

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 01-3991
)
 JOANNE T. STERN,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 10, 2002, and June 13, 2002, by video teleconference, with the parties appearing in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Madelyn P. Schere, Esquire
School Board of Miami-Dade County
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Suite 400
Miami, Florida 33132

For Respondent: David G. Hutchison, Esquire
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STATEMENT OF THE ISSUE

Whether the Respondent's professional services employment contract should be terminated for the reasons set forth in the Petitioner's letter to the Respondent dated October 1, 2002, and in the Notice of Specific Charges of Unsatisfactory Performance dated October 25, 2002.

PRELIMINARY STATEMENT

In a letter dated October 1, 2001, the Superintendent of Miami-Dade County Public Schools notified Joanne T. Stern that he was recommending to the Miami-Dade County School Board ("School Board") that her employment contract as a teacher with the School Board be terminated effective October 24, 2001. The Superintendent stated in the letter that he based his recommendation on Ms. Stern's alleged failure "to satisfactorily correct identified performance deficiencies during your 90-Day Performance Probation." The Superintendent additionally alleged that Ms. Stern was charged with gross insubordination, and she was advised of her right to request an administrative hearing. Ms. Stern contested the Superintendent's recommendation in a letter dated October 15, 2001, and the matter was referred to the Division of Administrative Hearings for assignment of an administrative law judge. The final hearing was originally scheduled for December 6, 2001.

On October 25, 2001, the School Board filed its Notice of Specific Charges of Unsatisfactory Performance, in which it set forth the factual allegations to support its charge that Ms. Stern failed to correct performance deficiencies within the time allotted.¹ After several continuances, all of which were granted at Ms. Stern's request, the final hearing was conducted on May 10, 2002, and June 13, 2002.

At the hearing, the School Board presented the testimony of the following witnesses: Betty A. Thomas, Principal at Campbell Drive Elementary School (Campbell Drive Elementary); Claudia Brown, Assistant Principal at Campbell Drive Elementary; Dr. Joyce Annunziata, former Assistant Superintendent of the School Board's Office of Professional Standards; and Dr. Thomasina O'Donnell, District Director of the School Board's Office of Professional Standards. Petitioner's Exhibits 1 through 18 were offered and received into evidence. In addition, the School Board was given leave to late-file as a rebuttal exhibit the transcript of the deposition of Randy Biro, Respondent's union bargaining agent representative at the times material to this case; the deposition transcript was filed on August 12, 2002, and is received into evidence as Petitioner's Exhibit 19.

Ms. Stern testified in her own behalf, and Respondent's Exhibits 1 through 5 were offered and received into evidence.

The parties submitted one joint exhibit, received into evidence as Joint Exhibit 1.

The first volume of the three-volume transcript of the proceedings was filed with the Division of Administrative Hearings on June 13, 2002; the corrected second volume of the transcript was filed on August 8, 2002; and the corrected third volume of the transcript was filed August 19, 2002. After several extensions of time were granted at Ms. Stern's request, the parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of the Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The School Board is the entity authorized to operate the public schools in the Miami-Dade County school district and to provide for the appointment, compensation, promotion, suspension, and dismissal of employees of the school district. Section 4(b), Article IX, Florida Constitution; Section 230.23(4) and (5), Florida Statutes (2001).

2. At the times material to this proceeding, Ms. Stern was employed as a teacher with the School Board under a professional services contract.

3. Ms. Stern is a member of the United Teachers of Dade ("UTD"), and the terms of her employment with the School Board are governed by the Contract between the Miami-Dade County Public Schools and the United Teachers of Dade ("UTD Contract").

4. Ms. Stern first received her teaching certificate in 1952, and she began teaching in the Miami-Dade County public school system in 1987. The 2000-2001 school year was her first year teaching at Campbell Drive Elementary, and she was assigned to teach a regular second grade class.

5. Campbell Drive Elementary was rated a "D" level school at the times material to this proceeding.

Teacher Assessment and Development System.

6. The Teacher Assessment and Development System ("TADS") had, prior to the 2001-2002 school year, been used in the Miami-Dade County public school system for 15 years to evaluate teachers employed by the School Board. The Joint Committee on Standards for Educational Evaluation ("Joint Committee") decided in 1996 that TADS should be replaced with a new evaluation system.² As a result, the Professional Assessment and Comprehensive Evaluation System ("PACES") was developed and has been in use in the Miami-Dade County public school system since the beginning of the 2001-2002 school year. As will be discussed in more detail below, the observations and evaluations at issue herein were all performed using TADS.

7. TADS is a performance-based evaluation instrument, which includes sixty-eight specific teacher behaviors that should be performed in the classroom.

8. The TADS evaluation procedures set forth in the UTD Contract and established by the Joint Committee required that formal Classroom Assessment observations be performed, that any observed performance deficiencies be noted, and that professional growth opportunities be provided to teachers with noted deficiencies.

9. In 1997, Chapter 231, Florida Statutes, was amended to provide for a 90-Calendar Day Performance Probation period for teachers with professional service contracts. A Memorandum of Understanding was executed by representatives of the Miami-Dade County public school system and the UTD to implement procedures for the new system. Pursuant to the procedures adopted in the Memorandum of Understanding, the 90-Calendar Day Performance Probation period is commenced the day after a conference-for-the-record is held with the teacher to advise him or her of classroom performance deficiencies. At least two observations must be conducted during the 90-Calendar Day Performance Probation period, and the teacher must be provided assistance through prescription plan activities and through referrals to resource persons for further assistance. At the conclusion of the 90-Calendar Day Performance Probation period, a confirmatory

observation is conducted to determine if the performance deficiencies have been corrected.

10. Prescription plan activities have the status of administrative directives.³

11. The principal of Campbell Drive Elementary at the times pertinent to these proceedings was Betty Thomas, and the assistant principal was Claudia Brown. Both were trained to observe and evaluate teachers using TADS.

12. Ms. Stern was first observed at Campbell Drive Elementary on October 10, 2001, by Ms. Brown. Ms. Stern received an overall acceptable rating on the CAI (Classroom Assessment Instrument) Post-Observation Report, as well as acceptable ratings on each of the six TADS rating categories. February 5, 2001, observation.

13. Ms. Thomas conducted her first formal observation of Ms. Stern's classroom performance on February 5, 2002,⁴ when she observed Ms. Stern's second grade math class from 12:30 p.m. until 1:35 p.m. Ms. Thomas completed a CAI Post-Observation Report and a Record of Observed Deficiencies/Prescription for Performance Improvement in which she reported the results of this observation. In the CAI Post-Observation Report, Ms. Thomas rated Ms. Stern's classroom performance acceptable in the categories of Preparation and Planning, Knowledge of Subject Matter, Teacher-Student Relationships, and Assessment

Techniques. Ms. Thomas rated Ms. Stern's classroom performance unacceptable in the categories of Classroom Management and Techniques of Instruction.

14. Specifically, Ms. Thomas rated Ms. Stern deficient in indicator III.A.2. of the Classroom Management category on the CAI Post-Observation Report. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that, during the observation, instructional time was lost while Ms. Stern sharpened pencils for several students and wandered around the room without giving instruction to the students and that instructional time was lost when Ms. Stern told the students to put their heads on their desks approximately 12 minutes before they were to leave the classroom for Spanish and Physical Education classes.

15. Ms. Thomas rated Ms. Stern deficient in indicators III.B.2. and 3. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to use verbal or non-verbal techniques to redirect students who were off-task and behaving inappropriately. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern ignored or failed to respond when two students yelled at one another during a test, when students talked and played with pencils during a lesson, when two students left the room

and returned, when two students hit one another, and when a student crawled on the floor.

16. Ms. Thomas rated Ms. Stern deficient in indicator III.B.4. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to use techniques to hold the attention of students who had been re-directed. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that, when virtually everyone in the class was talking, Ms. Stern asked those students who were talking to raise their hands; Ms. Stern praised the students who raised their hands for their honesty but did nothing to cause the students to stop talking. Ms. Thomas also noted several instances in which Ms. Stern responded to students with remarks that were either ineffectual or not to the point.

17. Ms. Thomas rated Ms. Stern deficient in indicator III.C.1. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to provide the students with clear expectations regarding appropriate behavior. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that no class rules were posted in the classroom and that Ms. Stern did not refer to any class rules. Ms. Thomas also noted that, while students were being sent to the board to

work math problems, 75 percent of the students in the class were talking and several students were wandering around the room, all without correction from Ms. Stern.

18. Ms. Thomas rated Ms. Stern deficient in indicators III.C.3. and 4. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to respond quickly or appropriately to students who acted inappropriately or interfered with the work of others. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not respond, and actually ignored, most of the students' inappropriate behaviors, which included a student dancing around the back of the room, students laughing and playing with a hat, students loudly asking how to do the assignment, and students yelling to one another.

19. Ms. Thomas rated Ms. Stern deficient in indicators IV.G.3. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to emphasize potential areas of difficulty, specifically with respect to the math problems involving "regrouping," by either verbal or non-verbal clues. Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern failed to assist a student who had difficulty with a math problem at the board.⁵

20. Ms. Thomas rated Ms. Stern deficient in indicators IV.H.1. and 2. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to clarify areas of potential confusion or to clarify areas of confusion after it became obvious that the students did not understand the assigned math problems involving "regrouping." Ms. Thomas noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern wrote problems on the board and directed the students to solve them without providing any explanation. When several students asked Ms. Stern how to do the problems, she told them she would go over it later, but she did not do so during the math lesson.

21. It was Ms. Thomas's general impression during her February 5, 2002, observation, that Ms. Stern was unable to manage the students in her class. There were many disruptions in the classroom that distracted the students and made it difficult for them to learn. Ms. Thomas estimates that approximately 90 percent of the students in the class were off-task at some point during the observation.

22. On February 20, 2001, Ms. Thomas held a Conference-for-the-Record with Ms. Stern.⁶ Also present at the conference were Ms. Brown, as well as Ms. Marcos and Ms. Rolle, Ms. Stern's union representatives. During the conference, Ms. Thomas

discussed the February 5, 2001, observation with Ms. Stern, and they discussed the prescription plan activities that Ms. Thomas had developed to assist Ms. Stern in correcting the deficiencies identified in the Record of Observed Deficiencies/Prescription for Performance Improvement and the timelines for completion of the prescription plan activities. It was agreed that Ms. Stern would complete all of the prescription plan activities by March 15, 2001.

23. The Record of Observed Deficiencies/Prescription for Performance Improvement also included lists of administrators and teachers that were available to assist Ms. Stern with respect to the prescription plan activities for the various deficiencies noted.

24. The Summary of the Conference-for-the-Record and Prescription dated February 20, 2001, reflects that Ms. Stern was advised during the conference that her 90-Calendar Day Performance Probation period would commence the day after the conference, on February 21, 2001. Ms. Stern was also advised by Ms. Thomas that, after the conclusion of the probation period, she would determine whether Ms. Stern had corrected the cited deficiencies during the probation period and would make a recommendation to the Superintendent at the conclusion of the probation period that could lead to the termination of Ms. Stern's employment.

25. On February 20, 2001, Ms. Stern signed the CAI Post-Observation Report, the Record of Observed Deficiencies/Prescription for Performance Improvement, and the Summary of the Conference-for-the-Record and Prescription, thereby indicating that she had seen and received a copy of these documents.

26. Ms. Stern completed approximately 80 percent of the prescription plan activities in the February 5, 2001, Record of Observed Deficiencies/Prescription for Performance Improvement by the March 15, 2001, deadline.
March 16, 2001, observation.

27. Ms. Brown, the assistant principal at Campbell Drive Elementary, conducted a formal observation of Ms. Stern's classroom performance on March 16, 2001, when she observed Ms. Stern's second grade language arts class from 9:00 a.m. until 10:45 a.m. Ms. Brown's impression was that Ms. Stern was agitated and angry that day and was unable to control the class or to teach adequately.

28. Ms. Brown completed a CAI Post-Observation Report and a Record of Observed Deficiencies/Prescription for Performance Improvement in which she reported the results of this observation. In the CAI Post-Observation Report, Ms. Brown rated Ms. Stern's classroom performance acceptable in the categories of Knowledge of Subject Matter, Teacher-Student

Relationships, and Assessment Techniques. Ms. Brown rated Ms. Stern's classroom performance unacceptable in the categories of Preparation and Planning, Classroom Management, and Techniques of Instruction.

29. The TADS Monitoring Committee reviewed the Record of Observed Deficiencies/Prescription for Performance Improvement and gave Ms. Stern credit for indicators IV.F.1., 2., and 3.; this change resulted in Ms. Stern's being rated acceptable in the category of Techniques of Instruction.

30. Specifically, Ms. Brown rated Ms. Stern deficient in indicator I.A.1. of the Preparation and Planning category on the CAI Post-Observation Report because Ms. Stern failed to include in her lesson plan assessment tools, homework, materials, and most of the lesson's objectives and activities.

31. Ms. Brown rated Ms. Stern deficient in indicator I.B.1. of the Classroom Management category on the CAI Post-Observation Report because Ms. Stern failed to prepare content and instructional activities to fill the allotted classroom time. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that, although the language arts block of instruction was scheduled from 9:00 a.m. to 11:00 a.m., Ms. Stern instructed the students to put their heads on their desks at 10:40 a.m., terminating the language arts instruction.

32. Ms. Brown rated Ms. Stern deficient in indicator III.A.2. of the Classroom Management category on the CAI

Post-Observation Report because, throughout the observation period, Ms. Stern allowed unnecessary delays during instruction and transitions. The notes Ms. Brown included in the Record of Observed Deficiencies/Prescription for Performance Improvement reflect that Ms. Stern spent approximately 20 minutes of the language arts period making comments to the students about the quality of their work and attempting to get their attention. As reported by Ms. Brown:

The teacher called out one comment and direction after the other, such as "I don't hear anything from table 4. excuse me, I just said your tables not talking. you did a beautiful job. thank you, Yrline, did you hear me?" "Salami, one, two, three, four. Now take your paper . . . everybody's eyes up here! Salami! Denise, table 1, your eyes up here, table 1, 2, 3, 4. Take your paper . . . Christian, Okoya, Desiree, Stanley, take your paper . . . excuse me."

"Salame" is an acronym for "Stop and look at me," and its use is recommended as a technique for quieting students. Ms. Stern did not apply the technique correctly, however, because she talked very quickly and did not wait to give the students a chance to quiet down.

33. Ms. Brown rated Ms. Stern deficient in indicators III.B.2. and 3. of the Classroom Management category on the CAI Post-Observation Report because, during the observation,

Ms. Stern failed to use verbal or non-verbal techniques to redirect students. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that students were talking and calling out to one another, making noises, and getting out of their seats while Ms. Stern read a story. Ms. Brown also noted that Ms. Stern told students to raise their hands, then accepted answers from students who had not raised their hands, and failed to correct a student who was out of his seat and sitting with a student who had been separated from the group for being disruptive.

34. Ms. Brown rated Ms. Stern deficient in indicator III.B.4. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to use techniques to hold the attention of students who had been re-directed. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that a student that Ms. Stern had separated from the class for being disruptive was allowed to spend 20 minutes building a house with word cards; that a student spent 15 minutes with his chin on his desk doing nothing without Ms. Stern's redirecting him, and, although she said she would return to help him, she did not do so; and that, in several instances, Ms. Stern either failed to correct students who were

behaving inappropriately or ignored students when they failed to respond to her directions.

35. Ms. Brown rated Ms. Stern deficient in indicator III.C.1. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to make her expectations regarding appropriate behavior clear to the students. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that, although Ms. Stern told students to raise their hands to answer questions, she accepted answers called out by students who did not raise their hands and failed to call on students who had raised their hands; that Ms. Stern re-enforced inappropriate behavior by telling a student that he was doing well when he was not working but was turned around in his seat talking to a student behind him; and that, although class rules were posted in the classroom, Ms. Stern did not refer to them.

36. Ms. Brown rated Ms. Stern deficient in indicators III.C.3. and 4. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to identify and deal quickly and appropriately with students who interacted with others inappropriately and interfered with the work of others. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern either did not notice, or ignored,

students' inappropriate behavior, which included a student doing work in another student's phonetic workbook; students talking and making noises while Ms. Stern was talking or reading; students laughing at another student, who had been sent to the corner and responded to Ms. Stern's direction to get up by standing up and turning around and around. Ms. Brown also noted that Ms. Stern did not state the consequences for students who were continuously told to stop calling out or were continuously told to sit down.

37. Ms. Brown rated Ms. Stern deficient in indicator IV.F.4. of the Classroom Management category on the CAI Post-Observation Report because, as noted in the Record of Observed Deficiencies/Prescription for Performance Improvement, during the observation, Ms. Stern failed to refer back to the objective of the lesson, to relate one part of the lesson to other parts of the lesson, and to summarize the lesson and apply it to past or future lessons.⁷

38. A conference was held on March 23, 2001, with Ms. Stern, Ms. Thomas, and Ms. Brown in attendance. No written summary of the conference was prepared, but Ms. Stern signed the CAI Post-Observation Report and the Record of Observed Deficiencies/Prescription for Performance Improvement on March 23, 2001, acknowledging that she had seen and received a copy of the documents.

39. At the March 23, 2001, conference, Ms. Thomas, Ms. Brown, and Ms. Stern discussed the results of the March 16, 2001, observation and the prescription plan activities that Ms. Brown had developed to assist Ms. Stern in correcting the deficiencies identified in the Record of Observed Deficiencies/Prescription for Performance Improvement, as well as the timelines for completion of the prescription plan activities. It was agreed that Ms. Stern would complete all of the prescription plan activities by April 20, 2001. The April 20, 2001, deadline was extended until May 18, 2001, because of Ms. Stern's absences, as discussed below.

40. The Record of Observed Deficiencies/Prescription for Performance Improvement also included lists of administrators and teachers that were available to assist Ms. Stern with respect to the prescription plan activities for the various deficiencies noted.

May 17, 2001, Conference-for-the-Record.

41. In a memorandum dated May 7, 2001, and directed to Dr. Thomasina O'Donnell, a District Director in the School Board's Office of Professional Standards, Ms. Thomas requested that Dr. O'Donnell take control of the "re-entry" of Ms. Stern. Ms. Thomas asked for Dr. O'Donnell's intervention because Ms. Stern had been absent a total of 22 personal and sick days

and because Ms. Stern was on 90-Calendar Day Performance Probation.

42. As a result of Ms. Thomas's request, Dr. O'Donnell sent a memorandum dated May 7, 2001, to Ms. Stern telling her that she needed to contact the Office of Professional Standards before she returned to work so that a clearance conference could be scheduled.

43. The clearance conference was held on May 16, 2001, at the Office of Professional Standards. Dr. O'Donnell, Ms. Thomas, Clemencia Waddell, Director of Region VI, and Dia Falco, Ms. Stern's UTD representative, attended the conference. As reflected in the Summary of the Conference-for-the-Record, the purpose of the conference was to address Ms. Stern's performance assessments, her attendance, and her medical fitness to perform her duties and to review Ms. Stern's record and her future employment status with the Miami-Dade County public school system.

44. As of May 15, 2001, Ms. Stern had used more sick time than she had accrued, and Dr. O'Donnell advised her that her absences, which consisted of 21.5 sick and personal days and 13 1/2 days of unauthorized leave without pay, were considered excessive.

45. Ms. Stern's performance evaluations were also discussed at the conference, and it was noted that she had been

provided prescription plan activities to assist her in correcting the deficiencies identified in the March 16, 2001, observation report, which activities were to have been completed by April 20, 2001. Ms. Stern had not provided the required materials to Ms. Thomas or Ms. Brown, but, because she was absent beginning on April 18, 2001, Ms. Stern was directed to provide all of the required materials for the prescription plan activities to Ms. Thomas by the end of the workday on May 18, 2001. Ms. Stern was advised that the failure to provide these materials within the time specified would be considered a deficiency in Category VII, which is the Professional Responsibilities category of TADS, and that she would be placed on a Category VII prescription.

46. Several directives were included in the Summary of the Conference-for-the-Record, and Ms. Stern was advised that she was cleared to return to work on May 17, 2001.

May 22, 2001, observation.

47. Ms. Brown conducted a formal observation of Ms. Stern's classroom performance on May 22, 2001, when she observed Ms. Stern's second grade language arts class from 9:00 a.m. until 11:00 a.m. Ms. Brown's overall impression was that Ms. Stern 's performance was worse than it was during the observation on March 16, 2001.

48. Ms. Brown completed a CAI Post-Observation Report and a Record of Observed Deficiencies/Prescription for Performance Improvement in which she reported the results of this observation. In the CAI Post-Observation Report, Ms. Brown rated Ms. Stern's classroom performance acceptable in the categories of Teacher-Student Relationships and Assessment Techniques. Ms. Brown rated Ms. Stern's classroom performance unacceptable in the categories of Preparation and Planning, Knowledge of Subject Matter, Classroom Management, and Techniques of Instruction.

49. Specifically, Ms. Brown rated Ms. Stern deficient in indicator I.B.1. of the Preparation and Planning category on the CAI Post-Observation Report because Ms. Stern had failed to plan content and instructional activities to fill the classroom time allotted for the language arts block. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern took the students to the library at 10:30 a.m., but had completed her planned classroom activities at 9:55 a.m.

50. Ms. Brown rated Ms. Stern deficient in indicator II.B.2. of the Knowledge of Subject Matter category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to present information in a meaningful or orderly manner. Ms. Brown noted in the Record of Observed

Deficiencies/Prescription for Performance Improvement that "[t]he sequence of the ideas did not flow into one another. The teacher asked questions and talked about whatever came to her mind, . . ." Ms. Brown also noted that there was no logical sequence of activities or framework established for the activities.

51. Ms. Brown rated Ms. Stern deficient in indicator II.B.3. of the Knowledge of Subject Matter category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to tell the students the most important topics in the lesson or various applications of the topics introduced in the lesson. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not tell the students what they would be doing and did not relate the lesson to the students' experiences.

52. Ms. Brown rated Ms. Stern deficient in indicator II.B.4. of the Knowledge of Subject Matter category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to present information using analysis or comparisons. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not ask open-ended questions, that she limited her questions to those that were simple and basic, and that she failed to challenge the students beyond one cognitive level.

53. Ms. Brown rated Ms. Stern deficient in indicator III.A.2. of the Classroom Management category on the CAI Post-Observation Report. The notes Ms. Brown included in the Record of Observed Deficiencies/Prescription for Performance Improvement reflect that Ms. Stern wasted 12 minutes of instruction time because of delays attributable to her repeatedly consulting her lesson plan during class and failing to use student helpers to pass out papers to the class, causing the students to wait without instruction until she passed out all of the papers.

54. Ms. Brown rated Ms. Stern deficient in indicators III.B.2. and 3. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to use verbal or non-verbal techniques to redirect students. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not notice or noticed but chose not to re-direct a student who was making a paper airplane and rearranging his desk and the inside of his book bag for a period of 15 minutes and that Ms. Stern did not speak to a student who, for a period of 10 minutes, sat with her knees to her chest. Ms. Brown also noted that Ms. Stern thanked two students for no apparent reason.

55. Ms. Brown rated Ms. Stern deficient in indicator III.B.4. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to use techniques to hold the attention of students who had been re-directed. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not notice for two minutes that a student had slid his chair halfway across the room to place it beside that of another student and that, when she noticed, she merely told the student to sit down. Ms. Brown also noted that a student fell asleep at 9:45 a.m.; after about 10 minutes, Ms. Stern noticed the student, asked if he had stayed up late the night before, and left him to sleep until he awoke at 10:25 a.m.

56. Ms. Brown rated Ms. Stern deficient in indicator III.C.1. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to make her expectations regarding appropriate behavior clear to the students. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern told the students that she "love[d] the way everyone is talking at once but it doesn't help" and that Ms. Stern continued to accept answers from students who

called out, accepting more answers from these students than from the students who raised their hands.

57. Ms. Brown rated Ms. Stern deficient in indicator III.C.2. of the Classroom Management category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to provide the students with appropriate and correct verbal feedback regarding specific behaviors. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern ignored two students who had their hands up for several minutes and accepted answers called out by other students. Ms. Brown also noted that Ms. Stern praised the class for working well together when the activity was an activity that each student worked on alone.

58. Ms. Brown rated Ms. Stern deficient in indicator IV.F.1. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to give the students necessary background about their activities. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not tell the students the ideas or skills they were to learn from the two stories that she read to them, one about a bear with a toothache and one about an octopus; she merely told the students that she was going to read a book.

59. Ms. Brown rated Ms. Stern deficient in indicator IV.F.2. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to tell the students how each activity related to the other activities. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not emphasize the important topics in the two stories or link the topics in the stories to future activities.

60. Ms. Brown rated Ms. Stern deficient in indicator IV.F.3. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to sequence activities and failed to point out any logic to the order in which she presented components of the lesson. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern went from one activity to the next without having an apparent goal or order to the lesson.

61. Ms. Brown rated Ms. Stern deficient in indicator IV.F.4. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to provide closure to the lesson. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern did not summarize,

recapitulate, or apply any of the concepts in the lesson to any past or future lessons.

62. Ms. Brown rated Ms. Stern deficient in indicator IV.H.2. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to clarify the students' confusion. Ms. Brown relates in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern asked a student a question about an octopus; when the student answered, "The end of one of the octopus' tails is the mouth," Ms. Stern's only response was "OK. I don't quite understand but OK." Ms. Brown also noted that Ms. Stern passed out word cards to the students but never told them what to do with the cards.

63. Ms. Brown rated Ms. Stern deficient in indicator IV.H.4. of the Techniques of Instruction category on the CAI Post-Observation Report because, during the observation, Ms. Stern failed to answer quietly the questions of individual students but would address the entire class when answering the questions of one or two students. Ms. Brown noted in the Record of Observed Deficiencies/Prescription for Performance Improvement that Ms. Stern interrupted the entire class several times to answer the questions of two students, with the result that the class did not have enough quiet time to read and complete the activity.

64. A Conference-for-the-Record was held on May 23, 2001, which was attended by Ms. Thomas, Ms. Brown, and Ms. Stern.⁸ During the conference, the deficiencies noted by Ms. Brown during her observation on May 22, 2001, were discussed, as well as the prescription plan activities that Ms. Stern was to complete to assist her in correcting the deficiencies. The timeline for completion of the prescription plan activities was also discussed, and it was agreed that Ms. Stern would complete all the prescription plan activities by June 13, 2001.

65. The Record of Observed Deficiencies/Prescription for Performance Improvement also included lists of administrators and teachers who were available to assist Ms. Stern with respect to the prescription plan activities for the various deficiencies noted.

66. Ms. Stern's failure to complete the prescription plan activities included in the March 16, 2001, observation by the May 18, 2001, deadline was also discussed at the May 23, 2001, Conference-for-the-Record. The Summary of the Conference-for-the-Record reflects that Ms. Brown went over with Ms. Stern the prescription plan activities that were not completed. As a result of her failure to complete the prescription plan activities, Ms. Thomas placed Ms. Stern on prescription for Category VII, the TADS Professional Responsibilities category. Ms. Stern had been advised at the May 17, 2001, Conference-for-

the-Record at the Office of Professional Standards that a Category VII prescription would be the consequence if she failed to complete the prescription plan activities by the May 18, 2001, deadline.

67. Ms. Stern ultimately completed the prescription plan activities in the March 16, 2001, Record of Observed Deficiencies/Prescription for Performance Improvement, although Ms. Brown had a difficult time determining that Ms. Stern completed all of the activities because the materials she submitted to Ms. Brown were very disorganized.

68. Ms. Stern also turned in by the June 13, 2001, deadline all of the written materials required in the prescription plan activities assigned as a result of the May 22, 2001, observation. She did not, however, turn in her weekly lesson plans to Ms. Brown prior to implementing them, as she had been instructed; rather, she turned in her lesson plans late, and, near the end of the 2000-2001 school year, she did not turn in any lesson plans.

September 13, 2001, Confirmatory Observation.

69. In a letter to Ms. Stern dated April 26, 2001, Dr. O'Donnell acknowledged having received a request for medical leave from Ms. Stern for the period extending from April 18, 2001, through May 4, 2001. In the letter, Dr. O'Donnell clarified for Ms. Stern the School Board's position with respect

to the impact of her absences on the calculation of the days remaining in her 90-Calendar Day Performance Probation period. Dr. O'Donnell confirmed in the letter that Ms. Stern's probation period began on February 21, 2001, and that the prescription plan activities arising out of the March 16, 2001, observation were due to be completed on April 20, 2001.

70. Dr. O'Donnell further advised Ms. Stern that the first 10 days of absence were included in the calculation of the 90 calendar days of the probation period and that, accordingly, the end of her probation period would be extended from May 31, 2001, to June 6, 2001, both of which dates fell within the final 10 days of the school year. Dr. O'Donnell acknowledged in the April 26, 2001, letter that, normally, no observations were performed during the first and final 10 days of a school year, but she advised Ms. Stern that her 90-day probation period must be concluded by June 16, 2001, because the Miami-Dade County public school system was to change from TADS to PACES for teacher performance evaluations, effective at the beginning of the 2001-2002 school year. Accordingly, Dr. O'Donnell put Ms. Stern on notice in the April 26, 2001, letter that her confirmatory observation would take place after her 90-Calendar Day Performance Probation period ended on June 6, 2001.

71. In a letter dated May 9, 2001, Ms. Falco, on behalf of the UTD, advised Dr. O'Donnell that, first, she had misstated

the rule regarding the treatment of absences. According to Ms. Falco, the UTD Contract provided that the first 10 days of absence were not to be counted in calculating the 90 days. Nonetheless, Dr. O'Donnell's calculation of June 6, 2001, as the last day of Ms. Stern's probation period was correct. Ms. Falco also took issue with Dr. O'Donnell's decision to complete Ms. Stern's probationary period on June 16, 2001, and she advised Dr. O'Donnell that the then-current observation procedures prohibited any formal observations during the first and final 10 days of the school year and that the UTD would appeal any formal observation of Ms. Stern conducted during the final 10 days of the 2000-2001 school year. Finally, Ms. Falco advised Dr. O'Donnell that the Joint Committee had not yet determined how to treat teachers whose probation periods carried over into the 2001-2002 school year, when teachers were to be evaluated under PACES.

72. The Joint Committee considered Ms. Stern's case individually and decided that Ms. Stern's confirmatory observation was to be conducted using TADS rather than PACES. Ms. Stern was not disadvantaged by having this observation conducted under TADS because it is easier for a teacher to get an acceptable evaluation under TADS than under PACES.

73. In accordance with the position taken by the UTD and because Ms. Stern could not be observed during the first 10 days

of the 2001-2002 school year, the end of Ms. Stern's 90-Calendar Day Performance Probation period was finally determined to be September 10, 2001.

74. On September 13, 2001, Ms. Thomas conducted a formal observation of Ms. Stern's classroom performance when she observed Ms. Stern teach a second grade math class from 1:30 p.m. to 2:30 p.m. This observation was the required confirmatory observation conducted to determine whether Ms. Stern had corrected the performance deficiencies identified in the February 5, 2001, March 16, 2001, and May 22, 2001, observations. Ms. Thomas completed a CAI Post-Observation Report in which she reported that she found Ms. Stern's classroom performance unacceptable in all five categories of TADS, Preparation and Planning, Knowledge of Subject Matter, Classroom Management, Techniques of Instruction, Teacher-Student Relationships, and Assessment Techniques.

75. Ms. Thomas based her determination that Ms. Stern's classroom performance was unacceptable on several factors. During the September 13, 2001, observation, Ms. Thomas noted that Ms. Stern was not teaching the lesson identified on her lesson plan; one of the students repeatedly threw paper across the room into a garbage can without re-direction by Ms. Stern; students were talking to one another and moving around the room during the entire lesson, to the extent that it was difficult

for Ms. Thomas to hear Ms. Stern; Ms. Stern did not remind students who were misbehaving of the class rules; Ms. Stern appeared not to notice a student crawling around on the floor; Ms. Stern told students to raise their hands, but she did not call on the students who did so; and Ms. Stern had only two grades for the students in her grade book at a point in the school year when she should have had two grades listed for each student for each week of school in each the five subjects she taught in her second grade class, or over 40 grades.

Recommendation for termination.

76. On September 17, 2001, Ms. Thomas notified Ms. Stern that she had failed to comply with the Category VII prescription imposed on May 23, 2001, because she had failed to turn in any lesson plans during the first weeks of the 2001-2002 school year.

77. On September 17, 2001, Ms. Thomas also presented to Ms. Stern for her signature a form that Ms. Thomas intended to submit to Dr. George M. Koonce, Regional Superintendent, containing Ms. Thomas's recommendation that Ms. Stern's employment contract be terminated because she had not satisfactorily corrected the noted performance deficiencies within the 90-Calendar Day Performance Probation period. Ms. Stern refused to sign the form to acknowledge that she was aware of the recommendation.

78. Dr. Koonce indicated his approval of Ms. Thomas's recommendation and forwarded it to the Deputy Superintendent for Personnel and Management Services, who, in turn, forwarded the recommendation to the Superintendent of the Miami-Dade County Public Schools.

79. In a letter dated October 1, 2001, the Superintendent notified Ms. Stern that he was recommending to the School Board that her employment contract be terminated at its October 24, 2001, meeting. Ms. Stern timely contested the recommendation, and this administrative proceeding commenced.

Summary

80. The evidence presented by the School Board is sufficient to establish with the requisite degree of certainty that Ms. Stern failed to correct the deficiencies identified in her classroom performance within the 90-Calendar Day Performance Probation period, that School Board personnel adhered to the applicable evaluation procedures in assessing Ms. Stern's teaching performance and in reaching the decision to terminate her for unsatisfactory teaching performance, and that the School Board adhered to all statutory timeframes.

81. Throughout the duration of Ms. Stern's 90-Calendar Day Performance Probation period, Ms. Thomas and Ms. Brown offered Ms. Stern assistance to help her correct the deficiencies in her classroom performance. The evidence presented by the School

Board is sufficient to establish with the requisite degree of certainty that, although Ms. Stern completed many of the prescription plan activities identified in the Record of Observed Deficiencies/Prescription for Performance Improvement for the observations of February 5, March 16, and May 22, 2001, she was unable or unwilling to implement in the classroom the techniques and lessons included in the prescription plan activities and failed to correct the deficiencies in her classroom performance.

82. In her testimony, Ms. Stern did not dispute any of the facts included by Ms. Thomas and Ms. Brown in the Record of Observed Deficiencies/Prescription for Performance Improvement for the formal observations of February 5, March 16, and May 22, 2001. Rather, Ms. Stern presented in her testimony justifications for and explanations of her classroom performance during the formal observations. This testimony has been considered and found insufficient to rebut the evidence of unsatisfactory performance presented by the School Board: Ms. Stern's second grade class was composed of students of varying abilities and ethnic backgrounds, but so were all of the second grade classes at Campbell Drive Elementary. Ms. Stern's classroom may not have provided an optimum environment for teaching, but the shortcomings of the physical and technological facilities provided to Ms. Stern do not justify the noted

deficiencies in her teaching and classroom skills. Finally, Ms. Stern's laissez-faire attitude regarding the inappropriate behavior of her students is difficult to reconcile with her obligation as a teacher to maintain a classroom environment in which opportunities for learning are maximized.⁹

CONCLUSIONS OF LAW

83. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2002).

84. Section 231.36, Florida Statutes (2001), governs Ms. Stern's professional services contract with the School Board. Section 231.36(3), Florida Statutes (2001), provides in pertinent part:

(e) A professional service contract shall be renewed each year unless the superintendent of schools, after receiving the recommendations required by s. 231.29, charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 231.29.

85. Section 231.29, Florida Statutes (2001), provides in pertinent part:

(1) For the purpose of improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the superintendent of schools shall establish procedures for assessing the performance of duties and

responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The Department of Education must approve each district's instructional personnel assessment system.

* * *

(3) The assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. The procedures must comply with, but are not limited to, the following requirements:

(a) An assessment must be conducted for each employee at least once a year. The assessment must be based upon sound educational principles and contemporary research in effective educational practices. Beginning with the full implementation of an annual assessment of learning gains, the assessment must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 229.57 and may consider results of peer reviews in evaluating the employee's performance. Student performance must be measured by state assessments required under s. 229.57 and by local assessments for subjects and grade levels not measured by the state assessment program. The assessment criteria must include, but are not limited to, indicators that relate to the following:

1. Performance of students.
2. Ability to maintain appropriate discipline.
3. Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.

4. Ability to plan and deliver instruction, including the use of technology in the classroom.
5. Ability to evaluate instructional needs.
6. Ability to establish and maintain a positive collaborative relationship with students' families to increase student achievement.
7. Other professional competencies, responsibilities, and requirements as established by rules of the State Board of Education and policies of the district school board.

(b) All personnel must be fully informed of the criteria and procedures associated with the assessment process before the assessment takes place.

(c) The individual responsible for supervising the employee must assess the employee's performance. The evaluator must submit a written report of the assessment to the superintendent of schools for the purpose of reviewing the employee's contract. . . . The evaluator must submit the written report to the employee no later than 10 days after the assessment takes place. The evaluator must discuss the written report of assessment with the employee. The employee shall have the right to initiate a written response to the assessment, and the response shall become a permanent attachment to his or her personnel file.^[10]

(d) If an employee is not performing his or her duties in a satisfactory manner, the evaluator shall notify the employee in writing of such determination. The notice must describe such unsatisfactory performance and include notice of the following procedural requirements:

1. Upon delivery of a notice of unsatisfactory performance, the evaluator must confer with the employee, make recommendations with respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.

2.a. If the employee holds a professional service contract as provided in s. 231.36, the employee shall be placed on performance probation and governed by the provisions of this section for 90 calendar days following the receipt of the notice of unsatisfactory performance to demonstrate corrective action. School holidays and school vacation periods are not counted when calculating the 90-calendar-day period. During the 90 calendar days, the employee who holds a professional service contract must be evaluated periodically and apprised of progress achieved and must be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. At any time during the 90 calendar days, the employee who holds a professional service contract may request a transfer to another appropriate position with a different supervising administrator; however, a transfer does not extend the period for correcting performance deficiencies.

b. Within 14 days after the close of the 90 calendar days, the evaluator must assess whether the performance deficiencies have been corrected and forward a recommendation to the superintendent of schools. Within 14 days after receiving the evaluator's recommendation, the superintendent of schools must notify the employee who holds a professional service contract in writing whether the performance deficiencies have been satisfactorily corrected and whether the superintendent of schools will recommend

that the district school board continue or terminate his or her employment contract. If the employee wishes to contest the superintendent of schools' recommendation, the employee must, within 15 days after receipt of the superintendent of schools' recommendation, submit a written request for a hearing. The hearing shall be conducted at the district school board's election in accordance with one of the following procedures:

(I) A direct hearing conducted by the district school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the superintendent of schools' recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

(II) A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the district school board. A majority vote of the membership of the district school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

86. Article XXI, Section B.1.b., of the UTD Contract provides:

Any recommendation for suspension or dismissal based upon unacceptable teaching performance shall require that teaching deficiencies be documented on the observation/evaluation forms in compliance with the procedures of the MDCPS evaluation process. Disciplinary action based on unacceptable teaching performance may not be taken against an employee in the absence of an official performance assessment conducted in accordance with the procedures, guidelines, stipulations, and requirements as are included in any employee assessment system in effect at the time.

87. The School Board is seeking to terminate Ms. Stern's professional services employment contract as a teacher, and, therefore, it has the burden of proof in this proceedings and must establish by a preponderance of the evidence that there are sufficient grounds to take such action. See Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3d DCA 1990); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

88. Based on the findings of fact herein, the School Board has satisfied its burden of proving by a preponderance of the evidence that Ms. Stern failed to correct deficiencies in her classroom performance during the 90-Calendar Day Performance Probation period and that her classroom performance was unsatisfactory at the conclusion of the probation period; that

Ms. Stern received all required notices; and that Ms. Stern was consistently provided the opportunity to obtain assistance to help her improve her teaching performance.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order terminating the professional services contract of Joanne T. Stern.

DONE AND ENTERED this 31st day of October, 2002, in Tallahassee, Leon County, Florida.

PATRICIA HART MALONO
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2002.

ENDNOTES

^{1/} The School Board did not mention the charge of gross insubordination in either its Notice of Specific Charges of Unsatisfactory Performance or its Proposed Recommended Order, and this charge is deemed to have been abandoned by the School Board.

^{2/} Under the UTD Contract, the Joint Committee, which is composed of both school system and UTD representatives, is responsible for establishing all procedures connected with

teacher evaluations in the Miami-Dade County public school system.

^{3/} Article XIII, Section 2, of the UTD Contract provides that "[f]ailure to implement required professional growth practices or to correct deficiencies for which professional growth was required shall constitute just cause for disciplinary action in accordance with the due process provisions in this Contract."

^{4/} Ms. Thomas went to Ms. Stern's classroom on February 1, 2001, to conduct an observation, but she was called away. As a result, Ms. Thomas did not conduct a formal observation on February 1, 2001, nor did she include anything she observed in Ms. Stern's classroom on February 1, 2001, in the report of the February 5, 2002, observation.

^{5/} Ms. Thomas also rated Ms. Stern deficient in indicator IV.G.4. of the Techniques of Instruction category on the CAI Post-Observation Report, but Ms. Stern was given credit for this indicator as a result of a review of the Record of Observed Deficiencies/Prescription for Performance Improvement by the TADS Monitoring Committee, which is a committee composed of UTD members and School Board administrators whose function is to review observation reports for procedural errors.

^{6/} The Conference-for-the-Record was originally scheduled for February 14, 2002, but Ms. Thomas attributed the delay in holding the Conference-for-the-Record to Ms. Stern's absences on February 13, 14, 15, and 16, 2001, and to the fact that February 19, 2001, was a legal holiday.

^{7/} Ms. Brown also rated Ms. Stern deficient in indicators IV.F.1., 2., and 3., but the TADS monitoring committee changed Ms. Stern's ratings on these indicators to acceptable.

^{8/} Ms. Thomas noted in the Summary of the Conference-for-the-Record that Ms. Stern advised her that she had contacted her UTD representatives about the conference but that they had not responded. Ms. Thomas advised Ms. Stern that two union representatives were at the school, and one even came to the office door to offer assistance. Ms. Stern declined the assistance of the on-site union representatives, apparently because she perceived that they had a conflict of interest. Ms. Thomas refused Ms. Stern's request that the conference be rescheduled.

^{9/} Ms. Stern also offered evidence regarding what appears to be a misunderstanding regarding a retirement option offered to her in March 2001. Having considered this evidence, and the evidence offered by the School Board in rebuttal, I find that it is not relevant or material to resolving the issue in this case; that is, it is not relevant or material to a determination of whether Ms. Stern's employment contract with the School Board should be terminated because her classroom performance during and after her 90-Calendar Day Performance Probation period was unsatisfactory.

^{10/} Section 231.29(3)(c), Florida Statutes (2001), also provides:

If the employee is assigned to a school designated in performance grade category "D" or "F" and was rated unsatisfactory on any function related to the employee's instructional or administrative duties, the superintendent of schools, in consultation with the employee's evaluator, shall review the employee's performance assessment. If the superintendent of schools determines that the lack of general knowledge, subject area expertise, or other professional competencies contributed to the employee's unsatisfactory performance, the superintendent of schools shall notify the district school board of that determination. The district school board shall require those employees, as part of their performance probation, to take and receive a passing score on a test of general knowledge, subject area expertise, or professional competencies, whichever is appropriate. The tests required by this paragraph shall be those required for certification under this chapter and rules of the State Board of Education.

Campbell Drive Elementary was a "D" level school at the times material to this proceeding. There was, however, no evidence presented by the School Board to establish that the above-quoted statutory procedures were followed in the instant case. Assuming that the School Board did not follow the procedures for teachers at "D" level schools with respect to Ms. Stern, the

failure would not affect the recommendation in this case because the statute imposes more demanding requirements than those that were imposed on Ms. Stern.

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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.