

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 01-1307
)
 CASSANDRA DICKERSON,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

The parties having been provided proper notice,
Administrative Law Judge John G. Van Laningham of the Division
of Administrative Hearings convened a formal hearing of this
matter in West Palm Beach, Florida, on June 7, 2001, as
scheduled. The hearing was adjourned that same day.

APPEARANCES

For Petitioner: Alan M. Aronson, Esquire
Office of the Chief Counsel
for the School Board
Palm Beach County School Board
3318 Forest Hill Boulevard, Suite C-302
West Palm Beach, Florida 33406

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue in this case is whether a district school board
is entitled to terminate the employment of a non-instructional

employee whose performance is alleged to have been unsatisfactory.

PRELIMINARY STATEMENT

In a Petition for Suspension Without Pay and Dismissal From Employment dated March 15, 2001, the Superintendent of Schools for the School District of Palm Beach County, Florida (the "District") urged the Palm Beach County School Board (the "Board") to suspend Respondent Cassandra Dickerson ("Ms. Dickerson") without pay effective March 29, 2001, and to terminate her employment effective 15 days after the Board's decision or, alternatively, following an administrative hearing if timely requested. The superintendent based his recommendation on the allegation that Ms. Dickerson had failed to correct identified performance deficiencies within 30 days after an unsatisfactory evaluation, despite having been provided assistance to improve her performance.

The Board accepted the superintendent's recommendation at its regular meeting on March 28, 2001. Ms. Dickerson timely requested a formal administrative hearing, and, on April 5, 2001, the matter was referred to the Division of Administrative Hearings.

The undersigned Administrative Law Judge, having been assigned the case, issued a Notice of Hearing on April 17, 2001, that set the final hearing for June 7 and 8, 2001, in West Palm

Beach, Florida. The hearing convened on June 7 as scheduled. The Board appeared through counsel. Ms. Dickerson, who had participated in pre-hearing telephone conferences and for that reason was known to be aware of the date, place, and time of the final hearing, did not appear. Because the Board had the burden of proving its allegations, the hearing went forward without Ms. Dickerson.

The Board presented four witnesses, all District employees: Kimberly Vargas-Vila, a classroom teacher; Ruby Garcia, a paraprofessional; Elizabeth Cardozo, Principal; and Diane Curcio-Greaves, Professional Standards Specialist. In addition, the Board introduced 29 exhibits into evidence, numbered 1 through 29.

On June 8, 2001, the Administrative Law Judge issued Post-Hearing Instructions that directed the parties to file their proposed recommended orders within 20 days after the filing of the final hearing transcript with the Division of Administrative Hearings.

The transcript was filed on June 27, 2001. An Order Regarding Proposed Recommended Orders was entered on June 28, 2001, which specifically established July 17, 2001, as the deadline for filing post-hearing papers. This deadline was enlarged to July 24, 2001, on the Board's motion.

The Board timely filed its Proposed Findings of Fact and Recommended Order. The undersigned carefully considered the Board's submission in the preparation of this Recommended Order. Ms. Dickerson did not submit any post-hearing papers.

FINDINGS OF FACT

1. At all times material, Ms. Dickerson was employed in the District as an education paraprofessional. For the 2000-01 school year, she was assigned to Meadow Park Elementary School (the "School").

2. That year, Ms. Dickerson worked under the supervision and direction of a special education teacher named Kimberly Vargas-Vila, whose half-dozen or so pupils, ranging in age from three to seven years, were children with autism.

3. Ms. Dickerson was one of two paraprofessionals placed in Ms. Vargas-Vila's classroom for the 2000-01 school year. In the discharge of her duties, Ms. Dickerson was required to feed students, help them in the toilet, assist the teacher in the classroom, assist children in play, watch them on the playground, make copies, and run errands for the teacher.

4. Not long after the school year started, Ms. Vargas-Vila noticed that Ms. Dickerson resisted attempts by the other paraprofessional, who was a so-called "one-on-one" aide assigned to a specific student, to help Ms. Dickerson. Ms. Dickerson wanted to perform certain duties herself and often refused

offers of assistance. Ms. Dickerson's unwillingness to share the work load was not initially disruptive but increasingly became so.

5. In October 2000, another problem developed: Ms. Dickerson began to disobey Ms. Vargas-Vila's directions concerning the management of students' behavior. The teacher spoke with Ms. Dickerson about this issue, but Ms. Dickerson refused to discuss the matter with her. Instead, Ms. Dickerson sent a letter to the Board in which she unjustly accused Ms. Vargas-Vila of harassment.

6. Unable on her own to resolve the problems she was having with Ms. Dickerson, Ms. Vargas-Vila sought the advice of the School's Principal, Elizabeth Cardozo. After conferring, they decided that the three of them (the principal, the teacher, and the paraprofessional) should meet together.

7. Accordingly, a meeting was held between Ms. Dickerson, Ms. Vargas-Vila, and Ms. Cardozo on October 18, 2000. While the primary topic of discussion was Ms. Dickerson's allegation that Ms. Vargas-Vila had harassed her (which was groundless), other matters were discussed too, with the participants agreeing to reconvene if problems recurred.

8. Despite this meeting on October 18, 2000, Ms. Vargas-Vila continued to have difficulties with Ms. Dickerson. Therefore, a few weeks later, on November 7, 2000, Ms. Vargas-

Vila wrote a memorandum to Ms. Cardozo that related her concerns about Ms. Dickerson's ongoing failure to follow instructions relating to the behavior management techniques that she (the teacher) wanted to use with a particular student.

9. In this memorandum, Ms. Vargas-Vila explained that she frequently had told Ms. Dickerson to ignore certain inappropriate behaviors in which the student in question was engaging, but Ms. Dickerson refused to comply. Rather than ignore the student, as directed, Ms. Dickerson would continue to talk and interact with the student. Ms. Vargas-Vila also had instructed that the student's chair be placed slightly apart from the other students, but Ms. Dickerson, disobeying, had moved the student's chair back towards the others in the group. Ms. Dickerson's defiance was causing friction in the classroom.

10. When Ms. Vargas-Vila witnessed these insubordinate acts, she immediately discussed them with Ms. Dickerson, who either did not comment or expressed her opinion that the teacher's orders were inappropriate.

11. Ms. Vargas-Vila's memorandum of November 7, 2000, reported as well that Ms. Dickerson continued to object when the teacher asked the other paraprofessional to handle duties that Ms. Dickerson felt were "her" tasks.

12. As a result of Ms. Vargas-Vila's memorandum, a meeting was held on November 17, 2000, between Ms. Dickerson,

Ms. Vargas-Vila, Ms. Cardozo, and a District official named John Stevens. The meeting was difficult because Ms. Dickerson became loud and angry, accusing the attendees, among other things, of plotting to violate her Constitutional rights. She also made the weird charge that Ms. Vargas-Vila had employed a "fake cough" to aggravate her in the classroom. Notwithstanding these impediments to productive discourse, Ms. Vargas-Vila reviewed "improvement strategies" with Ms. Dickerson, who said that she would follow this advice. Afterwards, Ms. Dickerson was provided a written summary of the November 17, 2000, conference, which specified the areas in which improvement was needed and the recommended improvement strategies.

13. For a while after the November 17, 2000, meeting, Ms. Dickerson's performance improved. But before the month was out, Ms. Dickerson had resumed refusing to allow the other paraprofessional to perform certain duties, and she had begun once again to disregard the behavior management techniques that Ms. Vargas-Vila prescribed. These problems continued into the next calendar year.

14. Throughout January 2001, Ms. Dickerson's performance-related problems persisted. Ms. Vargas-Vila talked specifically with Ms. Dickerson about the need for her to follow directions and allow other people to help out in the classroom, but Ms. Dickerson did not change her unsatisfactory behavior. As a

result, another meeting with Ms. Cardozo was scheduled, for January 25, 2001.

15. The January 25, 2001, meeting was attended by Ms. Cardozo, Ms. Vargas-Vila, and Ms. Dickerson. During the meeting, Ms. Dickerson was told that she had failed to follow the improvement strategies that had been recommended—and which she had agreed to implement—during the conference on November 17, 2000. Ms. Dickerson was notified that if she continued to disobey the teacher's directions, she would be subject to disciplinary action. Finally, more improvement strategies were discussed, and these were reduced to writing, as part of the principal's conference notes, a copy of which was provided to Ms. Dickerson on January 30, 2001.

16. As of the January 25, 2001, meeting, Ms. Cardozo was convinced that Ms. Dickerson's job performance was unsatisfactory and that her actions were interfering with the instructional process in the classroom. Consequently, Ms. Cardozo sought guidance from Diane Curcio-Greaves, a Professional Standards Specialist at the District's headquarters, in regard to the preparation of a performance evaluation of Ms. Dickerson.

17. The conditions of Ms. Dickerson's employment were governed by a collective bargaining agreement called the Agreement Between the School District of Palm Beach County,

Florida and the Association of Education Secretaries and Office Professionals, dated July 1, 1997 - June 30, 2000 (the "Union Contract"). The Union Contract forbade the recommendation of an employee for termination based upon an unsatisfactory evaluation unless that employee had been given at least 30 days to improve his or her performance.

18. In view of this contractual provision, Ms. Curcio-Greaves and Ms. Cardozo decided that Ms. Dickerson would be afforded 30 days from the date she received an unsatisfactory performance evaluation within which to correct the identified deficiencies.

19. On February 2, 2001, based on Ms. Vargas-Vila's input as well as her own observations, Ms. Cardozo recorded her assessment of Ms. Dickerson's performance on a Noninstructional Evaluation form used by the District. Ms. Cardozo rated Ms. Dickerson unsatisfactory under the categories of self motivation, adaptability to change, interpersonal effectiveness, and assignments (specifically, under the last heading, for failing to follow directions easily and effectively). Ms. Cardozo assigned Ms. Dickerson an overall rating of unsatisfactory.

20. Ms. Cardozo, Ms. Curcio-Greaves, and Assistant Principal Diane Bell met with Ms. Dickerson on February 5, 2001, to discuss the unsatisfactory evaluation and to initiate a 30-

day assistance plan. At this meeting, improvement strategies for each area in which her performance had been deemed unsatisfactory were recommended to Ms. Dickerson. These improvement strategies, together with a statement of the reasons why Ms. Dickerson's job performance was considered unsatisfactory, were set forth in a memorandum of assistance dated February 2, 2001, which Ms. Cardozo had prepared earlier.

21. The evaluation and its attachments, including the memorandum of assistance, were presented to Ms. Dickerson on February 5, 2001. Ms. Dickerson acknowledged receipt of these documents, noting her disagreement with the contents and vowing to appeal "THIS FALSE PLOT!"

22. In accordance with District policy and the Union Contract, Ms. Cardozo was responsible for monitoring Ms. Dickerson's progress during the 30-day assistance period and periodically meeting with Ms. Dickerson to review her performance and provide feedback. Ms. Cardozo scheduled several review conferences with Ms. Dickerson, to occur on Friday, February 16; Monday, February 26; and Monday, March 12, 2001. These dates were provided to Ms. Dickerson in a memorandum dated February 8, 2001, receipt of which was acknowledged by Ms. Dickerson that same day.

23. The first review conference was held on February 20, 2001.¹ Present were the same persons as on February 5:

Ms. Cardozo, Ms. Bell, Ms. Curcio-Greaves, and Ms. Dickerson. Ms. Cardozo discussed each previously-identified area of deficiency with Ms. Dickerson and told Ms. Dickerson what was expected of her to correct these deficiencies, which persisted. Ms. Dickerson was not receptive to advice and indeed refused to acknowledge that her performance was unsatisfactory. Based upon Ms. Dickerson's comments and the fact that she had not been following the implementation strategies described in the February 2, 2001, memorandum of assistance, Ms. Cardozo was of the opinion that as of February 20, 2001, Ms. Dickerson's job performance had not improved.

24. On February 22, 2001, Ms. Cardozo wrote a memorandum detailing the discussion that had taken place during the February 20, 2001, meeting. This memorandum specified the areas of Ms. Dickerson's job performance that continued to be deficient, and spelled out the steps that Ms. Dickerson needed to take in order to improve. Ms. Cardozo gave Ms. Dickerson a copy of her memorandum on February 22, 2001, receipt of which was acknowledged by Ms. Dickerson.

25. On February 23, 2001, Ms. Cardozo formally observed Ms. Dickerson in Ms. Vargas-Vila's classroom for one hour. She noticed that Ms. Dickerson continued to be performing unsatisfactorily in the area of interpersonal effectiveness.

26. A few days later, on February 26, 2001, a second review meeting was held with Ms. Dickerson. In attendance were Ms. Cardozo, Ms. Curcio-Greaves, Ms. Bell, Jeanne Burdsall (a Manager in the District's Office of Professional Standards), and Ms. Dickerson. At this meeting, Ms. Dickerson informed the group that she had spoken with the "Assistant Superintendent" concerning her belief that people were trying to take her job away and give her a bad evaluation. Ms. Dickerson was reminded that on February 5, 2001, she had been advised about the grievance procedures available to union members. Ms. Dickerson was again informed of her right to contact a union representative if she wanted to file a grievance regarding her evaluation.

27. It is evident that by the time of the February 26, 2001, meeting, Ms. Dickerson was not implementing previously-recommended improvement strategies and had no intention of doing so. She continued to deny having performance problems and stubbornly resisted attempts to help her improve. Ms. Dickerson repeated the now-familiar but utterly unsubstantiated accusation that Ms. Vargas-Vila and others were harassing her and plotting to take away her job. Ms. Dickerson's comments had become alarmingly irrational and paranoid.

28. On March 6, 2001, Ms. Dickerson received a copy of Ms. Cardozo's detailed memorandum describing the February 26

meeting. Ms. Cardozo continued to hold the opinion that Ms. Dickerson had not improved her job performance to a satisfactory level.

29. The next day, Ms. Dickerson refused to change a child's diaper at the direct request of Ms. Vargas-Vila, claiming that it was not her job and complaining that the teacher's directive constituted harassment. Ms. Vargas-Vila immediately brought this incident to Ms. Cardozo's attention. Within hours, the principal had notified Ms. Dickerson in writing that she wanted to meet with her the following day, March 8, 2001, in order to review the notes that Ms. Cardozo had made concerning her February 23, 2001, classroom evaluation of Ms. Dickerson.

30. Later that afternoon, Ms. Dickerson appeared in Ms. Cardozo's office, ranting loudly that she was being harassed and asking why they needed to have a meeting. Ms. Cardozo advised Ms. Dickerson that the reason for the meeting was to go over the results of the February 23, 2001, observation. Ms. Dickerson alleged (again) that she could no longer do her job due to the supposed harassment. Ms. Cardozo asked Ms. Dickerson if she was refusing to meet with her, and Ms. Dickerson told her she was not.

31. At that point, Ms. Cardozo told Ms. Dickerson that she would arrange to discuss the observation of February 23, 2001, at the upcoming assistance review meeting, scheduled for March 12, 2001. Thereupon, Ms. Dickerson left Ms. Cardozo's office, only to return minutes later to tell Ms. Cardozo that she was sick and leaving for the day. In light of Ms. Dickerson's outburst and bizarre behavior, Ms. Cardozo began to worry that she or her staff might be in danger.

32. Ms. Cardozo's last meeting with Ms. Dickerson was on March 12, 2001. Ms. Cardozo gave Ms. Dickerson a copy of her memorandum of the observation that she had conducted on February 23, 2001. In the memorandum, Ms. Cardozo specifically commented on Ms. Dickerson's lack of interpersonal effectiveness. Ms. Cardozo also handed Ms. Dickerson a Noninstructional Evaluation form that she had completed on March 12, 2001, on which Ms. Dickerson was graded unsatisfactory in the areas of self motivation, adaptability to change, interpersonal effectiveness, and assignments—the same areas in which Ms. Dickerson's performance previously had been considered deficient. Overall, the evaluation was unsatisfactory.

33. Because she had failed to correct the identified performance deficiencies within 30 days, Ms. Dickerson was informed via a letter from the Chief Personnel Officer, which she received on March 12, 2001, that effective March 13, 2001,

she was being reassigned to her home with pay, pending the Board's next meeting on March 28, 2001, at which time action would be taken to dismiss her.

34. By memorandum dated March 12, 2001, Ms. Cardozo notified the Director of Professional Standards that Ms. Dickerson had been given an unsatisfactory evaluation after the end of a 30-day assistance period. Based upon the unsatisfactory evaluation, Ms. Cardozo requested a District review to determine further action, up to and including termination of Ms. Dickerson's employment.

35. In due course, pursuant to District policy, a competency hearing was convened before a committee of District employees, to review the evaluation process and Ms. Cardozo's recommendation that Ms. Dickerson's employment be terminated. The committee determined that all of the procedures for terminating a non-instructional employee for unsatisfactory performance had been followed, and it voted to uphold Ms. Cardozo's recommendation.

36. The superintendent accepted the committee's recommendation, executing a petition on March 15, 2001, which urged the Board to suspend Ms. Dickerson without pay effective March 29, 2001, and to terminate her employment effective 15 days after the Board's decision or following an administrative hearing if timely requested.

37. Although the record is not entirely clear, it appears that the Board suspended Ms. Dickerson without pay effective March 29, 2001, as recommended.

Ultimate Factual Determination

38. Ms. Dickerson's job performance was unsatisfactory, and she failed to correct the identified deficiencies within the 30-day period prescribed under the Union Contract, despite the provision of ample assistance to improve her performance.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

40. Generally speaking, "[i]n accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards [are empowered to] operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law." Section 230.03(2), Florida Statutes.

41. The district superintendent is responsible for recommending the placement of school personnel and requiring compliance and observance by all personnel of the laws, policies, and directives of the school district. The superintendent has the authority to recommend to the school

board that a district employee be dismissed from employment. See Section 230.33(7)(e), Florida Statutes

42. "Under Florida law, a school board's decision to terminate an employee is one affecting the employee's substantial interests; therefore, the employee is entitled to a formal hearing under section 120.57(1) if material issues of fact are in dispute," for a school board is "a state agency falling within Chapter 120 for purposes of quasi-judicial administrative orders." Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

43. A district school board employee against whom a dismissal proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. School Board of Dade County, 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J. concurring).

44. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated, and none other. See Lusskin v. Agency for Health

Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Department of Insurance, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Department of Business and Professional Regulation, 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Department of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Department of Professional Regulation, Board of Medicine, 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (1991).

45. At hearing, the school board has the burden to prove the allegations contained in the notice of specific charges by a preponderance of the evidence, unless the collective bargaining agreement covering the bargaining unit of which the employee is a member prescribes a more demanding standard of proof. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2d DCA 1996) ("The School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense which may warrant dismissal."); Sublett v. Sumter County School Board, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995). Neither party here has pointed to or offered in evidence any contractual provision that would require the Board to satisfy a stricter standard of proof.²

46. Where the employee whose discharge is sought is an "educational support employee," the school board must also act

in accordance with the provisions of Section 231.3605, Florida Statutes, which provides:

(1) As used in this section:

(a) "Educational support employee" means any person employed by a district school system who is so employed as . . . 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. 231.1725. This section does not apply to persons employed in confidential or management positions. This section applies to all employees who are not temporary or casual and whose duties require 20 or more hours in each normal working week.

(b) "Employee" means any person employed as an educational support employee.

(c) "Superintendent" means the superintendent of schools or his or her designee.

(2)(a) Each educational support employee shall be employed on probationary status for a period to be determined through the appropriate collective bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the 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 the 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.

47. Ms. Dickerson is an "educational support employee," within the meaning of Section 231.3605(1)(a), Florida Statutes, who has completed the probationary period and is covered by a collective bargaining agreement. Accordingly, pursuant to Section 231.3605(2)(b), Florida Statutes, her employment may be terminated "for reasons stated in the collective bargaining agreement."

48. An examination of the Union Contract reveals that a bargaining unit member covered by the contract may be dismissed for unsatisfactory performance. The pertinent contractual provisions, found in Article 3, Section B, Paragraphs 4 and 14, provide, respectively, as follows:

(a) All members of the bargaining unit shall have one written evaluation yearly.

(b) Prior to an evaluation that may result in "less than satisfactory", a conference shall be arranged no less than twenty (20) duty days prior to the formal evaluation being conducted to allow an employee the opportunity to improve his/her performance. The employee shall receive, in writing, the areas of improvement needed.

(c) Employees will be given a copy of the written evaluation prepared by the principal/supervisor and will have the right to discuss such evaluation with his/her principal/supervisor.

(d) The professional judgment of the evaluator and the content of the evaluation shall not be subject to the grievance procedure. Any other grievance filed under this section of the contract shall not be subject to binding arbitration.

(e) The employee shall have twenty (20) duty days to attach a written statement of rebuttal to the evaluation. All written rebuttals shall be sent to the Department of Employee Records and Information Services.

(f) No administrator or department head shall discuss any matter relating to the performance of an employee in the presence of students, parents or other employees. All personnel and/or confidential matters shall only be discussed in private offices.

(g) If an employee is not working up to expectation, a Memorandum of Assistance will be presented to the employee by the principal/department head. This memorandum will state specific reasons why the employee's job performance is considered unsatisfactory. This memorandum will also state specific steps to take for the employee to improve his/her performance.

* * *

(a) An employee whose performance is deemed to be less than satisfactory by his/her supervisor shall be so advised in writing of such unsatisfactory performance by the principal/department head.

(b) The employee will be provided assistance to improve his/her performance.

(c) No employee shall be recommended for termination based on unsatisfactory evaluation unless he/she has been given at least thirty (30) days to improve his/her performance.

(d) An employee who has been recommended to the Superintendent for termination shall be given notice, in writing with documentation stating the reasons for this by his/her principal/department head. The employee shall be given ten (10) working days notice if the Superintendent is recommending termination prior to School Board action.

(e) After School Board action, an employee may, within fifteen (15) days, protest his/her performance-based termination through either the grievance procedure or the Department [sic] of Administration Hearings.

Union Contract, at pp. 11, 14-15.

49. As set forth in the Findings of Fact, the Board carried its burden, by the requisite quantum of proof, to establish that Ms. Dickerson's performance was unsatisfactory. The evidence shows as well that the Board complied with the provisions in the Union Contract that govern the performance-based termination of non-instructional employees.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board enter a final order ratifying Ms. Dickerson's suspension without pay effective

March 29, 2001, and discharging her from further employment in the Palm Beach County Public Schools.

DONE AND ENTERED this 24th day of August, 2001, in Tallahassee, Leon County, Florida.

JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of August, 2001.

ENDNOTES

^{1/} Evidently, this meeting, originally set to take place on February 16, 2001, had been rescheduled, for reasons that are not clear in the record.

^{2/} Where the district school board, through the collective bargaining process, has agreed to bear a more demanding standard, it must honor, and act in accordance with, its agreement. See Chiles v. United Faculty of Florida, 615 So. 2d 671, 672-73 (Fla. 1993)("Once the executive has negotiated and the legislature has accepted and funded an agreement [with its employees' collective bargaining representative], the state and all its organs are bound by that [collective bargaining agreement] under the principles of contract law."); Hillsborough County Governmental Employees Association v. Hillsborough County Aviation Authority, 522 So. 2d 358, 363 (Fla. 1988)("[W]e hold that a public employer must implement a ratified collective bargaining agreement with respect to wages, hours, or terms or conditions of employment"); Palm Beach County School Board v. Auerbach, No. 96-3683 (Fla. DOAH February 20, 1997) (Recommended Order)("Long-standing case law establishes that in a teacher employment discipline case, the school district has

the burden of proving its charges by a preponderance of the evidence. . . . However, in this case, the district must comply with the terms of the collective bargaining agreement, which . . . requires the more stringent standard of proof: clear and convincing evidence.").

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.