(i), Code of Ethics.

21. School Board Policy 3.02(4)(d), Code of Ethics, provides, in pertinent part, that each employee agrees and pledges to "treat all students and individuals with respect and to strive to be fair in all matters." Respondent did not treat Mr. Ripple with respect when he insulted him with profane language and threatened him with physical violence. Respondent's conduct also violated School Board Policies 3.02(4)(e) and (5)(i) which proscribe, respectively, "harassing behavior of students or colleagues" and failing to act in a "positive manner that enhances the public interest and trust."

22. The record in this case establishes that Respondent committed the second charged violation, Ethical Misconduct, in violation of School Board Policy 3.02(4)(a) and (d).

23. School Board Policy 3.02(4)(a), Accountability and Compliance, states in pertinent part, that "each employee agrees and pledges to provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace."

24. School Board Policy 3.02(4)(d), Accountability and Compliance, states in pertinent part, that "each employee agrees to treat all students and individuals with respect and to strive to be fair in all matters."

25. In insulting Mr. Ripple with profane language and threatening him with physical violence in the presence of other employees, Respondent did not provide the best example for other employees, nor did he demonstrate excellence, integrity, and responsibility in the workplace.

26. The record in this case establishes that Respondent committed the third charged violation, Failure to Follow Policy/Rule or Directive(s), in violation of School Board Policy 3.10(6), Conditions of Employment with the District, and School Board Policy 1.013(1), Responsibilities of School District Personnel and Staff.

27. School Board Policy 3.10(6), Conditions of Employment with the District, states, in pertinent part, that "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."

28. School Board Policy 1.013(1), Responsibilities of School District Personnel and Staff, states in pertinent part, "it shall be the responsibility of the personnel employed by the district ... to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, ... and local school and area rules."

29. The record in this case is clear that Respondent engaged in a pattern of conduct that he knew violated School Board policies and was inappropriate. Respondent was previously disciplined for physical violence against an employee and informed that the same or similar conduct would result in disciplinary action up to and including termination.

30. The record in this case is clear that Respondent insulted Mr. Ripple with profane language and threatened him with physical violence in violation of previous directives to refrain from such conduct.

31. The record in this case is clear that, as a result of Respondent's prior ten-day suspension without pay, a recommendation to terminate his employment is the next step in the progressive disciplinary provision of the Collective Bargaining Agreement.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is **RECOMMENDED** that the Palm Beach County School Board enter a final order suspending Respondent without pay and terminating his employment.

DONE AND ENTERED this 8th day of July, 2021, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
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 8th day of July, 2021.

COPIES FURNISHED:

Carl Carralero
6705 Lytle Court
West Palm Beach, Florida 33405

V. Danielle Williams, Esquire
School District of Palm Beach County
Office of the General Counsel
3300 Forest Hill Boulevard, Suite C-331
West Palm Beach, Florida 33406

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

Jean Marie Middleton, Esquire
School District of Palm Beach County
Office of the General Counsel
3300 Forest Hill Boulevard, Suite C-331
West Palm Beach, Florida 33406

Donald E. Fennoy, II, Ed.D., Superintendent
School District of Palm Beach County
3300 Forest Hill Boulevard, Suite C-316
West Palm Beach, Florida 33406-5869

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.