

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 02-3094
)
CLEVELAND F. WILLIAMS, JR.,)
)
 Respondent.)

)

RECOMMENDED ORDER

This case was heard pursuant to notice on October 10 and 11, 2002, by Stephen F. Dean, Administrative Law Judge of the Division of Administrative Hearings, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Michael B. Wedner, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32302

For Respondent: David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

Whether the Duval County School Board (Board) may terminate Respondent, Cleveland F. William, Jr.'s, employment as a teacher based upon incompetence under the Duval Country Teachers Tenure Act (the Act). This issue is dependent upon whether the Board

showed Respondent to be incompetent and whether the Board complied with the procedural requirements of the Act.

PRELIMINARY STATEMENT

The record reflects that the initial charge against Respondent was dated May 8, 2002. Respondent was charged with professional incompetence under subsection (e) of Section 4 of the Act. The charging document recites that Respondent received unsatisfactory evaluations for the 2000-2001 and 2001-2002 school years. Respondent taught 6th grade science at Fort Caroline Middle School during the 2000-2001 school year. He taught 7th grade science at Joseph A. Stilwell Middle School (Stilwell) during the 201-2002 school year. Respondent requested a hearing on May 17, 2002, and the Board forwarded the case to the Division of Administrative Hearings on August 5, 2002, to conduct a formal hearing pursuant to contract and pursuant to the provisions of Chapter 120, Florida Statutes. On August 27, 2002, the case was set for hearing on October 10 and 11, 2002, and was heard as noticed.

The charging document alleges that Respondent is incompetent, having been evaluated for two years in succession as an unsatisfactory teacher and should be terminated from employment. Respondent concedes, based upon his post-hearing brief, that he was less than satisfactory during the 2000-2001 school year, but asserts that with regard to the 2001-2002

school year, the Board failed to meet its obligations under subparagraphs (1) and (3) by not giving Respondent a clear and detailed statement of the specific reasons upon which the claim of incompetency is based and not affording Respondent the opportunity of specific in-service training to correct his alleged deficiencies.

Petitioner presented the testimony of Kathy Kassees, the principal at Fort Caroline Middle School; Dianne Rahn, instructor, design coach, and professional development facilitator at Stilwell; Lisa Dunn, cadre representative; Margarita Arroya science teacher and department head at Stillwell; Darrell Perry, house administrator (assistant principal) at Stilwell; and Frank Marjenhoff, principal at Stillwell. Respondent presented the testimony of Camille Hernandez, an interpreter for a deaf student in one of Respondent's classes at Stillwell, and Jamal Gazaleh, who co-taught an inclusion class with Mr. Williams at Stillwell. Petitioner prepared a binder containing 33 exhibits of which 1 through 11, 11A, 12 through 15, 17 through 21, 23 through 30, 32 and 33 were received into evidence. Respondent entered no exhibits into evidence. The two-volume transcript was filed on October 31, 2002.

Both parties filed post-hearing briefs containing findings of fact that were read and considered.

FINDINGS OF FACT

1. Respondent was first assigned to Fort Caroline Middle School during the academic year 2000-2001 to teach 6th grade science. Kathy Kassees was the principal at Fort Caroline Middle School during that school year. Respondent's brother was extremely ill and died during the school year. Respondent's performance evaluation for that school year was less than satisfactory. See Exhibit 2, 2000-2001 Performance Evaluation.

2. Respondent concedes that his performance in 2000-2001 was less than satisfactory. See paragraph 56 of Respondent's Post-hearing Brief.

3. When a tenured teacher in the Duval County system has a performance evaluation of less than satisfactory, the teacher may elect to transfer to another school, and Respondent exercised that option for the school year 2001-2002. Respondent was moved to Stillwell where he was assigned to teach 7th grade science. In addition, he was assigned for the first time to teach inclusion classes.

4. Inclusion classes are made up of students who are exceptional education students who may have various exceptionalities. These exceptionalities may include disabilities such as deafness, emotional and behavioral problems, and developmental disabilities. Behavioral problems

may include students diagnosed with attention deficit disorder and hyperactivity.

5. Stillwell utilizes a program of instruction called the America's Choice Plan (ACP). The ACP is a comprehensive educational program which covers all aspects of instruction, organization of the classroom, and display of student materials in the classroom. ACP has its own vocabulary of terms to describe activities and things. For example, "artifacts" refers to student work and other materials posted in the classroom. It is expected that "artifacts" will be posted and changed periodically. Weekly meetings to discuss the system are called "Tending the Garden" meetings. ACP had been used at Stillwell previously and the returning faculty were familiar with it. Respondent had never worked with ACP before.

6. Ms. Kassees had prepared a Success Plan for Respondent after he received his unsatisfactory evaluation to help him improve his deficiencies. Respondent took this plan with him to Stillwell, but the plan did not address ACP or inclusion classes.

7. Mr. Marjenhoff, the principal at Stillwell, met with Respondent and discussed Marjenhoff's expectation of Respondent. They did not discuss any special requirements or changes necessitated by ACP or inclusion classes.

8. Petitioner was unable to establish that it had prepared and delivered a new Success Plan to Petitioner at Stillwell. After his poor evaluation in February of 2002, Respondent asked Mr. Marjenhoff for a copy of the Success Plan and one was produced which was signed by Mr. Marjenhoff and dated August 6, 2001, and by Respondent on March 27, 2002. See Exhibit 13.

9. Respondent did attend various ACP, "Tending the Garden" in-service educational classes presented by Dianne Rahn; Urban Systemic Initiative (USI) seminars presented by Rose Curry; and classes presented by his department head, Margarita Arroyo. His attendance and punctuality at these meetings was on par with his peers.

10. The first indication of evaluative inspections came in a November 28, 2001, memo to Respondent from Marjenhoff stating that Dianne Dunn, a cadre member, would be contacting him about setting up a classroom visit. She did not conduct a visit until January 28, 2002. See Exhibit 11 and attachments.

11. The annual evaluation of faculty occurs in February.

12. Petitioner concedes that other than the cadre work by Dunn and some instruction on USI by Curry, little was done by way of individualized in-service training to address Respondent's shortcomings. Respondent was not afforded much in the way of unique, individualized oral counseling or critiques

of his performance during the first part of the school year. See paragraphs 21 and 22 of Petitioner's Post-hearing Brief.

13. A review of Curry's visits reflects she met with Respondent approximately once each month for a rough average of an hour, with the exception of the first meeting which was four hours. Curry's logs do not reflect the corrective actions taken with regard to Respondent's teaching. This hardly constitutes an accelerated effort to improve Respondents performance. See Exhibit 21.

14. The dates of the various class visits and evaluations by Marjenhoff are in February and March. See Exhibits 12, 18 and 19.

15. A review of the records of the in-class visits and commentaries by the observers reveal that too many general recommendations were made rather than specific, concrete changes to implement. For example, Darrell Perry visited Respondent's class and was concerned about its physical organization, i.e., where the television was located, the direction in which the seats were oriented, and where Respondent's desks was located. This was written up in March, which was late in the year to raise these issues, and Perry did not suggest or volunteer to help Respondent alter the room to meet Perry's expectations. Also see Exhibit 11 and attachments. In sum, there was too much

jargon and too little performance-oriented, hands-on correction of Respondent.

16. Memoranda relating to Respondent's performance all seem to be dated after January 2002. See Exhibits 16 and 17.

17. The corrections that were made came too late to have a meaningful impact upon the improvement of Respondent's teaching performance.

CONCLUSIONS OF LAW

18. This Order is entered pursuant to the contract between Duval County School Board and the Division of Administrative Hearings, which is authorized by Chapter 120, Florida Statutes.

19. Whether Mr. Williams may be terminated by the Board for professional incompetence is determined under the provisions of the Duval County Teacher Tenure Act. A copy of the Act was made available as an exhibit in a prior case, and it was not necessary to provide a second copy of the Act.

20. Section 4(e)(3) of the Act states in pertinent part:

That prior to the institution of proceedings as hereinafter provided, a period of one year shall elapse during which such teacher shall be afforded the opportunity of specific in-service training to correct the alleged deficiencies

21. The burden of proof is on Petitioner to show that the teacher was incompetent and that Petitioner complied with the terms of the Act.

22. With regard to Respondent's initial unsatisfactory evaluation, it is clear from the record that Respondent does not contest the validity of that evaluation. Respondent's position is that the Board did not afford him the opportunity of specific in-service training to correct his alleged deficiencies. In addition, the facts reveal there are some added factors which reflect that Respondent's teaching assignment was made more difficult by assigning him inclusion classes without proper prior training, and by introducing him into a new school with a relatively new and different system, ACP, with which he was not familiar and in which he did not receive compensatory training.

23. There is a conflict in the testimony regarding the preparation of a Success Plan for Respondent at Stillwell. I find that the Board did not prove it prepared a Success Plan prior to Christmas 2001. The best evidence indicates a Success Plan was generated around the first part of 2002.

24. For reasons that are unclear, there did not seem to be an emphasis in establishing a remedial program for Respondent when he arrived at Stillwell, based upon his needs. The only person who seemed to be working with Respondent from the outset was Ms. Curry, whose first meeting with Respondent was September 14 and again September 26, 2001. She met with Respondent monthly thereafter until May. Ms. Curry's work with Respondent was principally with instructional methodology in the

USI program, which was not specifically related to his deficiencies. Petitioner attended some in-service classes on ACP presented by Ms. Rahn, and Ms. Arroyo visited his class periodically as his department chair. Neither Rahn or Arroyo presented any specific instruction to Respondent designed to address specific deficiencies identified in his teaching. The same was true for Mr. Perry's observations of Respondent.

25. The classroom observations of Respondent by Rahn, Arroyo, and Perry may have been accurate; however, they did not present any specific recommendations for improving Respondent's teaching method.

26. The language of the Act indicates that an unsatisfactory teacher will be afforded the opportunity of specific in-service training to correct the alleged deficiencies. There does not appear to be a concrete assessment of Respondent's shortcomings or concrete recommendations about how to correct them made at a time when Respondent could have reasonably acted to improve his teaching methods. See the example of Mr. Perry's criticisms of the organization and arrangement of Respondent's classroom which came after Respondent's evaluation and where Mr. Perry did not volunteer to help rearrange the room.

27. Ms. Rahn was not asked to assist Respondent until October, did not contact him until November 28, and did not

visit him until January 2002. The 2002 evaluation was in February. This can hardly be termed timely and affording Respondent a meaningful opportunity to correct his deficiencies. Even without specific, timely correction, Respondent was able to improve competencies numbered five and six that were unsatisfactory on his 2000-2001 evaluation.

28. As mentioned at the outset, Respondent's assignment of inclusion classes without previous experience was unfair, as was putting him in a school which was using a new and different teaching methodology in which Respondent had no prior experience and was not provided supplemental instruction prior to the commencement of classes.

29. The Board recognizes some of its shortcomings but argues that it generally was fair and substantially complied with the terms of the Act. To the contrary, the Board's actions stacked the deck against Respondent by assigning him inclusion classes and putting him in a school using ACP, then giving him too little in-service training, too late to positively impact his evaluation.

30. As to this specific case, based on the facts above, the Board should provide Respondent with an additional year of in-service training complying with the requirements of the Act.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED:

That the Board provide Respondent another year in which timely and appropriate in-service training is provided to correct his deficiencies in teaching.

DONE AND ENTERED this 29th day of January, 2003, in Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of January, 2003.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.