

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 08-1495
)
 HANNIBAL ROSA,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on September 18, 2008, by video teleconference between Tallahassee and Miami, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Janeen L. Richard, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether Petitioner has just cause to terminate Respondent's employment based on the alleged performance deficiencies.

PRELIMINARY STATEMENT

At its regularly scheduled meeting on March 12, 2008, Petitioner took action to suspend Respondent's employment as a classroom teacher with a professional services contract and to initiate proceeding to terminate that employment. The recommendation for the action made by the Superintendent of Schools to Petitioner was based on ". . . just cause, including but not limited to: failure to correct noted performance deficiencies within the 90 day performance probation. This action is taken in accordance with Sections 1001.32(2), 1012.22(1)(f), 1012.33, 1012.34, and 447.209, Florida Statutes."

During the 2007-2008 school year, Respondent was assigned to teach first grade class at Caribbean Elementary School (Caribbean). Caribbean has been designated as a Reading First School.

Respondent timely requested a formal administrative hearing to challenge the Petitioner's proposed action, the matter was referred to DOAH, and this proceeding followed.

On April 23, 2008, Petitioner filed its Notice of Specific Charges which set forth factual allegations based on observations of Respondent's classroom performance pursuant to the Professional Assessment and Comprehensive Evaluation System (PACES), deficiencies noted during those observations, and Respondent's alleged failure to correct the observed

deficiencies. The Notice of Specific Charges contained One Count based on his failure to correct noted deficiencies during his 90-day performance probation.

The Dynamic Indicators of Basic Literacy Skills (DIBELS) is administered to Florida students in kindergarten through third grade in Reading First schools. DIBELS was designed to help assess the risk level a student may have for developing later difficulties in reading.

On May 28, 2008, Petitioner filed an Amended Notice of Specific Charges which contained allegations as to the performance on the DIBELS testing by the students assigned to Respondent's classroom. Based on those allegations, Petitioner added an allegation that the poor performance by the students in Respondent's class on DIBELS constituted grounds to terminate his employment.

At the final hearing, Petitioner presented the testimony of Monica Maza (Assistant Principal of Caribbean), Christina Guerra (Principal of Caribbean), Dr. Donna Riley (Administrative Director of Leadership Development), Pauline Ward (Executive Director of Reading First), and Joyce Castro (District Director of the Office of Professional Standards). Petitioner presented 49 sequentially numbered Exhibits, each of which was admitted into evidence. Respondent presented no testimony and offered no exhibits.

A Transcript of the proceedings was filed on October 21, 2008. Each party filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. At all times material hereto, Petitioner employed Respondent as a classroom teacher pursuant to a professional service contract. During the 2007-08 school year, Respondent taught a first grade class at Caribbean Elementary School.

3. Teachers employed by Petitioner are evaluated pursuant to an evaluation system named Professional Assessment and Comprehensive Evaluation Systems (PACES), which was adopted through the collective bargaining process. PACES has been approved by the Florida Department of Education and complies with the requirements set forth in Section 1012.34, Florida Statutes (2008).

PACES contains the following seven DOMAINS:¹

- I. Planning for Teaching and Learning.
- II. Managing the Learning Environment.
- III. Teacher/Learner Relationships.
- IV. Enhancing and Enabling Learning.
- V. Enabling Thinking.
- VI. Classroom-Based Assessment of Learning.
- VII. Professional Responsibilities.

4. Each Domain contains Indicators and Components, which are standards which the evaluator must utilize in completing the evaluation of a teacher.

5. PACES observers must be school administrators who have been trained to conduct PACES observations. Monica Maza and Christina Guerra were the PACES observers in this case. These observers have had extensive training in the standards to be observed and evaluated in teacher performance and student learning. Ms. Maza and Ms. Guerra are authorized and well-qualified to perform PACES observations.

6. If, during an observation, an administrator finds that a teacher (the teacher) is performing below standards, that initial observation is deemed to be not of record (initial observation). The administrator promptly meets with the teacher, goes over the observation, makes suggestions for improvement, and notifies the teacher that he or she will be formally observed within one month. The administrator offers a Professional Growth Team (PGT) to assist the teacher achieve the desired performance improvement. Members of the PGT are individuals (usually fellow teachers) who have been trained in PACES and are authorized to give support and assistance to the teacher.

7. The same administrator who conducted the initial observation must conduct the next observation, which is referred to as the "kickoff observation." The kickoff observation is of record. If this observation is below performance standards, a Conference for the Record (CFR) is held with the teacher and the teacher is put on a Professional Improvement Plan (PIP). The performance probation period of 90 calendar days (Performance Probation Period) begins the day after the PIP is given to the teacher.

8. There can be as many as four official observations of the teacher during the Performance Probation Period. A final observation is conducted after the conclusion of the 90-day Performance Probation Period (the Confirmatory Observation) to determine whether the teacher has corrected the deficiencies that had been identified by the prior official observations. Typically, if the administrator conducting the Confirmatory Observation determines, by utilizing the PACES evaluation criteria, that the teacher has not met standards, the school administrators recommend to the Superintendent of Schools that the teacher's employment contract be terminated.

9. Monica Maza, an assistant principal at Caribbean, conducted the initial observation (the observation that is not of record) on September 7, 2007. Ms. Maza completed a PACES Observation Form (Petitioner's Exhibit 3), which found

Respondent to be below standards in the following Domains: II, IV, V, and VI. Ms. Maza's observation of Respondent on September 7, 2007, was appropriate and fairly assessed Respondent's performance. Petitioner's Exhibit 3 accurately reflects Ms. Maza's observations on September 7, 2007.

10. Ms. Maza met with Respondent on September 12, 2007. During that meeting, Ms. Maza reviewed the observation with Respondent and explained the reasons for the deficiencies she noted. Ms. Maza advised that she would return to do a follow-up observation. At the meeting of September 12, 2007, Ms. Maza explained to Respondent the purpose of a PGT and offered Respondent the services of a PGT, which he accepted. On September 13, 2007, Ms. Maza identified the members of the PGT.

11. Between September 13 and October 17, 2007, the PGT provided appropriate assistance to Respondent.

12. Ms. Maza conducted the kickoff observation on October 17, 2007. Ms. Maza completed a PACES Observation Form (Petitioner's Exhibit 8), which found Respondent to be below standards in the following Domains: II, III, IV, V, and VI. Ms. Maza's observation of Respondent on October 17, 2007, was appropriate and fairly assessed Respondent's performance. Petitioner's Exhibit 8 accurately reflects Ms. Maza's observations on October 17, 2007.

13. On October 24, 2007, Ms. Guerra and Ms. Maza held a CFR with Respondent to address the areas of performance observed to be unsatisfactory by Ms. Maza on October 17, advised that he was being placed on a 90-day Performance Probation Period, explained to him that he would have to correct his deficiencies prior to the conclusion of the Performance Probation Period, and provided him with a PIP (Petitioner's Exhibit 10). The PIP provided Respondent with specific information as to his observed deficiencies and cited reference material to assist him in correcting his deficiencies.

14. The PIP provided Respondent on October 24, 2007, was appropriately drafted and complied with the requirements of PACES.

15. Respondent's 90-day Performance Probation Period began October 25, 2007, the day after he received the PIP. Respondent was provided additional assistance through his PGT to assist him to correct the noted deficiencies. The provision of that assistance complied with the requirements of PACES.

16. On November 19, 2007, Ms. Guerra formally observed Respondent in his classroom over a period of two hours. Ms. Guerra completed a PACES Observation Form (Petitioner's Exhibit 20), which found Respondent to be below standards in the following Domains: II, V, and VI. Ms. Guerra's observation of Respondent on November 19, 2007, was appropriate and fairly

assessed Respondent's performance. Petitioner's Exhibit 20 accurately reflects Ms. Guerra's observations on November 19, 2007.

17. Ms. Guerra met with Respondent on November 30, 2007, to go over her observation of November 19 and to issue another PIP (Petitioner's Exhibit 22). The PIP of November 30 was consistent with the requirements of PACES and was designed to assist Respondent correct the observed deficiencies.

18. On January 8, 2008, Ms. Maza formally observed Respondent in his classroom over a period of 121 minutes. Ms. Maza completed a PACES Observation Form (Petitioner's Exhibit 24), which found Respondent to be below standards in the following Domains: II, V, and VI. Ms. Maza's observation of Respondent on January 8, 2008, was appropriate and fairly assessed Respondent's performance. As with prior observations, Respondent was not in control of his classroom. Respondent failed to re-direct inappropriately off-task students who were not engaged in learning. Petitioner's Exhibit 24 accurately reflects Ms. Maza's observations on January 8, 2008.

19. On January 14, 2008, Ms. Maza met with Respondent to go over her observation of January 8, 2008, and to issue another PIP (Petitioner's Exhibit 26). The PIP of January 14 was consistent with the requirements of PACES and was designed to assist Respondent correct the observed deficiencies.

20. Because the observation on January 8, 2008, reflected that Respondent's performance continued to be unsatisfactory, a final observation was conducted after the expiration of his 90-day Performance Probation Period. Ms Guerra conducted that observation (the confirmatory observation) on February 15, 2008. Ms. Guerra completed a PACES Observation Form (Petitioner's Exhibit 29), which found Respondent to be below standards in the following Domains: II, V, and VI. Ms. Guerra's observation of Respondent on February 15 was appropriate and fairly assessed Respondent's performance. Petitioner's Exhibit 29 accurately reflects Ms. Guerra's observations on February 15, 2008.

21. Ms Guerra notified Respondent on February 15, 2008, that he had not satisfactorily corrected his noted deficiencies during his 90-day Performance Probation Period and that she was going to recommend to the Superintendent of Schools that Respondent's employment be terminated.

22. Ms. Guerra forwarded her recommendation to the Regional Superintendent on February 15, 2008, by a memorandum (Petitioner's exhibit 48) which provided, in relevant part, as follows:.

Pursuant to Section 1012.34, Florida Statutes, the above-named employee was placed on a 90-Calendar Day Performance Probation commencing October 25, 2007. During the probationary period, the employee was provided assistance. The employee has not satisfactorily corrected the noted

performance deficiencies within the provided timeframe. Therefore, I am recommending that the employee's contract be terminated.

23. Ms. Guerra's recommendation was also forwarded to the Office of Professional Standards (OPS), which approved the recommendation.

24. On February 26, 2008, a meeting was held in the Office of Professional Standards which included appropriate representatives of the School District, Respondent, and Respondent's representative from the United Teachers of Dade. A memorandum generated as a consequence of the meeting (Petitioner's Exhibit 34) reflected that Respondent was advised he would be ". . . recommended for dismissal on the following charges: failure to correct noted performance deficiencies."

25. On February 27, 2008, Maria Teresa Rojas, the Assistant Superintendent of Schools, notified Respondent by letter (Petitioner's Exhibit 35) of the following recommendation by the Superintendent of Schools:

This is to notify you that the Superintendent of Schools will be recommending to the School Board of Miami-Dade County, Florida, at its scheduled meeting of March 12, 2008, that the School Board suspend and initiate dismissal proceedings against you from your current position as Teacher at Caribbean Elementary School, effective at the close of the workday, March 12, 2008, for just cause, including, but not limited to: failure to correct noted performance deficiencies within the 90 calendar day performance

probation. This action is taken in accordance with Section 1001.32(2), 1012.22(1)(f), 1012.33, 1012.34 and 447.209, Florida Statutes.

If you wish to contest your suspension and dismissal, you must request in writing within 15 calendar days of the receipt of the notice of the Board action, in which case, formal charges will be filed and a hearing will be held before an administrative law judge.

If the School Board accepts (or approves) the Superintendent's recommendation, you will be notified of the School Board's action.

26. The School Board approved the Superintendent's recommendation at its meeting of March 12, 2008. Respondent timely requested a formal administrative hearing, the matter was referred to DOAH, and this proceeding followed. On April 23, 2008, Petitioner filed its Notice of Specific Charges which contained one count based on Respondent's alleged failure to correct noted deficiencies during his Probation Period.

27. On May 28, 2008, Petitioner filed its Amended Notice of Specific Charges, which added the following factual allegations in paragraphs 13 and 14:

13. The students assigned to Respondent's classroom were individually tested on their early literacy development. The Dynamic Indicators of Basic Literacy Skills (DIBELS) are administered to Florida students in kindergarten through third grade in Reading First schools to determine risk levels for later difficulties in reading. Caribbean Elementary is a Reading First School.

14. Early in the 2007-2008 school year, approximately fifty-three percent (53%) of

Respondent's first grade students were classified as low-risk. Respondent's students were tested a second time on or about January 24, 2008. The number of low-risk students decreased to 22%, a decline of thirty-one (31) percentage points. At the same time, the number of high-risk students increased from 24% to 33%.

28. The Amended Notice of Specific Charges filed May 28, 2008, added the following as grounds for the termination of Respondent's employment in paragraph 22:

22. The students assigned to Respondent's classroom performed poorly when administered the DIBELS test.

29. Petitioner proved the factual allegations set forth in paragraph 13 of the Amended Notice of Specific Charges. The allegations contained in paragraph 14 of the Amended Notice of Specific Charges will be discussed below.

30. DIBELS has been approved by the Department of Education² and is used throughout the country. The administration of DIBELS is required by the Florida Department of Education in Reading First schools.

31. DIBELS is administered one on one to each student by members of what was referred to as a SWAT team who are not the student's regular teacher. DIBELS consists of subtests, which are a minute to three minutes in length.

32. Two assessments of DIBELS are at issue in this proceeding. The first, conducted in September 2007, consisted

of four subtests referred to, respectively, as "Letter Naming Fluency", "Phoneme Segmentation Fluency," "Nonsense Word Fluency", and "DIBELS Oral Reading Fluency".

33. Pauline Wood, Petitioner's Executive Director of Reading First, in reference to Petitioner's Exhibit 38, described the four subtests in response to questions from Petitioner's counsel (beginning on page 99 of the Transcript):

Q. Now, I just want to draw your attention to the four categories, and if you can just explain to us what the categories are?

A. Those are on the four subtests that the children were administered for the first assessment. The first one is Letter Naming Fluency.

Q. What is that? I'm sorry.

A. Children are given a sheet of paper, a probe, that has both upper-case and lower-case letters on it and in one minute's time, they're asked to identify orally the letters.

Q. The next category?

A. The Phoneme Segmentation Fluency. The students are given a word, for example, Sam, and they're asked to segment each of the phonemes. The Ss-Ah-Mm part, and that's exactly what we're expecting children to do at this point.

And, again, it's a one minute probe.

Q. And the next category?

A. Nonsense Word Fluency is a phonics decoding assessment. It's a consonant/vowel/consonant word and we're determining whether students can decode short vowel sounds.

There are words like lut, L-U-T, which is a nonsense word, not a real word, and they're asked to decode it.

Q. And the fourth category?

A. The DIBELS Oral Reading Fluency is a

series of three passages that are written on grade level. The students are asked to read each of the passages one at a time. Each of them is one minute timed probe and the correct words per minute are scored.

34. The second DIBELS test was administered to Respondent's class in January 2008. Consistent with the testing protocol, the Letter Naming Fluency subtest was not administered. The Phoneme Segmentation Fluency, Nonsense Word Fluency, and the DIBELS Oral Reading Fluency subtests were administered.

35. Ms. Ward made comparisons of the scores of Respondent's class on the first administration of DIBELS in September and the second administration of DIBELS in January for the subtests of Phoneme Segmentation Fluency, Nonsense Word Fluency, and the DIBELS Oral Reading Fluency. Ms. Ward's analysis was performed in April or May 2008.

36. Her analysis reflected that, as compared to the two administrations of DIBELS to Respondent's class, a greater percentage of the class fell into the high risk category and a lower percentage of the class fell into the low risk category. Ms. Ward's analysis demonstrated that Respondent's students did not perform as well on the January 2008 administration of DIBELS when compared to the September 2007 administration of DIBELS.

37. Petitioner's Exhibit 49 is a list of the students assigned to Respondent's class who took the DIBELS test in

September and those who took it in January. An examination of that list reflects that 15 of Respondent's students took both the first and second DIBELS test. Three of the students who had taken the first test did not take the second test because they had been removed from the class. Four students who had not taken the first test took the second test for the first time. As a consequence, the first test was administered to 17 students and the second test was administered to 18 students. The pie charts prepared by Ms. Ward reflect the overall performance of the 17 students who took the first test as compared to the overall performance of the 18 students who took the second test. Her analysis makes no adjustment for the above-described changes in the constitution of Respondent's class. While it is clear that there was a decline in performance by Respondent's class on the second administration of DIBELS, the undersigned declines to adopt the percentages reflected on the pie charts because of the failure to account for the changes in Respondent's class between the first and second administration of DIBELS.

38. When OPS evaluated the recommendation from Ms. Guerra that Respondent's employment be terminated, OPS had the results of DIBELS tests administered to Respondent's class in September 2007 and January 2008. OPS did not have Ms. Ward's analysis of those scores. Joyce Castro is the District Director of Respondent's Office of Professional Standards. Ms. Castro's

testimony established that the OPS considered the DIBELS scores discussed above as demonstrating that Respondent's students were making unsatisfactory progress.

39. The Stanford Achievement Test is a norm-referenced test given in March of each school year to first and second graders in Reading First schools. Norm-referenced scoring compares a student's score to scores of same grade students nationwide.

40. Like the Florida Comprehensive Achievement Test (FCAT) administered to older students, the Stanford Achievement Test is an end of the year measurement to assess a student's progress, or lack thereof, during the school year.

41. The FCAT is a criterion referenced test, which has certain benchmarks that students must meet and measures the student's progress toward meeting those benchmarks. In addition, third, fourth, and fifth grade students also take what was referred to as the Norm Referenced Test.

42. Ms. Ward was the only witness who testified as to the purpose of DIBELS. She described DIBELS as being a tool to help teachers target their instruction. She responded as follows to the following question from Respondent's attorney at page 116, beginning at line 17 of the transcript:

Q. DIBELS is not designed as an assessment tool to determine whether the teacher has succeeded or failed, vis-à-vis

the FCAT or any of these other norm-referenced tests, is that correct?

A. I don't think I have the expertise to answer that question, to tell you the truth.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the subject matter parties to this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008). Because the termination proceedings began in 2007, the relevant provisions of Sections 1008.22 and 1012.34, Florida Statutes (2007,) apply to this proceeding.

44. Respondent argues, essentially, that the students' performance on DIBELS should not be considered because that was not a part of the recommendations made by the principal, made to the superintendent, or to the school board. Respondent's argument is rejected because this is a de novo proceeding designed to formulate agency action as to the matter at issue. See Hamilton County Commissioners v. Department of Environmental Regulation, 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991); Young v. Department of Community Affairs, 625 So. 2d 831, 833 (Fla. 1993); and McDonald v. Department of Banking and Finance, 346 So. 2d 569, 584 (Fla. 1st DCA 1977). Petitioner's Amended Notice of Specific Charges provided Respondent with sufficient notice that it was relying on the students' performance on the

DIBELS testing as part of its grounds for the termination of Respondent's employment.

45. Section 1012.34(3), Florida Statutes (2007), provides, in relevant part, as follows:

(3) The assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. Pursuant to this section, a school district's performance assessment is not limited to basing unsatisfactory performance of instructional personnel and school administrators upon student performance, but may include other criteria approved to assess instructional personnel and school administrators' performance, or any combination of student performance and other approved criteria. The procedures must comply with, but are not limited to, the following requirements:

(a) An assessment must be conducted for each employee at least once a year. The assessment must be based upon sound educational principles and contemporary research in effective educational practices. The assessment must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22 and may consider results of peer reviews in evaluating the employee's performance. Student performance must be measured by state assessments required under s. 1008.22 and by local assessments for subjects and grade levels not measured by the state assessment program. The assessment criteria must include, but are not limited to, indicators that relate to the following:

1. Performance of students.
2. Ability to maintain appropriate discipline.
3. Knowledge of subject matter. The

district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.

4. Ability to plan and deliver instruction and the use of technology in the classroom.

5. Ability to evaluate instructional needs.

6. Ability to establish and maintain a positive collaborative relationship with students' families to increase student achievement.

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

46. Sherrod v. Palm Beach County School Board, 963 So. 2d 251 (Fla. 4th DCA 2006), and Young v. Palm Beach County School Board, 968 So. 2d 38 (Fla. 4th DCA 2006) construed the 2003 version of Section 1012.34, Florida Statutes, which did not contain the following underscored language, which was added by Chapter 2004-295, § 11, at 16, Laws of Florida:

(3) The assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. Pursuant to this section, a school district's performance assessment is not limited to basing unsatisfactory performance of instructional personnel and school administrators upon student performance, but may include other criteria approved to assess instructional personnel and school administrators' performance, or any combination of student performance and other approved criteria. The procedures must comply with, but are not limited to, the following requirements:

47. The court in Sherrod, supra, reversed a school board's final order that had terminated a teacher's employment based upon such factors as the teacher's failure to timely post grades, failure to provide instruction consistent with suggested time lines, failure to enter grades properly into the computer system, and failure to exercise proper control over his students. The ALJ found those reasons to be of sufficient significance to justify a performance-based termination, despite the absence of evidence as to the performance of the teacher's students on standardized tests.

48. The court in Sherrod, supra at 251, focused on the following language of Section 1012.34(3), Florida Statutes (2003), in reversing the teacher's termination: "[t]he assessment procedure for instructional personnel . . . must be primarily based on the performance of students assigned to their classrooms" The court also focused on the following language of Section 1012.34(3)(a), Florida Statutes (2003), providing that the annual assessment " . . . must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22 and may consider results of peer reviews in evaluating the employees' performance."

49. The court in Sherrod, supra at 252, specifically noted that the school board had not made any use of the data described in Section 1012.34(3)(a), Florida Statutes (2003). The court in Sherrod, supra at 253, unequivocally stated that the statute requires that “. . . the term primary in the statute unmistakably makes student performance on annual tests the first consideration in any teacher evaluation. And because the requirement of 90 calendar days for compliance should be given effect, the issue of termination may have to stretch over two school years.” (Emphasis in the original).

50. The court in Young, supra, followed Sherrod on facts very similar to those at issue in this proceeding and reversed the termination of a teacher's employment. In Young the school board discharged the teacher for his failure to correct unsatisfactory performance as observed by his principal, but had not used data pertaining to student performance based on state or local assessments. In Young, supra at 39, the court observed:

Regardless of the good intentions of the School Board in relying on what it felt were suitable criteria to evaluate teacher performance by depending on an assessment procedure not primarily based on student performance as measured by state FCAT tests or local assessments, the School Board failed to follow the applicable law. . . .

51. Petitioner correctly argues that the language added to Section 1012.34, Florida Statutes, by Chapter 2004-295, § 11, at 16, Laws of Florida, affords more flexibility to school boards in terminating a teacher's contract. That added language does not, however, change the requirement that the assessment of a teacher's performance be ". . . primarily based on the performance of students assigned to their classrooms . . .," nor does it eliminate the requirement that the assessment ". . . must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22. . . ."

52. Section 1008.22, Florida Statutes (2007), provides as follows in subsection (1):

(1) PURPOSE.--The primary purposes of the student assessment program are to provide information needed to improve the public schools by enhancing the learning gains of all students and to inform parents of the educational progress of their public school children. The program must be designed to:

(a) Assess the annual learning gains of each student toward achieving the Sunshine State Standards appropriate for the student's grade level.

(b) Provide data for making decisions regarding school accountability and recognition.

(c) Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school with a standard or special high school diploma.

(d) Assess how well educational goals and curricular standards are met at the school, district, and state levels.

(e) Provide information to aid in the evaluation and development of educational programs and policies.

(f) Provide information on the performance of Florida students compared with that of other students across the United States.

53. While DIBELS arguably promotes some of the goals of Section 1008.22, Florida Statutes (2007), Petitioner failed to establish that DIBELS is an annual assessment instrument as specified in that statute. DIBELS, as explained by Ms. Ward, is a tool to identify a student's problem area(s) in reading, which helps the teacher target his or her instruction to the student. Moreover, it is clear that Petitioner is relying primarily on the PACES evaluations, and Respondent's failure to correct the noted deficiencies. It cannot be said that Petitioner is relying primarily on the performances by Respondent's class on the two administrations of DIBELS in acting to terminate Respondent's employment.

54. In applying Sherrod and Young, supra, the undersigned is constrained to conclude that the provisions of Section 1012.34(a), Florida Statutes (2007), when read in conjunction with Section 1008.22, Florida Statutes (2007), required Petitioner to assess Respondent's performance primarily based on the performance of the students assigned to his classroom

utilizing an annual assessment instrument required by Section 1008.22, Florida Statutes (2007, which, for Respondent's first grade class at Caribbean, would be the Stanford Achievement Test.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that Petitioner enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order reinstate Respondent to his position with full back pay and benefits.

DONE AND ENTERED this 16th day of December, 2008, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
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 16th day of December, 2008.

ENDNOTES

^{1/} Petitioner's Exhibit 45 is the PACES manual which sets forth the Seven Domains, Indicators, and Components. According to Ms. Riley, the seventh Domain, styled Professional Responsibilities, was added in 2002. The assessment forms used by the evaluators for the evaluations that are at issue in this proceeding do not contain the seventh Domain and appear to be on forms that pre-date the adoption of the seventh Domain. The use of the outdated forms has had no bearing on the conclusions and recommendations set forth in this Recommended Order.

^{2/} This finding is based on the testimony of Ms. Ward. It is not clear whether she was referring to the United States Department of Education or the Florida Department of Education. The distinction is immaterial to the findings and conclusions set forth in this Recommended Order.

COPIES FURNISHED:

Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

Janeen L. Richard, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Dr. Eric J. Smith
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Alberto M. Carvalho, Superintendent
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 912
Miami, Florida 33132

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.