

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RUTH HENDERSON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 03-0412  
 )  
 BREVARD COUNTY SCHOOL BOARD, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this case on April 10 and 11, 2003, in Viera, Florida.

APPEARANCES

For Petitioner: Adrienne E. Trent, Esquire  
700 North Wickham Road, Suite 107  
Melbourne, Florida 32935

For Respondent: Alan S. Diamond, Esquire  
Amari & Theriac, P.A.  
96 Willard Street, Suite 302  
Cocoa, Florida 32922

STATEMENT OF THE ISSUE

Whether Respondent's, Brevard County School Board, decision to terminate Petitioner's, Ruth Henderson, continuing teaching contract was appropriate based on allegations that Petitioner physically abused three students.

PRELIMINARY STATEMENT

On December 6, 2002, Richard A. DiPatri, Superintendent of the Brevard County School District, petitioned Respondent for dismissal of Petitioner as an instructional employee and termination of her continuing teaching contract. The petition indicated that the dismissal and termination was based on the following alleged acts by Petitioner: (a) striking and hitting a student with her shoe; (b) slapping a student in the face; and (c) grabbing and shaking a student, causing the student to fall and bump his head.

The petition further alleged that these acts constituted child abuse and battery as defined by Florida Statutes and corporal punishment in violation of Brevard County School Board Rule 5630.

The petition alleged that the described conduct constituted misconduct in office, gross insubordination and conduct unbecoming a member of the instructional staff, exposed the students to conditions harmful to their physical health and safety, brought the education profession in disrepute, and seriously impaired Petitioner's effectiveness as a teacher.

On December 10, 2002, Respondent dismissed Petitioner as an instructional employee and terminated her continuing teaching contract effective December 11, 2002.

On December 13, 2002, Petitioner appealed her dismissal and termination. On January 30, 2003, Petitioner's appeal was forwarded to the Division of Administrative Hearings by Respondent which requested assignment of an Administrative Law Judge.

On February 6, 2003, an Initial Order was sent to the representatives of both parties. On February 19, 2003, the case was scheduled for final hearing in Viera, Florida, on April 10 and 11, 2003.

At the final hearing, Petitioner testified in her own behalf and presented three witnesses: Joanne Theil, a teacher, and two kindergarten students, S.S. and D.L. Petitioner's performance appraisals were received into evidence as Petitioner's Exhibit 1 by stipulation of the parties.

Petitioner requested that judicial, in this context official, notice be taken of the Notice of No Information filed in Brevard County Circuit Court case number 02-64347, State of Florida v. Ruth Henderson, the criminal case filed as a result of the child abuse and battery allegations. The undersigned Administrative Law Judge indicated that the decision on official notice would be taken under advisement and suggested that it be considered by the parties in their proposed recommended orders. Formal notice of Petitioner's intention to seek official notice was given by filing her Motion to Take Judicial Notice on

April 10, 2003, the first day of the final hearing. This is not "timely notice" as contemplated by Subsection 90.203(1), Florida Statutes. Neither party presented any argument regarding the appropriateness of taking official notice, although Petitioner did cite Florida Evidence Code, Section 90.202, Florida Statutes, as authority in her proposed recommended order. Official notice will not be taken; the Notice of No Information has little bearing on the Recommended Order herein.

Respondent presented nine witnesses: Cocoa Police Detective David Baker; School Principal Sandra Brown; four kindergarten students, S.L., J.T., R.G., and J.A.; and three parents. The videotape interviews of S.L., J.T., R.G., and portions of the interview of J.A. were admitted into evidence as Respondent's Exhibit A.

The Transcript of Hearing was filed with the Division of Administrative Hearings on May 23, 2003. On Petitioner's Motion for Extension, the time for filing proposed recommended orders was extended from May 30, 2003, to June 6, 2003.

On June 18, 2003, a post-hearing telephone conference was held to discuss concerns regarding the confidentiality of the videotapes of the child witnesses and documents related to Petitioner's teaching contract and Brevard County School Board Bylaws and Policies. Subsequent to the telephone conference, counsel submitted an Order Sealing Video of Child Victims,

entered on June 23, 2003, by a circuit judge in the Eighteenth Judicial Circuit in and for Brevard County, Florida, which is a part of the record in this case and which governs access to the videotapes of the child witnesses which are included with this Recommended Order. The record also includes the documents filed on June 23, 2003, including Article 11 of the Collective Bargaining Agreement, Petitioner's Continuing Contract of Employment, and Brevard County School Board Bylaws and Policies 3139, 3140, and 3210. Both parties timely filed Proposed Recommended Orders which were thoughtfully considered.

#### FINDINGS OF FACT

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

1. Petitioner is a teacher who was employed by Respondent from September 1958 to December 2002. In May 1965, Petitioner and Respondent entered into a Continuing Contract of Employment which continued until her termination. She had taught at Cambridge Elementary School, Cocoa, Florida, from September 1980 until her termination in 2002. Petitioner has a bachelor's of science degree in elementary education and a master's of science degree in reading, K-12. Petitioner's annual performance evaluations over her 44-year teaching career reflect that she was an effective teacher with no indication of the problems of which she stands accused.

2. Respondent operates, controls, and supervises the free public schools of Brevard County, Florida. It has entered into individual and collective agreements with the teachers it employs and publishes bylaws and policies that control the activities of its teaching professionals.

3. School started on August 8, 2002, for the 2002-2003 school year. Historically, Petitioner had taught third grade; this year she was teaching kindergarten for the first time.

4. On August 22, 2002, S.L. and R.G., two of the most active and disruptive children in Petitioner's kindergarten class, were engaged in a crayon fight (throwing crayons at each other).

5. Petitioner removed S.L. from his normal seat and placed him in the "time out" chair, a form of approved discipline. S.L. required assistance in the form of taking him by the hand or arm and leading him to the "time out" chair because he sometimes refused to go as directed. On this occasion, August 22, 2002, Petitioner held S.L. by the arm and shook him as she placed him into the "time out" chair, accidentally causing him to bump his head against a bookcase.

6. When S.L. arrived home from school that day, he tearfully reported the incident to his mother, Y.J. She observed a bump/lump on his head consistent with his story of bumping his head on the bookcase. The following morning,

Friday, August 23, 2002, Y.J. went to Cambridge Elementary and, in the absence or unavailability of the principal, reported the incident to Bernadine Blake, a guidance counselor. Ms. Blake e-mailed Principal Sandra Brown, informing her of Y.J.'s report of the incident. This e-mail was first read by Principal Brown on Tuesday, August 27, 2002.

7. On that day, August 27, 2002, R.G. was involved in a disciplinary incident with Petitioner. As a result of R.G.'s misconduct, Petitioner instructed R.G. to stay behind in the classroom while the other children left the room. Petitioner then removed her sandal and spanked R.G.'s buttocks with the sandal. Even though the children were removed outside the classroom, the incident was observed by a child, J.T.

8. When R.G. was picked up at school that day, he reported the incident to his step-father; later the same afternoon, R.G.'s parents returned to Cambridge Elementary and reported the incident to Principal Brown.

9. On August 27, 2002, a meeting took place among Petitioner, Principal Brown and R.G.'s parents; at that time, Petitioner denied the incident as reported by R.G. and later denied the incident as reported by S.L.

10. On the same day, August 27, 2002, the incident involving R.G. was reported to the Cocoa Police Department.

11. On August 28, 2002, Cocoa Police Department Detective David Baker, an officer specially trained in child abuse investigation, initiated an investigation of both incidents. He interviewed parents, student victims, and student witnesses and arranged to have several children interviewed by the Brevard County Child Protection Team. Most of the child victims and witnesses were interviewed by the Child Protection Team on September 3, 2002; one child witness was interviewed on September 10, 2002.

12. Child Protection Team interviews are conducted in a non-threatening environment by individuals specially trained to elicit information by asking age-appropriate questions designed to elicit responses regarding various forms of child abuse. These interviews take place in a children's playroom at a local hospital and are videotape recorded by hidden cameras.

13. The testimony of the child victims and witnesses preserved on videotape and elicited at the final hearing contained inaccuracies and confusion one would expect of children who were five and six years old. However, each child's testimony was credible considering their age and innocence. On the whole, the testimony of the child victims and witnesses was consistent regarding the occurrence of the incidents giving rise to the Petition For Termination.



14. One child, J.T., reported having been slapped by Petitioner. This report is not considered credible based on the lack of timeliness of the report and lack of corroborating witnesses.

15. As a part of Petitioner's continuing contract with Respondent, she agreed to faithfully observe rules and regulations of Respondent as they related to her teaching responsibilities.

16. Respondent has a rule against corporal punishment of students. Petitioner was aware of the rule against corporal punishment of students.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction of the parties and the subject matter. Section 120.57 and Subsection 231.36(6)(a)2., Florida Statutes (2001).

18. Subsections 230.03(2) and (3), Florida Statutes (2001), read as follows:

(2) SCHOOL BOARD.-In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.

(3) SUPERINTENDENT.-Responsibility for the administration and management of the schools and for the supervision of instruction in the district shall be vested

in the superintendent as the secretary and executive officer of the school board, as provided by law.

19. A district school board is considered the "public employer," as that term is used in Chapter 447, Part II, Florida Statutes, "with respect to all employees of the school district." Subsection 447.203(2), Florida Statutes. As such, it has the right "to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons." Section 447.209, Florida Statutes. Any instructional staff member who is under continuing contract may be suspended or dismissed at any time during the school year for misconduct in office, gross insubordination, or willful neglect as those terms are defined by the State Board of Education. Subsection 231.36(4)(c), Florida Statutes (2001).

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

21. The appropriate standard of proof in a school board dismissal proceeding is preponderance of evidence, unless the collective bargaining agreement covering the bargaining unit of which the employee is a member prescribes a more demanding standard of proof. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995). Neither party here has pointed to or offered evidence of any contractual provision that would require Respondent to satisfy a more strict standard of proof.

22. Because the statute and rules providing grounds for terminating Petitioner's contract are penal in nature, they must be construed in favor of the employee. Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977).

23. When a school board seeks to terminate an employee's contract for cause, it must establish each and every element of the charge. MacMillan v. Nassua County School Board, 629 So. 2d 226 (Fla. 1st DCA 1993).

24. Any disciplinary action taken against the employee may be based only upon the conduct specifically alleged in the written notice of specific charges. Luskin v. Agency for Health Care Administration, 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Department of Insurance, 685 So. 2d 1371,

1372 (Fla. 1st DCA 1996); Klein v. Department of Business and Professional Regulation, 625 So. 2d 1237, 1238 (Fla. 2d DCA 1993); and Delk v. Department of Professional Regulation, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

25. Respondent's order dated January 30, 2003, indicates: "[T]he Respondent is dismissed from his [sic] employment and her continuing contract terminated effective December 11, 2002, for reasons set forth in the attached Petition For Dismissal." The Petition For Dismissal, dated December 6, 2002, lists the following reasons:

3. Respondent should be dismissed from employment with the Brevard County School District and her continuing contract terminated for the following reasons:

(a) In or about August, 2002, Respondent did intentionally strike and hit with her shoe, R.G., a five-year-old student in Respondent's kindergarten class.

(b) In or about August, 2002, Respondent did intentionally strike and slap with her hand the face of J.T., a six-year-old student in Respondent's kindergarten class.

(c) In or about August, 2002, Respondent did intentionally grab and shake by the arm, S.G., a six-year-old student in Respondent's kindergarten class with the result that S.G. fell and struck his head on a bookcase causing a contusion or bump on his head.

4. The actions of Respondent as described above constitute child abuse in violation of Section 827.03(1), Fla. Stat., battery in violation of Section 748.03(1) (a), Fla. Stat., and corporal punishment of a student

in violation of Brevard County School Board Rule 5630.

5. Respondent's actions as described above constitute misconduct in office, gross insubordination and conduct unbecoming a member of the instructional staff of the Brevard County School District.

6. Respondent's actions also exposed the students to conditions harmful to their physical health and safety in violation of The Code of Ethics and The Principles of Professional Conduct of the Education Profession In Florida as set forth in State Board of Education Rule 6B-1.006, F.A.C.

7. Respondent's actions are of such a serious nature as to bring the education profession in disrepute and to seriously impair Respondent's effectiveness as a teacher and constitute just cause for dismissal under Section 231.36(4)(c), Fla. Stat.

26. The allegations in the Petition For Dismissal that Petitioner's actions constitute child abuse and battery, Subsections 827.03(1) and 748.03(1)(a), Florida Statutes, absent evidence of criminal convictions, have little bearing on this administrative proceeding. No evidence of convictions was presented.

27. Respondent alleges that Petitioner's actions constitute "corporal punishment of a student in violation of Brevard County School Board Rule 5630." Brevard County School Board Bylaw and Policy 5630 reads as follows:

## Corporal Punishment

A teacher or other member of the certified staff shall assume such authority for the control of students who are assigned to him/her by the principal or designee and shall keep good order in the classroom. The use of corporal punishment is prohibited. Alternative disciplinary procedures, which include timeout, peer review, or other forms of positive reinforcement should be used to bring about appropriate student classroom behavior.

Professional staff as well as classified staff, within the scope of their employment, may use and apply reasonable force and restraint to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon or within the control of the student, in self-defense, or for the protection of persons or property.

28. Petitioner acknowledged being aware of the prohibition against corporal punishment (Brevard County School Board Bylaw and Policy 5630). Clearly, Petitioner's actions in disciplining the two children in question rise to the definition of corporal punishment.

29. Petitioner's Continuing Contract of Employment for Instructional and Administrative or Supervisory Personnel of Public Schools reads as follows:

3. The Teacher hereby accepts the above described appointment and agrees to perform in a thorough and professional manner all of the duties of the position for which he is employed and to observe and enforce faithfully the rules and regulations lawfully prescribed by legally constituted

school authorities insofar as such rules and regulations may be applicable to the position held by him.

\* \* \*

9. The power of the County Board to suspend or dismiss the Teacher for cause, as provided by law, is in no manner impaired or effected by this contract.

30. Subsection 231.36(4)(c), Florida Statutes (2001), reads as follows:

(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. Whenever such charges are made against any such employee of the district school board, the district school board may suspend such person without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid. In cases of suspension by the district school board or by the superintendent of schools, the district school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the district school board and such employee is discharged, his or her contract of employment shall be thereby canceled. Any such decision adverse to the

employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the district school board.

31. Respondent's Petition For Termination, in paragraph 5, alleges that Petitioner's actions "constitute misconduct in office, gross insubordination, and conduct unbecoming a member of the instructional staff of the Brevard County school District." Two of these offenses are found as bases of suspension or dismissal in Subsection 231.36(4)(c), Florida Statutes (2001), cited immediately above.

32. The terms "misconduct in office" and "gross insubordination" are not defined in Subsection 231.36(4)(c), Florida Statutes (2001); these terms are defined in Rule 6B-4.009, 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, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

(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.

33. The "Code of Ethics of the Education Profession," Rule 6B-1.001, Florida Administrative Code, reads as follows:



(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(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.

34. The "Principles of Professional Conduct for the Education Profession in Florida," Rule 6B-1.006, Florida Administrative Code, reads as follows:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(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 and/or physical health and/or safety.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

(f) Shall not intentionally violate or deny a student's legal rights.

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

(h) Shall not exploit a relationship with a student for personal gain or advantage.

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

(4) Obligation to the public requires that the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

(c) Shall not use institutional privileges for personal gain or advantage.

(d) Shall accept no gratuity, gift, or favor that might influence professional judgment.

(e) Shall offer no gratuity, gift, or favor to obtain special advantages.

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

(b) Shall not on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition if otherwise qualified, or social and family background deny to a colleague professional benefits or advantages or participation in any professional organization.

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(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, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

(g) Shall not misrepresent one's own professional qualifications.

(h) Shall not submit fraudulent information on any document in connection with professional activities.

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

(j) Shall not withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

(k) Shall provide upon the request of the certificated individual a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

(l) Shall not assist entry into or continuance in the profession of any person known to be unqualified in accordance with these Principles of Professional Conduct for the Education Profession in Florida and other applicable Florida Statutes and State Board of Education Rules.

(m) Shall self-report within forty-eight (48) hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be

admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment. When handling sealed and expunged records disclosed under this rule, school districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.

(n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(o) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

(p) Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

(q) Shall, as the supervising administrator, cooperate with the Education Practices Commission in monitoring the probation of a subordinate.

35. The offense of "misconduct in office" has two elements: first, violation of the "Code of Ethics of the Education Profession," Rule 6B-1.001, and the "Principles of Professional Conduct for the Education Profession in Florida,"

Rule 6B-1.006, Florida Administrative Code; and, second, that violation of the aforementioned Code of Ethics and Code of Professional Conduct was so serious as to impair the individual's effectiveness in the school system. Without discussing whether Petitioner violated the Code of Ethics or the Code of Professional Conduct, no evidence was presented that addressed whether Petitioner's effectiveness as a teacher had been impaired. Therefore, no findings of fact have been made regarding this element of the proof of "misconduct in office." Respondent has failed to carry its burden of proof that Petitioner's actions were so serious that her effectiveness as a member of the instructional staff was impaired, and neither the nature of the two offenses nor the circumstances in which they were committed can reasonably support an inference that Petitioner's effectiveness as a teacher was impaired. While it is acknowledged that the presentation of specific evidence to support the allegation of impaired teaching effectiveness is not absolutely necessary, see, for example, Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000), nothing in the evidence presented leads the undersigned Administrative Law Judge to conclude that Petitioner's teaching effectiveness is impaired by the two reported incidents.

36. The offense of "gross insubordination" is defined as a constant or continuing intentional refusal to obey a direct

order, reasonable in nature, and given by and with proper authority. No evidence was offered that supported the contention that the conduct alleged in the Petition For Termination was insubordinate. Two occasions of excessive discipline do not give rise to the suggestion that Petitioner constantly refused to obey reasonable, direct orders. In order to constitute "gross insubordination" or "willful neglect," a teacher's conduct must be more than an isolated incident of refusing to comply with an order; indeed, it must be on a constant or continuing basis. Smith v. School Board of Leon County, 405 So. 2d 183, 185 (Fla. 1st DCA 1981). "Constant" has been defined as continually recurring and persistent. Rutan v. Pasco County School Board, 435 So. 2d 399, 400 (Fla. 2d DCA 1983). An examination of Petitioner's performance evaluations reflect the opposite of a grossly insubordinate or willfully negligent teacher. These performance evaluations show 44 years of exceptional performance as an elementary school teacher.

37. Paragraph 6 of the Petition For Termination alleges that "Respondent's actions also exposed the students to conditions harmful to the physical health and safety" in violation of the Code of Ethics and Principles of Professional Conduct. Subsection 3(a) of the Principles of Professional Conduct for the Education Profession in Florida, Rule 6B-1.006, Florida Administrative Code, reads as follows:

Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

38. Petitioner's conduct in striking a student on his buttocks with her sandal and shaking another student and placing him in the "time out" chair in such a manner as to accidentally cause him to bump his head violates Rule 6B-1.006(3)(a), Florida Administrative Code, in that such conduct fails to protect the students from conditions harmful to their physical health and safety.

39. While neither child suffered any lasting impairment to his physical health, Petitioner should have reasonably foreseen that an unintended consequence of her conduct could cause physical harm. As such, her conduct failed to protect her students from harm to their physical health and safety.

#### RECOMMENDATION

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

RECOMMENDED that Respondent enter a final order finding that Petitioner inappropriately utilized corporal punishment in the discipline of two students, endangering their physical health and safety; that she be suspended from employment without pay for seven months beginning December 11, 2002; and that she be placed on 24 months' probation upon her return to teaching.



DONE AND ENTERED this 3rd day of July, 2003, in  
Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
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 3rd day of July, 2003.

COPIES FURNISHED:

Alan S. Diamond, Esquire  
Amari & Theriac, P.A.  
96 Willard Street, Suite 302  
Cocoa, Florida 32922

Adrienne E. Trent, Esquire  
700 North Wickham Road, Suite 107  
Melbourne, Florida 32935

Honorable Jim Horne  
Commissioner of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel  
Department of Education  
325 West Gaines Street  
1244 Turlington Building  
Tallahassee, Florida 32399-0400

Dr. Richard A. DiPatri, Superintendent  
Brevard County School Board  
2700 Judge Fran Jamieson Way  
Viera, Florida 32940-6699

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.