STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GILCHRIST COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-4891
	)	
DAN TAYLOR,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on March 7-8, April 8, and May 8, 2002, in Trenton, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William H. Andrews, Esquire
Coffman, Coleman, Andrews
& Grogan, P.A.
Post Office Box 40089
Jacksonville, Florida 32203

For Respondent: Dan Taylor, pro se
Post Office Box 657
Bell, Florida 32619-0657

STATEMENT OF THE ISSUE

The issue is whether Petitioner has just cause to terminate Respondent's employment pursuant to Sections 231.36(1)(a) and 231.35(6)(a), Florida Statutes.

PRELIMINARY STATEMENT

By letter dated December 7, 2001, Don Thomas, as Superintendent of Schools of Gilchrist County, Florida, advised Respondent Dan Taylor (Respondent) that he was suspended with pay pending a decision by Petitioner Gilchrist County School Board (Petitioner) regarding the termination of Respondent's employment as a teacher at Bell High School. The letter alleged that Respondent had engaged in misconduct in office, gross insubordination, and/or disregard for professional responsibilities.

Superintendent Thomas's December 7, 2001, letter specifically accused Respondent of engaging in the following conduct: (a) using profane or obscene language in the classroom; (b) condoning students' use of profane or obscene language in the classroom; (c) intimidation and embarrassment of students; (d) unprofessional language and conduct towards co-workers and/or administrators; and (e) continual refusal to obey direct orders from school board personnel.

Superintendent Thomas also furnished Respondent with a copy of a formal Petition dated December 7, 2001. In the Petition, Superintendent Thomas recommended that Petitioner terminate Respondent's employment for the same reasons set forth in the December 7, 2001, letter. The Petition specifically alleged that Respondent's conduct included the following:

A. On several occasions, on dates up to and including October 10, 2001, the use of profanity in the classroom and condoning students' use of profanity in violation of School Board Policy;

B. Acting in such a way as to cause unnecessary embarrassment and intimidation of students, including, but not limited to:

i. Singling out a student as a recurring example of failure;

ii. Telling students that if they don't want to be at school, then they can drop out and go on welfare;

iii. Reprimanding a student in front of the class based upon that student's parent calling during scheduled class time; and

iv. Criticizing a student for having misaligned priorities because said student was leaving class early to attend a school sponsored event.

C. Unprofessional interaction and language directed towards fellow teachers, administrators and other individuals, including, but not limited to:

i. In October 1999, the embarrassment of fellow teachers Chris Handy and Brad Surrency in front of Respondent's class;

ii. On or about June 5, 2001, statements made to Vice Principal Robert Rankin in connection with Respondent's end of the year evaluation;

iii. On or about October 2001, unprofessional and harassing statement to a parent regarding that parent's concern over her child's performance in the classroom; and

iv. In October 2001, statements made to Superintendent Don Thomas regarding Respondent's opinion of the School Board procedures and of Principal Buddy Schofield.

D. Disregard for or refusal to follow direct orders, including, but not limited to:

i. Failure to approve classroom speakers as per School Board procedure, after repeatedly being instructed as to such;

ii. Refusal to follow school policies such as keeping doors locked during class, keeping doors closed for security reasons, checking in at the main office, and proper fire alarm procedures, after repeatedly being instructed as to required conduct; and

iii. Failure to refrain from using derogatory and unprofessional language towards fellow teachers and/or administrators after being specifically reprimanded from previous behavior and instructed not to repeat inappropriate conduct.

In the Petition, Superintendent Thomas recommended that Petitioner continue Respondent's salary and benefits until completion of a formal hearing if Respondent requested same.

Petitioner considered Superintendent Thomas's recommendation at a meeting on December 11, 2001.

On December 19, 2001, Respondent requested a formal hearing to contest the charges against him. On December 21, 2001, Petitioner referred the case to the Division of Administrative Hearings.

The Parties' Response to Initial Order was filed on January 7, 2002. A Notice of Hearing dated January 10, 2002, scheduled the case for hearing on March 7-8, 2002.

On January 25, 2002, Respondent filed a Motion to Dismiss the Petition, or in the Alternative, for a More Definite Statement and a Motion for Continuance of Hearing. Petitioner filed a response in opposition to these motions on January 30, 2002. An Order dated February 1, 2002, denied the motions.

On February 27, 2002, Respondent filed a letter requesting the following: (a) suppression of all evidence prior to Respondent's evaluation dated June 5, 2001; (b) admission of exhibits for impeachment purposes; and (c) permission for the public to make comments during the hearing.

The undersigned conducted a telephone conference with the parties on February 27, 2002. During the conference, Respondent was advised that his requests to suppress evidence or admit exhibits would be considered during the hearing as each evidentiary question arose.

The parties could not complete the presentation of their cases during the hearing on March 7-8, 2002. Pursuant to the agreement of the parties, a Notice of Hearing dated March 11, 2002, scheduled April 8, 2002, for continuation of the proceeding.

On April 8, 2002, Petitioner presented the testimony of three out-of-state or out-of-town witnesses. However, because of a tragic accident in the community, the undersigned granted another continuance. A Notice of Hearing dated April 10, 2002, scheduled May 8-10, 2002, for continuation of the proceeding. The hearing was concluded on May 8, 2002.

During the hearing, Petitioner presented the testimony of 16 witnesses in its case in chief. Petitioner offered

31 exhibits (P1 through P31) that were accepted into evidence. Petitioner withdrew the offer of an exhibit identified as P32.

Respondent presented the testimony of 14 witnesses in his case in chief. Respondent offered 24 exhibits (R1, R3-R21, R25-R28) that were accepted into evidence. Respondent's Exhibits R2, R22-R24, and R30 were excluded for lack of authentication. Respondent's Exhibit R29 is hereby admitted over Petitioner's objection of lack of authentication.

Pursuant to Respondent's request and Petitioner's agreement, the undersigned permitted members of the general public to testify, under oath and subject to cross-examination, for one hour on May 8, 2002. A total of seven witnesses testified during this time.

The four-volume Transcript of the March 7-8, 2002, proceeding was filed on March 22, 2002. The one-volume Transcript of the April 8, 2002, proceeding was filed on April 17, 2002. The one-volume Transcript of the May 8, 2002, proceeding was filed on May 17, 2002.

On May 21, 2002, Petitioner requested an extension of time to file proposed recommended orders. On May 21, 2002, Respondent filed a response in opposition to the request. An Order dated May 21, 2002, granted an extension of time, requiring the parties to file their proposed recommended orders on June 7, 2002.

Respondent filed his Proposed Recommended Order on June 6, 2002, together with a 52-page composite consisting of letters from the general public on Respondent's behalf. Petitioner filed its Proposed Recommended Order on June 7, 2002.

On June 13, 2002, Petitioner filed a Motion to Strike exhibits attached to Respondent's Proposed Recommended Order and portions of the proposed findings of fact in Respondent's Proposed Recommended Order. On June 14, 2002, Respondent filed Motions to Accept Proposed Recommended Order as Submitted, and Reject Petitioner's Recommended Order. Petitioner's motion is granted and Respondent's motions are denied.

FINDINGS OF FACT

1. Respondent has been employed as a social studies teacher at Bell High School since 1988. He is employed under a professional services contract for instructional personnel.

2. At all times material to this proceeding, Respondent has received satisfactory performance appraisals. He was selected Bell High School Teacher of the Year and Gilchrist County Teacher of the Year in 1996.

3. Respondent's competency as a teacher is not at issue here. It is undisputed that Respondent is an effective teacher except as alleged by Petitioner in this case.

1998/1999 School Year

4. On January 26, 1999, Superintendent Thomas (Superintendent) wrote a letter recommending Respondent for the James Madison Fellowship Program. In the letter, the Superintendent stated that Respondent is an outstanding teacher who is academically strong in the field of social studies, American History, and American Government. The letter recounts Respondent's involvement as the senior class sponsor and in developing a cultural exchange program and a junior achievement program.

5. Respondent was the senior class sponsor in the Fall of 1998. In the first days of school, Respondent prepared and presented the seniors with a detailed letter containing information, including, but not limited to, officer duties and responsibilities. The section on officer duties and responsibilities stated, in part, that the senior sponsor reserved the right to remove officers for incompetence or inappropriate behavior.

6. Subsequently, a certain female student was elected senior class president. She and Respondent had a personality conflict from that time forward. Part of the problem involved the student's initiation of class projects without Respondent's approval, which was contrary to Respondent's procedures outlined in the letter referenced above.

7. Respondent often found fault with the senior class president's performance of her duties and her inability to devote full time to her elected position because of extracurricular activities. On several occasions, Respondent made comments to the senior class president that embarrassed her in front of other students and teachers, embarrassing her to the point of tears. One time Respondent told the student that he was not going to chaperon "some damn carwash" and miss his football game. The student complained to her parents about the way Respondent treated her.

8. In November 1998, the student and her parents requested a parent/teacher conference with Respondent. The assistant principal also attended the meeting. After Respondent offered to shake the father's hand, the conversation almost immediately resulted in a heated discussion between the student's father and Respondent. During the conversation, Respondent informed the parents that he had students in his class that were more important than their daughter's feelings and that if the daughter was going to complain to her parents, she was fired from her position as senior class president.

9. The student's father then accused Respondent of being disrespectful of the daughter and objected to Respondent's use of curse words in front of the daughter. Respondent stated that he did not consider "damn" a curse word.

10. On November 9, 1998, the parents made a written complaint about Respondent's conduct before and after the parent/teacher conference. They requested that the letter be placed in Respondent's personnel file.

11. Respondent responded with a letter dated November 8, 1998. He claimed that he had been summoned to the office for a meeting with a hostile parent for which he had been completely unprepared. Respondent denied that he had ever cursed the student. Respondent stated that he did not ever intend to be "bushwhacked" again.

12. Respondent later told the principal that the student was fired as class president. The principal said that she would not be removed from her elected office. Respondent then resigned his position as senior sponsor.

13. In January 1999, Respondent wrote a letter to the Superintendent and members of the school board. The letter outlined a series of events and incidents alleged by Respondent to represent the inadequacies of the school system. For example, the letter includes, but is not limited to, the following: (a) allegations of nepotism and incompetent teachers; (b) allegations that a student broke the nose of Respondent's daughter after a coach told her to hit the student if he sexually harassed her again; (c) allegations that a coach had walked into the girls locker room while they were changing;

and (d) allegations that the coach had retaliated against Respondent by falsifying his daughter's grades because Respondent complained about the locker room incident.

14. Apparently the Superintendent did not reply in writing to Respondent's January 1999 letter or require any employee to write a letter of apology. Nevertheless, competent evidence indicates that the Superintendent investigated Respondent's concerns and properly resolved all issues, including the disciplining of employees where necessary.

15. Respondent was responsible for the establishment of a World War II (W.W. II) Monument on the grounds of the Gilchrist County Courthouse in honor of the veterans who fought in that war. Respondent often invited veterans to speak in his class regarding their wartime experiences.

16. Mr. Cody Bennett, a W.W. II veteran, spoke to Respondent's class approximately 16 times. On one occasion, the principal questioned whether Mr. Bennett had signed in at the office and whether Respondent had requested pre-approval of Mr. Bennett's presentation according to the school's policy.

17. Bell High School policy requires a visitor to sign in at the main office and to be approved by an administrator. The policy states that guest speakers should be pre-approved by an administrator.

18. Mr. Bennett's class presentation was not pre-approved by an administrator. Because Mr. Bennett had not signed in at the office before visiting Respondent's classroom, Respondent signed him in as he was leaving the campus.

1999/2000 School Term

19. In the Fall of 1999, Respondent requested another male teacher to demonstrate something for Respondent's students. The male teacher agreed and went into Respondent's class. Respondent then requested his colleague to show the class the "three point stance" of a football player. After the teacher bent over with his hands on his knees, Respondent asked the teacher to spell the word "r-u-n." As the class burst out laughing, the embarrassed teacher quickly left the class. The teacher later realized that he had been requested to demonstrate a homosexual act in front of the class.

20. Respondent made the same request of another male teacher. After asking his colleague to show the class a football lineman's position (knees bent ready for a block), Respondent requested the teacher to spell the word "r-u-n." Once again the class burst out laughing. The second teacher did not fully understand the inappropriate joke until he left Respondent's classroom.

21. By letter dated October 22, 1999, the principal of Bell High School wrote a letter to Respondent reprimanding him

for the inappropriate sexual implication of Respondent's behavior. The principal directed Respondent to write letters to the teachers, apologizing for his conduct that constituted extreme misconduct for a teacher. The principal warned Respondent that such conduct in the future could result in discharge.

22. The principal noted in his October 22, 1999, letter that Respondent had shown a negative attitude toward the principal as Respondent's supervisor. The principal stated that he expected Respondent to show a more positive attitude in the future. The principal placed the letter of reprimand in Respondent's personnel file.

23. As requested by the principal, Respondent wrote letters of apology dated October 22, 1999, to the teachers. Both letters stated Respondent's regrets for causing his co-workers embarrassment for the incident that he referred to as a "spontaneous practical joke."

24. Respondent admits that the practical joke was in bad taste and demonstrated a lapse of judgment on his part. During the hearing, the teachers testified that they maintained good professional and personal relationships with Respondent despite the incidents.

25. One day before class in April 2000, one of Respondent's students told him that she needed to leave his

class early to attend a school softball game. Respondent was unnecessarily harsh and embarrassed the student when she reminded him during class that she had to leave the class. In chastising the student, Respondent emphasized that the student did not need softball to graduate but that she did need his class. The incident was videotaped because a group of students were about to make a class presentation at the time.

26. The student's parent wrote a letter to Respondent, complaining about Respondent's treatment of the student. The complaint alleged, among other things, that Respondent had humiliated the student about her work and yelled and screamed at the student for interrupting class when leaving for the game.

27. Respondent replied to the parent's complaint by letter dated April 28, 2000. Respondent objected to being slandered by a student. He stated that the student's grade for incomplete work would stand as recorded. Respondent admitted that he did not like interruptions in his class due to sports events. He said he would no longer give the student a "mild scolding" to enhance her performance. According to Respondent's letter, he felt the parent's letter was hostile, unfounded, and personally insulting.

28. On May 1, 2000, the principal advised Respondent that he was transferring the student out of Respondent's class due to the strained relationship on the part of the student. The

letter requested that Respondent furnish the principal with the student's grades and a copy of the videotape of the incident involving the student's interruption of class.

29. Respondent complied with the principal's request to provide the principal with the student's grades. There is no persuasive evidence that Respondent altered the student's grades before doing so. However, there is competent evidence that Respondent never complied with the principal's request to produce the videotape.

2000/2001 School Term

30. Petitioner requires its teachers to maintain a portfolio containing examples of assignments and student work samples. One purpose of the portfolio is to assist supervisors in assessing the teachers' performance at the end of the year.

31. On May 2, 2001, the teachers at Bell High School were advised that their portfolios would be due on May 18, 2001. Respondent did not turn in a portfolio by the required date.

32. Toward the end of the 2000/2001 school year, the fire alarm was activated at Bell High School. The record is unclear whether the alarm was the result of a planned fire drill or a false alarm due to recurring problems with the fire alarm system. In any event, Respondent did not interrupt his class to take his students outside as required by school policy.

33. In June 2001, the assistant principal at Bell High School and Respondent met to review Respondent's end-of-the-year performance evaluation. Petitioner's signature on the evaluation would have indicated only that the assistant principal had reviewed it with Respondent.

34. During the meeting, the assistant principal explained that Respondent's score would have been higher but for Respondent's failure to turn in a portfolio and his failure to take his class outside during a fire alarm during semester exams. Respondent disagreed with the assistant principal over his evaluation, in part, because a one-point higher would have resulted in an increase in Respondent's salary. The assistant principal responded to Respondent's objections stating, "You made it easy."

35. Because he did not agree with the evaluation, Respondent told the assistant principal that he was wasting Respondent's time and that he did not "want to listen to any more of this." Respondent then requested that he be dismissed so that he could attend a school board meeting.

36. Respondent started to leave the room. When the assistant principal requested Respondent to return to discuss the evaluation, Respondent stated, "Why listen to more of this bullshit?" Respondent then told the assistant principal that he was a "spineless lizard." Respondent then wrote "I do not

concur" on the evaluation and without signing his name on the evaluation, left the room.

37. By letter dated June 6, 2001, the principal of Bell High School reprimanded Respondent for his inappropriate, unprofessional, and insubordinate conduct toward the assistant principal. The principal reminded Respondent that he previously had been reprimanded for his attitude to the former principal. The principal stated that such conduct in the future could result in discharge.

38. The principal's letter of reprimand directed Respondent to write a letter of apology to the assistant principal. Before the letter was placed in Respondent's personnel file, Respondent signed it, including the statement "I spoke only the truth."

39. On June 6, 2001, Respondent wrote a one-sentence letter of apology to the assistant principal. The letter simply stated, "I am sorry."

40. Respondent subsequently wrote a letter dated June 8, 2001, directed to the principal and others, including the Superintendent, but not including the assistant principal. Respondent's letter listed a number of incidents in which Respondent felt that he had been unfairly treated.

41. Respondent's June 8, 2001, letter asserts that a teacher twice called him a "son of a bitch" without receiving a

reprimand. That incident involved a situation where Respondent told a teacher that he was not going to engage in a battle of wits with an unarmed person. The teacher then called him a "son of a bitch." Respondent asked his colleague to repeat what she said in front of witnesses and she did. The principal subsequently counseled with Respondent and the teacher, giving them both a verbal reprimand, and telling them not to make such inappropriate comments to each other in the future.

42. In his June 8, 2001, letter, Respondent requested an investigation of each of the incidents. Respondent also stated in the letter that he was sorry if he hurt the assistant principal's feelings. The assistant principal never received a copy of the letter containing Respondent's apology.

43. The Superintendent subsequently performed an investigation. By letter dated October 11, 2001, the Superintendent advised Respondent that the issues raised in his June 8, 2001, letter had been reviewed. Competent evidence supports the Superintendent's conclusion in the letter that the former or current principal at Bell High School had properly addressed each of Respondent's concerns.

2001/2002 School Term

44. On August 6, 2001, the Superintendent signed and issued to Respondent a Professional Service Contract of Employment for Instructional Personnel of the Public Schools for

the 2001/2002 school term. The contract states that Petitioner had determined that Respondent had satisfactorily completed all requirements of law for such a contract.

45. On August 10, 2001, Respondent signed a form indicating that he had received a copy of Bell High School's Teacher Handbook. The handbook included an emergency plan that required teachers to keep their classroom doors locked each period of the day. The policy was created as a safety measure after the "Columbine" shooting spree.

46. Respondent generally followed the locked-door policy. However, occasionally he would leave the door open so that students could go and come from the restroom without interrupting the class. Respondent also left his door open for about 10 or 15 minutes in the morning because one student from another school zone arrived late every morning and Respondent did not want the class interrupted. Despite the inconvenience to Respondent in having his class interrupted, leaving the door open was contrary to established policy.

47. Sometime prior to August 15, 2001, Respondent extended an invitation to Brett Hillman to visit his class. Mr. Hillman was a former student of Respondent and on leave from active military service. When Mr. Hillman arrived on campus, he was arrested for trespassing on school property.

48. Respondent subsequently wrote a letter dated September 14, 2001, to the county judge assigned to hear the criminal trespass case against Mr. Hillman. Respondent's letter explained to the judge that he felt responsible because he had neglected to have Mr. Hillman's visit to the campus approved through the office.

49. An assistant state attorney subsequently wrote a letter dated October 18, 2001, advising the principal that Mr. Hillman's case was resolved in a deferred prosecution procedure. The assistant state attorney explained the problems associated with the prosecution not being aware of Respondent's invitation for Mr. Hillman to visit Respondent's classroom.

50. One of Respondent's classes in the Fall of 2001 was an eighth-grade American History class. The students ranged in ages from 14 to 17. The following incidents occurred with students in that class.

51. Several times Respondent asked students if they had a date for the weekend. If the student replied that he or she did not, Respondent would respond, "Oh, I didn't think so" or "Ha-Ha, I didn't think so." On one occasion, Respondent replied, "I figured not because you're so ugly." The regularity in which Respondent made these statements and manner in which the students understood them indicates that the students were not offended and understood that Respondent was joking.

52. On at least one occasion, Respondent discussed the difference in Democrats and Republicans with two of his students. Respondent told the students that Democrats are asses, not donkeys, and Republicans are elephants. The evidence is not clear and convincing that Respondent made this comment intentionally to slander or make a profane statement about either of the political parties.

53. At times, Respondent used inappropriate language in an attempt to motivate his students individually. For example, Respondent called one student who was rather large, "Bigun," meaning no disrespect to the student. However, on at least one occasion, Respondent told "Bigun" that he was lazy and should drop out and shovel shit if he did not want to stay in school. On another occasion, Respondent told "Bigun" to get his fat ass out of his (Respondent's) class.

54. Respondent told a bashful student that if he did not want to participate in class, he could get the hell out of the class, drop out, and flip burgers. Respondent made this comment because the student did not want to read out loud in class.

55. Respondent also made the following statements to students: (a) a student should drop out and get a job flipping burgers so she would not be on welfare for others to support; (b) a student should get out of school and stop stinking it up if they did not want to learn; (c) two students were a pain in

the ass because they had not finished a report and did not want to learn; (d) it was bullshit for a student not to want to participate in a project; (e) a student should shut up; and (f) a student should get the hell out of here.

56. Sometimes Respondent made inappropriate comments to the class at large. Respondent told the class he knew he was an asshole but the class would have to live with it because he did. Respondent also said he "could be a nice person, but just don't piss him off." Respondent would remind his class that if they dropped out of school and got a job, their boss would yell at them and tell them to get off their fat ass.

57. Respondent made some of these comments in the context of a lesson on illiteracy. Nevertheless, Respondent's choice of words to make his point regarding the importance of an education in getting and keeping a good job was inappropriate.

58. On two occasions, Respondent told a student to "get the hell out of this classroom" if the student did not want to learn. The second time that Respondent made this statement, the student left the class, spoke to the principal, and spent a couple of days in the In-School Suspension (ISS) room.

59. When the student returned to Respondent's class, Respondent learned that the student had spoken to the principal. Respondent then stated, "All this crap is happening all over again."

60. On another occasion, Respondent used the word "damn" in a conversation with a student. During the conversation, Respondent also stated, "[t]his is my class and I'm running the show here. And if you don't want to go along with it, you can get out." After making this statement, another student in the same area of the classroom started laughing and making fun of the first student.

61. In discussing the First Amendment to the United States Constitution, Respondent told his students that they could say anything because they had a right to freedom of speech. To make his point, Respondent told the class that they could curse each other or him outside of class and he would not write them up because of their right to speak freely. However, there is no clear and convincing evidence that Respondent condoned student use of curse words in class.

62. On September 11, 2001, the atmosphere in Respondent's class was emotionally charged as everyone learned about the attack on New York City. Later in response to a student's questions, Respondent used the words "rag heads," referencing the terrorists responsible for the collapse of the World Trade Center towers. Respondent used the same terms in discussing the terrorists with the principal.

63. In the Fall of 2001, one eighth-grade student complained to his mother that Respondent was singling him out

and embarrassing him in class. The mother told her son to tough it out for another week because Respondent might have been having a bad day.

64. The student later complained again to his mother about Respondent's embarrassing treatment in the classroom. Based on the student's repeated complaints, the mother sent a message to Respondent asking him to call at his convenience.

65. After receiving the message, Respondent immediately returned the mother's call. During the conversation, Respondent stated that the student was "not completing his work. . . . I chewed him out really good yesterday so maybe he'll do something today." When the mother inquired about the student's allegations that Respondent was singling the student out in class and embarrassing him to the point of tears in front of the other students, Respondent replied, "Yes, that's true, but I am a hard teacher and I am not gonna cuddle and baby [the student] in my classroom. He either does what I say or he fails." When the mother questioned whether Respondent had told his students to quit school and stop wasting Respondent's and the school's time if they did not want to work, Respondent admitted that he had made such a statement. When the mother asked Respondent not to embarrass her son in front of the class, Respondent stated, "[y]ou wouldn't call up your doctor or your lawyer and harass them, and I don't expect you to do this to me." When the mother

responded that she was just trying to find out what was going on, noting that Respondent was chewing her out, Respondent replied, "If there is nothing else, I have a class to teach so you can make an appointment like everybody else" then hung up the phone.

66. Respondent appeared to be angry when he returned to the classroom after speaking with the mother. Respondent then requested to see the student's work folder. After making a derogatory comment about the work in the folder, Respondent told the student to get it organized and tossed it down on the student's desk, causing the papers to fall on the floor. There is no clear and convincing evidence that the folder hit the student in the chest, but the incident did cause the student embarrassment in front of his classmates.

67. The mother subsequently called the assistant principal to complain about Respondent's unprofessional behavior. Specifically, the mother stated that Respondent had hung up on her and that she wanted her son removed from Respondent's class. After receiving written complaints from the mother and her son, both of which contained allegations that Respondent used curse words in class, the assistant principal gave the information to the principal.

68. Based on the complaints from the mother and her son, the principal initiated an investigation on October 11, 2001. He first talked to several students in the class.

69. The students did not know why they were being questioned. Without naming Respondent, the students were asked whether any teachers used profanity in the classroom. The students named Respondent as the only teacher who did so.

70. Each student was talked to separately, sequestered, and asked to write a statement concerning Respondent's conduct in the classroom. There is no competent evidence that the students were unduly influenced or coached regarding the content of their statements. Two students, who did not want to get involved, were allowed to return to class.

71. The student's initial statements and the mother's statement were submitted to the Superintendent. Because the statements warranted further investigation, the Superintendent appointed a committee to look into the matter.

72. Respondent sent a memorandum dated October 16, 2001, to the members of the school board. In the memorandum, Respondent complained that he was being harassed because students from his at-risk class were being summoned from class to provide statements regarding his classroom activities without his knowledge. According to Respondent, the administration's current investigation was consistent with past personal attacks

on Respondent. Respondent demanded that Petitioner provide him with all written statements by students, teachers, and parents and any notes in the possession of administrators but not included in his personnel file. He demanded that Petitioner refer the alleged harassment to the Educational Practices Commission. He insisted that he receive prior notification of any subsequent investigations.

73. The Superintendent appointed an outside investigator as soon as he learned that Respondent believed the investigation was politically motivated and in retribution for Respondent running against the Superintendent in the most recent election.

74. During the investigation, Petitioner once again pulled the students who had signed previous statements from class. At that time, Petitioner requested the students to sign affidavits that their initial statements were true. The only other times that Petitioner pulled students from class in relation to this case was to speak with an investigator or attorney in preparation for trial. On one occasion a student asked to call her father. At that point Petitioner's counsel stopped talking to the student.

75. On or about October 15, 2001, Respondent called the Superintendent at home one night, demanding copies of all documents being considered in the investigation. During this conversation, Respondent told the Superintendent that the

investigation was all a bunch of crap, that the principal at Bell High School was an idiot, and that he (Respondent) was not interested in the Superintendent's bullshit procedures.

76. When the independent investigation was completed, the Superintendent reviewed all of the information. He considered Respondent's years of service, his satisfactory performance evaluations, and his personnel file, which contained two letters of reprimand. The Superintendent concluded that termination of Respondent's employment was appropriate after considering all aggravating and mitigating factors.

77. By letter dated October 29, 2001, Respondent was invited to a meeting to discuss the allegations against him, which at that point included misconduct in office and/or gross insubordination. Specifically, the letter stated that Respondent had: (a) used profane or obscene language; (b) encouraged or condoned student's use of profanity; (c) intimidated and embarrassed students; and (d) continued refusal to obey direct orders from school board personnel. The Superintendent's letter advised Respondent of his rights under the Collective Bargaining Agreement, giving him a five-day notice of the meeting scheduled for November 5, 2001. The purpose of the meeting was to allow Respondent an opportunity to rebut the allegations against him.

78. In a letter dated November 1, 2001, Respondent objected to the meeting scheduled for November 5, 2001, because it did not provide him with a five-day notice from the time that he received the October 29, 2001, letter. Respondent also requested that the Superintendent furnish Respondent with copies of certain documents, including his personnel file, all written complaints from students, parents, and teachers, and a copy of Petitioner's policies.

79. Respondent's November 1, 2001, letter stated that the eighth-grade class had been exploited and that the student's affidavits had been solicited under duress. There is no persuasive evidence to support these allegations.

80. Respondent claimed that the classroom was hostile and not conducive to effective education. Respondent asserted that he was not certified to teach the eighth-grade class because it was not a mainstream class. He requested that he be assigned to teach another class for that time block.

81. By letter dated November 1, 2001, the Superintendent rescheduled the meeting for November 7, 2001, to ensure that Respondent was given adequate notice. The Superintendent also reminded Respondent that he had been furnished a copy of his entire personnel file and copies of affidavits obtained during the preliminary investigation. The Superintendent's letter enclosed a copy of the parent's letter that initiated the

investigation. The letter sets forth the conditions under which a copy of Petitioner's policies would be made available to Respondent.

82. Finally, the Superintendent's November 1, 2001, letter denied Respondent's request for reassignment as premature. However, that request was subsequently granted.

83. On November 4, 2001, Respondent wrote a letter to the Superintendent. The letter states, among other things, that a student had called his home to tell him that his daughter was threatening other students. Respondent demanded a written explanation from the Superintendent regarding the persons who assisted the student in using the office phone to make the call and insisting that the Superintendent investigate the incident. There is no persuasive evidence that Respondent's daughter ever threatened her classmates.

84. Respondent attended the meeting with the Superintendent on November 7, 2001. During the meeting, the Superintendent granted Respondent's request for additional time to respond to the allegations in writing. Respondent made his written response in a letter dated November 12, 2001.

85. In Respondent's November 12, 2001, letter, Respondent apologized for using certain inappropriate words in class but argued that technically they were not defined as "profanity." He denied that he had ever disobeyed a direct order but

apologized for offending the Superintendent in a heated conversation. He denied intimidating and embarrassing students, claiming that he only administered warranted admonishments. Respondent could not recall what he had said to students about the terrorists on September 11, 2001. He condoned the division of the word "assassination" into syllables to help the students learn to spell it. He denied that he called a student fat but admitted that he may have used the work lazy. Respondent accused a student of using the word ass instead of donkey to describe Democrats, stating that he thought nothing of the student's comment at the time.

86. By letter dated December 7, 2001, the Superintendent suspended Respondent's employment with pay. The letter stated that the suspension would be effective until Petitioner's next board meeting on December 11, 2001.

87. Respondent and another school employee ran against the Superintendent for the elected position of Superintendent of Gilchrist County Schools in 2000. The Superintendent was reelected in the first primary. There is no persuasive evidence that the Superintendent's investigation and ultimate decision to recommend suspension of Respondent's employment was politically motivated.

88. There have been other incidents where the Superintendent has had to discipline teachers for using

profanity. There has been no situation where the Superintendent has failed to take some disciplinary action against these teachers. The type of discipline in each incident was decided on a case-by-case basis, depending on the circumstances.

89. Petitioner has a policy entitled "Profane or Obscene Language," which states as follows in pertinent part:

> Under no condition shall any School Board employee be permitted to use profane or obscene language in his or her relationship with students. Any employee who uses profane or obscene language while speaking to, communicating with or in the presence of students shall be guilty of misconduct in office, conduct which seriously reduces his/her effectiveness as an employee and failure to comply with a School Board rule.

On every occasion in which a violation of this policy has been brought to the attention of the Superintendent, he has issued some form of discipline. There is no policy requiring the Superintendent to inform anyone about the discipline of another teacher.

90. During the public input period of the hearing, the general public was given an opportunity to present oral or written communications. Five individuals spoke on Respondent's behalf. Some of these witnesses could not believe that Respondent would engage in the conduct of which he was accused but conceded that if Respondent had behaved in such inappropriate conduct, it might change their opinion of him.

91. Two citizens testified on behalf of Petitioner during the public input period. One witness was a former student of Respondent who presented credible testimony that Respondent called him a "swinging dick" on one occasion and threw the student's shoe out the window on another occasion because the student had his foot on his desk.

92. The other public input witness testifying for Petitioner was the father of a former student. This witness presented credible evidence that Respondent engaged in degrading and humiliating behavior toward his family, by insulting them during a parent/teacher meeting. During this meeting, Respondent accused the father of not having the ability to comprehend or deal with the situation and that the father was not mentally capable of carrying on a conversation with him.

93. Respondent used many posters as visual aides in his classroom. For example, Respondent had pictures of every president of the United States up on the walls. One of Respondent's classes in 1992 hung President Clinton's picture upside down until the assistant principal required Respondent to turn the picture right side up in 1998.

94. Respondent routinely placed a Groucho Marx nose on the picture of the President when the class was studying about that president. There is no clear and convincing evidence that Respondent used the nose to disparage one president over

another. However, there is competent evidence that Respondent did not immediately remove the nose from President Clinton's picture when the assistant principal requested him to do so.

95. In the Fall of 2001, the principal found one poster on the outside of Respondent's classroom door. The posted depicted a crying baby and a picture of the official seal of the United States Democratic Party, with the caption "Don't be a cry baby." The principal removed the picture from Respondent's door because the principal did not believe the poster was politically neutral.

96. In prior years, the principal twice instructed Respondent to remove a car tag from his bulletin board. The car tag showed a person urinating on President Clinton's name. The second time that Respondent was directed to remove the tag, he covered the tag with a paper containing the word "censored" on it.

CONCLUSIONS OF LAW

97. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Sections 120.569, 120.57(1), and 231.29(3)(d)3.b., Florida Statutes.

98. Petitioner has the burden of proving by the preponderance of the evidence that it has just cause to

terminate Respondent's employment. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990).

99. A school board's contracts with instructional staff must contain provisions for dismissal only for just cause pursuant to Section 231.36(1)(a), Florida Statutes, which states as follows in part:

> Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

100. Respondent argues that Petitioner violated Respondent's substantive and procedural due process rights during the investigation of this case. The Division of Administrative Hearings does not have jurisdiction to rule on constitutional issues. Department of Revenue of Florida v. Young American Builders, 330 So. 2d 864 (Fla. 1st DCA 1976). However, the Division of Administrative Hearings may consider whether a school district has complied with notice and procedural requirements for conducting a performance assessment procedure set forth in Section 231.29, Florida Statutes. The Court in Witgenstein v. School Board of Leon County, 347 So. 2d 1069 (Fla. 1st DCA 1977), held that "if there exists a disputed issue of material fact as to whether certain teachers on annual contract had been appropriately assessed in accordance with the provisions of section 231.29, Florida Statutes, the board was

required to hold a section 120.57(1) hearing to resolve the disagreement" (emphasis supplied). Martin v. School Board of Gadsden County, 432 So. 2d 588 (Fla. 1st DCA (1983)(dissenting opinion). For similar reasons, the Division of Administrative Hearings may also determine whether a school board has inconsistently applied statutes, rules, and/or policies in derogation of a teacher's rights. Amos v. Department of Health and Rehabilitative Services, District IV, 444 So. 2d 43, 47 (Fla. 1st DCA 1983).

101. In this case, Respondent does not argue that Petitioner failed to follow the procedures set forth in the Collective Bargaining Agreement. The record here does not include a copy of that agreement. The only competent evidence in the record indicates that Petitioner complied with all provisions of the Collective Bargaining Agreement. Accordingly, there is no basis for concluding that Petitioner violated any procedural or substantive requirements set forth in the agreement.

102. Respondent does argue that Petitioner failed to provide him with adequate notice of the charges against him and failed to follow the procedures set forth in Section 231.29(3), Florida Statues, which states as follows in relevant part:

> (3) The assessment procedure for instructional personnel shall comply with,

but not be limited to, the following requirements:

(a) An assessment shall be conducted for each employee at least once a year. . . . The assessment criteria must include, but are not limited to, indicators that relate to the following:

1. Ability to maintain appropriate discipline.

2. Knowledge of subject matter. . . .

3. Ability to plan and deliver instruction.

4. Ability to evaluate instructional needs.

5. Ability to communicate with parents.

6. Other professional competencies, responsibilities, and requirements as established by rules of the State Board of Education and policies of the district school board.

* * *

(c) The individual responsible for supervising the employee must assess the employee's performance. . . . 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.

(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. The employee shall be placed on performance probation and governed by the

> provisions of the section for 90 calendar days from receipt of the notice of unsatisfactory performance to demonstrate corrective action. . . .
>
> 3. 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. Within 14 days after receiving the evaluator's recommendation, the superintendent must notify the employee in writing whether the performance deficiencies have been satisfactorily corrected and whether the superintendent will recommend that the school board continue or terminate his or her employment contract. . . .

103. The failure of a school district to follow the procedures set forth in Section 231.29(3), Florida Statutes, does not prevent a school board from terminating a teacher's employment where evidence in an administrative proceeding establishes just cause based on extraordinary matters that arise outside the scope of the mandated assessment procedures or where the record in an administrative proceeding contains a "just cause" showing why the assessment procedures were ignored. See Buckner v. School Board of Glades County, Florida, 718 So. 2d 862, 864 (Fla. 2d DCA 1998) ("any determination of 'good cause' by a school board for a rejection of a superintendent's nomination shall at least contain a 'good cause' showing as to why the assessment procedures were ignored").

104. There is no evidence relative to the Superintendent's failure to give Respondent a probationary period to correct his

deficiencies. Nevertheless, it is apparent from the record that Respondent was not granted the probationary period as required by Section 231.29(3)(d), Florida Statutes.

105. Under the facts of this case, competent evidence indicates that Petitioner provided Respondent with all notice and procedural protections to which he was entitled. Adequate notice was provided in the Superintendent's letters dated October 29, 2001, and December 7, 2001, and in the Petition recommending that Petitioner terminate Respondent's employment. Respondent was given an opportunity to rebut the allegations at the November 7, 2001, meeting and in writing. Respondent also had an opportunity to address Petitioner at one or more board meetings.

106. The greater weight of the evidence shows that the Superintendent acted appropriately in suspending the procedures set forth in Section 231.29(3)(d), Florida Statutes. As discussed below, Respondent's conduct was sufficiently egregious and continuous over many years for Petitioner to conclude that granting Respondent time to correct his attitude and conduct during a probationary period would have been to no avail.

107. Respondent received satisfactory performance evaluations as a teacher up though and including his annual evaluation for the 2000/2001 school term. Respondent's conduct subsequent to that evaluation, and apart from his competency as

a classroom teacher, forms the basis of the allegations against him in this case. Allegations relating to Respondent's behavior occurring prior to the completion of his most recent performance appraisal are considered here only to show a pattern of such conduct or in aggravation or mitigation of discipline.

108. Respondent asserts that the Superintendent unfairly discriminated against him for political reasons and applied the school district's policies and procedures in an inconsistent manner. To support these allegations, Respondent presented some evidence of isolated incidences involving students, parents, and Respondent's own family that he claims were not properly investigated. He presented other isolated incidences involving teachers that he states were not properly disciplined. Respondent's arguments in this regard lack merit for several reasons.

109. First, there is insufficient evidence to determine whether Respondent's complaints involving students, parents, his family, and other teachers were comparable to the situations where Respondent was investigated and disciplined. Second, there is competent evidence that the Superintendent properly investigated every complaint made by Respondent involving students and parents and appropriately disciplined teachers when discipline was required. Finally, there is no evidence to indicate that persons, other than Respondent, who were involved

in an investigation or required discipline, repeated the complained of behavior after completion of the investigation or imposition of discipline.

110. Respondent also alleges that Petitioner unduly influenced the students who wrote statements and testified about his inappropriate behavior. Competent evidence refutes this allegation.

111. Respondent's allegations that Petitioner improperly allowed unauthorized persons to view his personnel file or improperly maintained his file are also unfounded. There is no competent evidence that Petitioner violated the provisions of Section 231.291, Florida Statutes, relating to personnel files of school board employees. To the extent that such a violation may have occurred, Respondent presented no evidence showing how the violation was relevant to this proceeding.

112. Turning to the merits of the case, teachers are charged by Sections 231.09 and 231.2615, Florida Statutes, with providing leadership and maintaining effectiveness as teachers. By virtue of their leadership capacity, teachers are traditionally held to a higher moral standard in the community. See Adams v. State Professional Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981).

113. Rule 6B-1.001, Florida Administrative Code, sets forth the Code of Ethics of the Education Profession in Florida and provides as follows in relevant part:

> (1) The educator values the worth and dignity of every person . . . .
>
> * * *
>
> (3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

114. Rule 6B-1.006, Florida Administrative Code, sets forth the Principals for the Professional Conduct for the Education Profession in Florida and provides as follows in relevant part:

> 3. Obligation to the student requires that the individual:
> (a) shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental or physical health and/or safety.
>
> * * *
>
> (e) shall not intentionally expose a student to unnecessary embarrassment or disparagement.
>
> * * *
>
> (5) Obligation to the profession requires that the individual:

* * *

> (d) shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimating, abusive, offensive, or oppressive environment; and further, shall make reasonable effort to assure that the each individual is protected from such harassment or discrimination.
>
> (e) Shall not make malicious or intentionally false statement about a colleague.

115. Misconduct in office is defined in Rule 6B-4.009(3), Florida Administrative Code, as follows:

> (3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

116. Gross insubordination is defined in Rule 6B-4.009(4), Florida Administrative Code, as follows:

> (4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

117. The greater weight of the evidence shows that Respondent engaged in personal conduct, which constitutes misconduct in office because it was serious as to impair his

effectiveness as a teacher. Specifically, in the Fall of 2001, Respondent repeatedly used profane and obscene language in the classroom and condoned the use of such language by students. These actions violated Petitioner's policy regarding profane and obscene language and Rules 6B-1.001(1), 6B-1.001(3), 6B-1.006(3)(a), and 6B-1.006(3)(e), Florida Administrative Code.

118. A preponderance of the evidence shows that, in the Fall of 2001, Respondent repeatedly humiliated and embarrassed students, singling them out for ridicule in front of their classmates, and creating a hostile and abusive learning environment. Respondent's conduct in this regard constituted misconduct in office and violated Rules 6B-1.001(1), 6B-1.006(3)(a), and 6B-1.006(3)(e), Florida Administrative Code.

119. The greater weight of the evidence shows that, in the Fall of 2001, Respondent used unprofessional language, which was profane and/or obscene, towards the Superintendent. This abusive language, and Respondent's hostile and aggressive conduct towards his superior, constitutes misconduct in office in violation of Rules 6B-1.001(1), 6B-1.001(3), 6B-1.006(5)(d), and 6B-1.006(5)(e), Florida Administrative Code.

120. In light of Respondent's previous written and verbal reprimands, the preponderance of the evidence indicates that Respondent is guilty of gross insubordination. In the Fall of 2001, Respondent used profane and abusive language and

demonstrated an unprofessional attitude towards his superior, disobeying prior direct orders to refrain from such language and conduct, in violation of Rules 6B-1.001(1), 6B-1.001(3), 6B-1.006(5)(d), and 6B-1.006(5)(e), Florida Administrative Code.

121. Respondent's actions in the Fall of 2001 had a detrimental effect upon students, set a poor example and harmed the professional work environment at Bell High School. The conduct ran counter to Petitioner's policies and procedures and did not project the image of professionalism and confidence to the school community that Petitioner strives to direct and expects of its instructional employees. Respondent's conduct in the Fall of 2001, without more, creates just cause for Petitioner to discharge Respondent.

122. In determining whether discharge is the appropriate result in this case, one must consider aggravating and mitigating circumstances. The mitigating factors are: (a) Respondent is and has been a competent teacher for many years; (b) some students, parents, and members of the community hold Respondent in high regard in the community as a teacher; and (c) Respondent has been actively involved in establishment of a W.W. II Veteran's Memorial and other extracurricular and/or community projects.

123. On the other hand, a preponderance of the evidence demonstrated the following aggravating factors:

(a) Respondent's history of not being able to control his temper in parent/teacher conferences; (b) Respondent's history of singling students out and/or embarrassing them in class; (c) Respondent's repeated failure to show proper respect for colleagues; and (d) Respondent's failure to follow Petitioner's policies regarding guest speakers, fire alarms, portfolios, and the locking doors of doors for security purposes.

124. Respondent's failure to control his temper and his tongue over time has created embarrassing situations that were harmful to students. Respondent's malicious verbal attacks on his colleagues show a pattern of lack of respect for his co-workers. The greater weight of the evidence indicates that Petitioner has just cause and should discharge Respondent for misconduct in office and gross insubordination in the Fall of 2001.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order dismissing Respondent from his employment as a teacher in the Gilchrist County School System.

DONE AND ENTERED this 26th day of June, 2002, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2002.

COPIES FURNISHED:

Honorable Charlie Crist
Commissioner of Education
Department of Education
The Capitol, Plaza Level 08
Tallahassee, Florida 32399-0400

Don Thomas, Superintendent
Gilchrist County School Board
310 Northwest 11th Avenue
Trenton, Florida 32693-3804

William H. Andrews, Esquire
Coffman, Coleman, Andrews
& Grogan, P.A.
Post Office Box 40089
Jacksonville, Florida 32203

Dan Taylor
Post Office Box 657
Bell, Florida 32619-0657

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.