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BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

DEBORAH POWERS RENFRO

FILED

APPELLANT

JUN 02 2014

VS.

DOCKET NOS. 13-063

EMPLOYEE APPEALS BOARD

MISSISSIPPI DEPARTMENT OF EDUCATION

RESPONDENT

ORDER

The appeal of this matter came on for hearing before Hearing Officer, B. Ray Therrell, II, on February 4, 2014, February 5, 2014, and February 25, 2014 at the Mississippi State Personnel Board Offices in Jackson, Mississippi. Wilson H. Carroll represented Deborah Powers Renfro and Raina Anderson Lee represented the Mississippi Department of Education (MDE). Renfro appeals her termination from her position as an Education Specialist Senior with the Mississippi Department of Education.

On October 1, 2013, Mrs. Renfro received a Suspension with Pay and Pre-Disciplinary Action Notice citing a Group II offense of insubordination, a Group III offense of unauthorized/misuse of state property, and a Group III offense of willful violation of MSPB policies and procedures. On October 7, 2014, Mrs. Renfro was sent an Amended Suspension with Pay and Pre-Disciplinary Action Notice citing the above offenses and adding an additional Group II offense of insubordination. On October 30, 2013, a Disciplinary Action Notice was mailed to Mrs. Renfro terminating her employment effective October 31, 2013. On November 13, 2013, Mrs. Renfro filed an appeal of her termination.

The rules and regulations of the Mississippi State Personal Board clearly allocate the burden of proof to the Appellant to show by a preponderance of the evidence that the reasons stated in her termination notices are not true or sufficient for the actions taken by Mississippi Department of Education. Mississippi State Personnel Board Policy and Procedures Manual provides "the presiding hearing officer shall hear or receive evidence on only those reasons and allegations

contained in the responding party's final disciplinary notice to the employee of such action." See Section 10.7.18 Mississippi State Policy & Procedures Manual.

As to the Group II offense of insubordination, the MDE's Disciplinary Action Notice states the following:

According to an E-mail forwarded to the department on September 19, 2013, on or about August 6, 2013, you provided guidance to this parent on how the district should have handled an IEP involving her child, indicating that the district was in error.

You have been instructed on numerous occasions that your responsibility on the parent hotline is to provide parents and districts their rights according to IDEA and not to coerce parents by sharing with them that you believe the districts are not providing the necessary services to their children. In addition, you have been provided guidance by the Bureau of Special Projects about giving information to parents concerning the decisions made by the IEP committee and resolving issues of noncompliance that is determined by the Monitoring Division.

MDE contends the email sent by the parent to MDE on September 19, 2013, indicates the Appellant committed or attempted to coerce any parent with regards to how an IEP should have been handled by a school district and provided advice as to how the parent should handle the IEP process. Based on the testimony and evidence presented before the Hearing Officer, it is clear that the email of September 19, 2013, in no way indicates the Appellant committed or attempted to coerce any parent with regards to the MDE policies or share with them the district was in error.

██████████, the parent that sent the email, testified the Appellant only advised her of her rights. She further stated that she never felt pressured to send the email. In fact, ██████████ testimony praised the services provided by the Appellant. Nothing in the record suggests the Appellant was overly involved in a parent's situation, nor is no suggestion that the Appellant intended to do anything that violated her neutrality in providing services to the parent. Thus, the hearing officer finds that the Appellant has met her burden of proof.

As to the Group III offense of unauthorized use or misuse of State property or records, and

the Group III offense of MSPB policies and procedures, including, but not limited to, refusing to cooperate and/or giving false statement in an investigation of possible violation of MSPB policies and procedures, the MDE's Disciplinary Action Notice states the following:

On Monday, September 23, 2013, Dr. Joy Hogge, the Executive Director of Mississippi Families as Allies contacted MDE staff and stated that several parents contacted her concerning an email that you sent on September 9, 2013 asking for "a favor". You specifically asked the recipients of your email to "...write an email to trmyers@mde.k12.ms.us (Director) and I won't tell you what to say, but if you will, let him know that hopefully I was helpful to you when you called with some concerns as a parent. Then you can say anything you wish about our conversation and the friendship that I think we have now." You asked that they share with the new director that you were doing a good job and to make you look and sound good. You further requested that the parents blind copy you on the correspondence for your records. On September 9, 2013, at least two (2) parents responded to your request for "a favor".

Dr. Hogge indicated that some of the parents who had been contacted through this email process felt their rights were violated. In addition, these parents are now reluctant to contact MDE/OSE for assistance for their children.

Your actions are in direct violation of established MDE policy (Ethical Policies), MSPB policy (Conflict of Interest) and FERPA laws.

In addition, it is noted that your email of September 9, 2013, was sent during working hours, utilizing the office computer to solicit parents for a favor.

Dr. Hogge and Dr. Myers testified for MDE that they were aware that several parents had complained about receiving emails from the Appellant. However, they were unable to identify or provide any substantial evidence to support their contention that parents had complained about the emails. Moreover, there is nothing in the record to suggest the Appellant pressured any parents to send feedback to the MDE. In fact, two parents testified they were thankful for the service they received. They did not feel that their confidentiality was in anyway compromised by any email they received from the Appellant, nor did they feel pressured into sending feedback to MDE.

MDE argues that both using the parents' email addresses to send the emails and using her personal email account to send the emails were a misuse of state property or records. The hearing

officer does not find any misuse of MDE property or records. First, all the names on the emails were redacted; thus, it could not be clear as to who was sent the emails, Secondly, the record indicates that use of the computers for personal use was common place in the agency, and the Appellant seems to be the only employee cited for such use. In fact, the record tends to suggest that use of the state computers for personal use was more common than MDE may have claimed. For the above reasons, the hearing officer finds that the Appellant has met her burden of proof as it relates to the Group III offense of unauthorized use or misuse of State property or records, and the Group III offenses of willful violation of policies and procedures, including, but not limited to, refusing to cooperate and/or giving false statement in an investigation of possible violation of policies and procedures.

Having considered the testimony of all the witnesses and exhibits introduced into evidence, the hearing officer finds the record lacks any substantial evidence to show any confidentiality was breached by the "favor" or "inspirational" email sent by the Appellant. There was no clear evidence to show who the emails were sent to, and whether those individuals were receiving services from MDE. The Appellant has met her burden of proof and has proven that the allegation that she misused the email addresses of parents is unsupported by the evidence.

As to the final alleged offenses of insubordination, the Department of Education's Disciplinary Action Notice states the following:

On October 2, 2013, it was discovered by your supervisor that a Formal State Complaint (FSC) received by the Office of Special Education and assigned to you on September 27, 2013 had not been completed, but instead had been left on your desk without the proper procedures and adhering to specific timelines as required by State and Federal laws. Specifically, you were responsible for providing written notification and a copy of the complaint to the public agency's superintendent, requiring a written response to the alleged violation(s) and forward supporting documentation notifying the school district and parent that a FCS had been received by the Office of Special Education. This should have been done by you within the first two (2) hours of being assigned the FCS to allow full 60 day implementation timeline.

The FCS was not processed until October 2, 2013, full three days after receipt of the complaint.

This dereliction of duty caused the Office of Special Education to not have the full sixty (60) days for the desk audit or onsite visit, if deemed necessary.

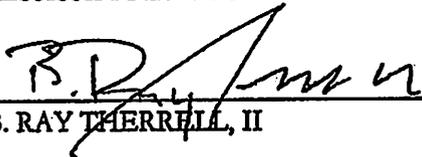
MDE's allegations upon which the Appellant committed a Group II offense of insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy as stipulated in the Mississippi Employee Handbook, are based on the allegation the Appellant failed to properly process a formal state complaint in a timely manner.

While several MDE witnesses testified there was an in house deadline of processing the Formal State Complaints within the first two (2) hours the complaint was received, there was no evidence to show that this deadline was in writing, or that the lack of processing the complaint adversely affected the district involved. Having considered the testimony of all the witnesses and exhibits introduced into evidence, the hearing officer finds that the Appellant has met her burden of proof and has proven that the allegation that she failed to properly process a formal state complaint is unsupported by the evidence.

It is therefore ordered and adjudged that the termination of Debbie Powers Renfro be reversed, and that the Appellant shall be reinstated to her former position as of the date of her termination and restored to all her rights and benefits including back pay, medical leave and personal leave to the extent allowed by law. It is also ordered that the Appellant be restored to all of her retirement benefits she would have been entitled to had she not been erroneously terminated, provided the integrity of such benefits remain uncompromised in accordance with all applicable law, policies, rules, and regulations.

SO ORDERED, this the 2nd day of June, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD



B. RAY TERRILL, II