

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-2703
	)	
ALENA HUNT,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 15 and 16, 2009, in Jacksonville, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David J. D'Agata, Esquire  
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For Respondent: David A. Hertz, Esquire  
Duval Teachers United  
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STATEMENT OF THE ISSUES

The issues in this matter are as follows: (a) whether Petitioner followed all procedural requirements before deciding to terminate Respondent's employment as a teacher; and

b) whether Petitioner properly determined that Respondent's employment as a teacher should be terminated.

PRELIMINARY STATEMENT

On May 14, 2008, Mr. Ed Pratt-Dannals, Superintendent of Duval County Public Schools, issued Respondent Alena Hunt (Respondent) a Notice of Discharge as a teacher based on professional incompetence as defined at Section 4(e) of the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941). The notice referenced Respondent's consecutive unsatisfactory evaluations from two different principals while she taught at two different schools during school years 2006-2007 and 2007-2008.

Upon receipt of the notice, Respondent timely requested an administrative hearing to contest the termination of her employment. On June 6, 2008, Petitioner Duval County School Board (Petitioner) referred the case to the Division of Administrative Hearings. A subsequent Notice of Hearing dated June 17, 2008, scheduled the hearing for September 4, 2008.

On August 26, 2008, Petitioner filed an Unopposed Motion for Continuance. On August 29, 2008, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing for October 23, 2008.

On October 9, 2008, Petitioner filed an Unopposed Motion for Continuance. On October 14, 2008, the undersigned issued an

Order Granting Continuance and Re-scheduling Hearing for January 15 and 16, 2009.

At the hearing, Petitioner presented the testimony of four witnesses. Petitioner offered 28 exhibits that were accepted as evidence.

Respondent testified on her own behalf. Respondent offered no exhibits into evidence.

At the conclusion of the hearing, the parties agreed to file proposed recommended orders within 10 days of the transcript being filed. The transcript was filed on January 28, 2009, making the proposed recommended orders due on or before February 9, 2009. By Order dated February 16, 2009, Petitioner was granted an extension of time up to February 20, 2009, to file its proposed order.

Respondent filed a proposed order on February 9, 2009. Petitioner filed its proposed order on February 20, 2009.

#### FINDINGS OF FACT

1. In 1985, Respondent received her Florida Teacher Certification, qualifying her to teach elementary education, Grades 1-6. She continues to hold that certification.

2. Respondent worked as a substitute teacher in Petitioner's elementary, middle, and high schools for 13 years before she was hired as a full-time teacher in 1998. Thereafter, Respondent taught the following classes at the

following schools: (a) from 1999-2003, "literacy" and language arts to sixth and seventh graders at Paxon Middle School; (b) from 2003-2004, third graders at John E. Ford Elementary; (c) from 2004-2006, first graders at Lake Lucina Elementary (Lake Lucina); (d) from 2006-2007, first graders at Arlington Heights Elementary (Arlington Heights); and (e) from 2007-2008, fourth graders at Sabal Palm Elementary (Sabal Palm).

3. Throughout her tenure as a full-time teacher, school principals evaluated Respondent's performance on an annual basis. During school years 2006-2007 and 2007-2008, Petitioner used the Teacher Assessment System ("TAS") as the primary method to evaluate Respondent's teaching ability.

4. The TAS measures teaching performance based on nine different "Competencies." These Competencies, listed in the 2006-2007 and 2007-2008 versions of the TAS include the following: (a) Promotes student growth and performance; (b) Evaluates instructional needs of students; (c) Plans and delivers effective instruction; (d) Shows knowledge of subject matter; (e) Utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline; (f) Shows sensitivity to student needs by maintaining a positive school environment; (g) Communicates with parents; (h) Pursues professional growth; and (i) Demonstrates professional behaviors.

5. Under the TAS, a school administrator (usually the principal) evaluates teachers based on three scheduled classroom observations. During the observations, the principal uses the Teacher Assessment Instrument ("TAI") to collect data and identify "indicators" associated with each Competency. In evaluating a teacher's overall performance, principals may also consider informal, unannounced observations.

6. The Classroom Observation Instrument ("COI") is an earlier version of the TAI. The COI contains the same Competencies as the TAI, though they appear in different order.

7. The "Evaluation of Professional Growth of Teacher" is a summative evaluation form used during the final annual evaluation conference. The form reflects the teacher's final rating as to each Competency and the principal's overall performance rating for the school year.

8. The TAS procedures provide as follows in pertinent part:

TAS Procedures-Principal/Supervisor

PLEASE NOTE: One purpose of the TAS is to assist the employee to improve performance. Performance problems are best addressed early. If an informal observation or classroom visit indicates possible performance problems then the principal should immediately arrange to initiate a formal classroom observation using the TAI.

1. Conduct an initial orientation for all instructional employees to be evaluated

by the TAS. This should occur during pre-planning and include at minimum, 1) an overview of the forms and procedures, 2) a description of the competencies and their indicators, and 3) your schedule for observation activities.

2. Pre-arrange with the employee at least one instructional session to be formally observed.

3. Conduct a pre-observation conference with the employee. Discuss with the employee information regarding the lesson plan, targeted students and methodology. A pre-observation conference must occur.

4. Conduct the observation using the TAI. All competency indicators that are observed during this observation will be checked on the TAI.

5. Complete the TAI for all competencies/indicators not completed during the classroom observation. After the instrument has been completed, review and rate the data, and prepare the report to share with the employee.

6. Within five (5) working days, schedule and conduct a post-observation conference with the employee to provide feedback.

7. During the post-observation conference, review the TAI with the employee. Identify any problematic areas. At this time, schedule a conference to develop a success plan for employees who potentially may receive an overall unsatisfactory evaluation. This action must take place within two (2) weeks of the post conference but prior to February 1. During this time, a letter of Potential Unsatisfactory Evaluation must be given to the employee.

8. Close the conference by signing all appropriate documents and securing the employee's signature of receipt.

9. Follow the time line provided in the manual to ensure compliance with the

reappointment process and to ensure due process for the employee.

9. If a teacher demonstrates deficient performance under any Competency, a "Success Plan" is written in collaboration with the teacher. The Success Plan identifies areas of weakness by Competency, sets out objectives, and provides timelines to meet the objectives.

10. A Success Plan Team includes the teacher, school administrators, colleagues that have expertise in the relevant subject matter, "resource" teachers or "coaches," and, at times, a teachers' union representative.

11. According to the TAS, personnel decisions will be appropriate if the timeline and the following steps are followed:

1. Notify the employee in clear and simple written communication(s) regarding your specific performance expectation as identified by the competency indicators on the TAI.
2. Explain to the employee in oral and written detail the deficiency(ies) from the previously stated expectation(s). (Be specific by noting the time factors, place, circumstances, principal observations).
3. Arrange with and/or for the employee to receive appropriate training or other assistance as needed in order to improve the deficiency(ies) noted on the TAS Success Plan. Record in writing any offers of help.
4. Time any communication(s) to the employee so there is sufficient opportunity for the employee to correct deficiencies.
5. The Success Plan Team (including the identified employee) must meet frequently to

review the status of the implementation of the plan and the employee's progress.

12. While teaching first graders at Lake Lucina, Respondent elected to transfer to Arlington Heights in school year 2006-2007. Robert L. Snyder was, and still is, the principal of Arlington Heights.

13. Upon meeting Respondent, Mr. Snyder considered Respondent as a pleasant and likeable person. However, because Respondent received an unsatisfactory evaluation the prior year, Mr. Snyder arranged for the development of a Success Plan for Respondent.

14. With Respondent's input, the Success Plan Team drafted a Success Plan to be implemented at Arlington Heights. The Success Plan outlined areas of weakness, objectives toward improvement in those areas, and timelines. It was finalized and signed by Ms. Hunt in October 2006.

15. The Success Plan Team included experienced teaching coaches. The coaches modeled instruction in Respondent's class on several occasions.

16. Mr. Snyder conducted three formal observations and observed Respondent's teaching performance informally on several occasions. During his visits to the classroom, Mr. Snyder would see students doing worksheets amounting to "busy work" which had no apparent connection to instruction or evaluation.



17. Mr. Snyder kept personal notes documenting Respondent's tardiness to school on several occasions. He also noted her tardiness to workshops and in-service programs, including an in-service program focused on a reading assessment system for first graders known as Developmental Reading Assessment (DRA).

18. On or about January 30, 2008, Mr. Snyder intended to deliver a letter to Respondent, advising her that she was at risk to receive an unsatisfactory evaluation for the year. When he went to Respondent's classroom, Mr. Snyder discovered that Petitioner was absent and had left no plans for the substitute teacher. The school policy required teachers to have three days of substitute plans in case of an unexpected absence.

19. While Mr. Snyder assisted in the development of plans for the substitute teacher, he observed incomplete and blank DRA data collection forms. The forms did not indicate the students' levels of reading ability or the strategies put in place to enhance areas of weakness. Mr. Snyder also observed the teaching assistant doing work which should have been done by Respondent, such as grading papers.

20. When Respondent submitted her lesson plans to Mr. Snyder, he observed that Respondent was not actually teaching the lesson plans to her class. Mr. Snyder also noted a lack of grades in Respondent's grade book. Mr. Snyder brought

these concerns to Respondent's attention verbally and in writing.

21. Throughout the school year, Respondent had a full-time paraprofessional/teacher's assistant ("TA") in her classroom. Mr. Snyder observed tensions between Respondent and her TA, as well as a second TA. The working relationship between Respondent and her TA deteriorated through the year.

22. On one occasion, Respondent left her class of first graders completely unattended by an adult for twenty minutes. Mr. Snyder knew Respondent was in the office working on the computer when he saw Respondent's unsupervised students.

23. On another occasion, Mr. Snyder saw Respondent who appeared to be videotaping students in a common hallway. The school did not have parental permission to videotape some of the students in another teacher's class. Mr. Snyder retrieved the videotape and discarded it.

24. Respondent did not attend certain conferences with Mr. Snyder (including at least one formal pre-observation conference). Additionally, it was difficult to conduct meetings with the Success Plan Team because Respondent always insisted that an outside union representative instead of the building representative attend the meetings with her. Scheduled meetings with Respondent were delayed or cancelled on a number of

occasions because an outside union representative was not available.

25. Mr. Snyder formally observed Respondent and completed TIAs on December 15, 2006, February 6, 2007 and March 14, 2007. Mr. Snyder had a conference with Respondent before and after each formal observation to discuss the TIAs. Respondent signed each TIA.

26. Respondent's Evaluation of Professional Growth of Teacher was issued on March 15, 2007. Reflecting the findings on the TIAs, the annual evaluation showed unsatisfactory performance in the following Competencies: Promoting Student Growth and Performance; Planning and Delivering Effective Instruction; and Demonstrates Professional Behaviors. The evaluation also showed a "Needs Improvement" rating in the following Competencies: Evaluates Instructional Needs of Students; Utilizes Appropriate Classroom Management; and Parent Communications. Respondent received and signed the annual evaluation.

27. In school year 2007-2008, Respondent elected to transfer to Sabal Palm. At the new school, Respondent taught reading, writing and science to a fourth-grade class. Respondent's co-teacher, Kim Stancil, taught math and social studies. There were approximately 26 students in the class.

28. The principal at Sabal Palm was, and still is, Mary Mickel. Because Respondent received an unsatisfactory evaluation the prior year, Ms. Mickel initiated a Success Plan for Respondent. Respondent signed a final copy of the plan on December 11, 2007.

29. The Success Plan outlined areas of weakness, objectives toward improvement in those areas, and timelines. The Success Plan Team consisted of Ms. Mickel, other teachers, a "standards coach," and a "reading coach."

30. Ms. Stancil retired on October 29, 2007. A new co-teacher, Christie Callison, began teaching in January 2008.

31. Ms. Mickel became concerned when Respondent failed to attend grade-level meetings. After receiving encouragement from Ms. Mickel, Respondent began attending the meetings but did not actively participate.

32. Ms. Mickel had several parents call to complain about how Respondent treated their children or how their children were doing in Respondent's class. Ms. Mickel participated in at least one parent/teacher conference to resolve a parent's concerns.

33. Ms. Mickel visited Respondent's classroom from time to time throughout the school year. Ms. Mickel conducted four formal evaluations of Respondent's performance.

34. The formal observations took place on the following dates: September 13, 2007; November 19, 2007; January 28, 2008; and March 5, 2008.

35. Ms. Mickel provided Respondent with advanced notice of the formal observations. Ms. Mickel had a conference with Ms. Hunt before and after the observations.

36. During the formal observations, Ms. Mickel used the COI instrument to document indicators of performance under the nine Competencies. Respondent does not challenge Ms. Mickel's use of the COIs versus the TIAs.

37. Ms. Mickel observed Respondent using materials and teaching subjects that were not age-appropriate for fourth graders. For instance, Respondent based a lesson on a book typically used with 1st graders. Ms. Mickel discussed this with Respondent and commented on the subject in the COIs. As time passed, Ms. Mickel observed Respondent's continued failure to properly assess student performance and failure to tailor instruction to student needs.

38. Respondent had opportunities to participate in grade-level training on a weekly basis. She was allowed to observe other teachers in her school without having to take personal time. Respondent's coaches came into her class, prepared a lesson plan with her, and modeled the instruction.

39. According to Ms. Callison, Respondent refused to collaborate with planning and instruction. Respondent did not want, give or receive assistance from her co-teacher.

40. Respondent typically did not provide direct instruction to the students. Instead, Respondent gave the students "busy work" via worksheets that had nothing to do with the required curriculum.

41. Respondent openly classified students by ability, using terms such as "middle group" and "low group." Respondent would then have students grade each others' papers and report the grades out loud to Respondent in class.

42. Respondent's Evaluation of Professional Growth of Teacher was issued on March 14, 2008. Reflecting the findings on the COIs, the annual evaluation showed unsatisfactory performance under the following Competencies: Evaluates Instructional Needs of Students and Plans and Delivers Effective Instruction. Respondent obtained a "Needs Improvement" rating in the following Competencies: Promotes Student Growth and Performance; Communicates with Parents; and Demonstrates Professional Behaviors. Respondent received and signed the annual evaluation.

43. Respondent testified that teaching fourth grade is particularly challenging compared to teaching other grade levels. According to Respondent, fourth-grade is difficult to

teach because students must take the Florida Comprehensive Assessment Test (FCAT) in math, reading and writing.

44. Although Respondent was without a co-teacher for a portion of the 2007-2008 school term, she is certified to teach all fourth-grade subjects. More importantly, Respondent has had experience teaching reading and writing to sixth and seventh-grade students, some of whom were working at the fourth-grade level.

45. Respondent worked with and was evaluated by seven different principals throughout the last eight years of her employment. During those eight years, Respondent's summative evaluations showed her performance as follows: (a) eight consecutive years with unsatisfactory performance in the Parent Communication Competency; (b) five consecutive years with unsatisfactory performance in the Student Growth and Performance Competency; (c) five consecutive years with unsatisfactory performance in the Planning and Delivery of Instruction Competency; (d) four consecutive years with unsatisfactory performance in the Evaluation of Student Needs Competency.

#### CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to Sections 120.569, 120.57 (1), and

1003.57(3)(i)(e), Florida Statutes (2008), and Florida Administrative Code Rule 6A-6.

47. Petitioner has the burden of proving that Respondent's employment should be terminated. See Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49 (2005); Devine v. Indian River County School Board, 249 F.3d 1289, 1291-92 (11th Cir. 2001), cert. denied, 537 U.S. 815 (2002); and Ferris v. Turlington, 510 So. 2d 292, 294, n.2 (Fla. 1987).

48. While the standard of proof applied to license revocation cases is clear and convincing evidence, the standard of proof applied to employment termination cases is a preponderance of the evidence. See Ferris v. Austin, 487 So. 2d 1163 (Fla. 5th DCA 1986); South Florida Water Management Dist. V. Caluwe, 459 So. 2d 390 (Fla. 4th DCA 1984).

49. In this case, Petitioner determined that Respondent should be discharged from her teaching position on the basis of "professional incompetence." See Section 4(e), Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941)(as amended).

50. The term "incompetency" as defined in the Florida Administrative Code has been accepted as instructive in determining incompetence under the Tenure Act. See School Board of Duval County v. Kerry Smith, DOAH Case No. 89-4132 (Recommended Order, August 22, 1990).



51. Florida Administrative Code Rule 6B-4.009 states, in pertinent part, that:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity . . . [a finding of incompetence may be based on] a preponderance of evidence showing the existence of one or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law; (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

52. Florida Administrative Code Rule 6B-5.004 sets forth the following standards for the competent education professional:

The competent educator shall use or ensure the use of acceptable techniques to analyze the needs and potential of individuals. The educator, commensurate with job requirements and delegated authority, shall demonstrate competence in the following techniques to analyze the needs and potential of individuals:

(1) Diagnose the entry level and skill of students, using diagnostic tests, observations and student records.

(2) Select, adapt or develop, and sequence instructional materials and activities for the designated set of instructional objectives and student needs.

(3) Create interest through the use of materials and techniques appropriate to the varying abilities and backgrounds of students.

(4) Use individual student interests and abilities when planning and implementing instruction.

(5) Make assignment of tasks and duties consistent with individual abilities and specialties.

53. During the 2006-2007 school year, Respondent's teaching performance revealed itself through informal observations in the following ways: (a) she relied on worksheets that amounted to busy work with no connection to curriculum or lesson plans; (b) she failed to properly complete the DRA forms; (c) she let her TA grade papers; (d) she failed to record a sufficient number of grades in her grade book; (e) she did not teach according to her lesson plans; (f) on one occasion, she failed to ensure that her class was properly supervised; and (g) she did not follow school policy regarding the videotaping of students. These problems, together with Mr. Snyder's observations during the formal evaluations, establish Respondent's incompetence.

54. During the 2007-2008 school year, Respondent's teaching performance revealed itself through informal observation in the following ways: (a) she failed to attend

important meetings; (b) she used materials that were not age appropriate for fourth grade students; (c) she failed to properly assess student performance and/ or to tailor her lessons to student needs; (d) she refused to collaborate planning and instructions with her co-teacher; (e) she gave the students busy work that had nothing to do with the curriculum; (f) she openly grouped the student's groups as "middle" or "low;" and (g) she allowed students to grade each other's papers and to report the grades out loud. These problems, together with Ms. Mickel's observations during the formal evaluations, establish Respondent's incompetence.

55. Before discharging a teacher for professional incompetence, the Tenure Act mandates that the teacher is first given: (a) fair written notice containing a clear and detailed statement on which the claim of incompetence is based; (b) at least one opportunity to transfer to a new school; and (c) adequate opportunities throughout one school year for in-service training tailored to the correction of the alleged areas of incompetence. All of these prerequisites were met in this case.

56. Additionally, the teacher is required to cooperate and make a fair attempt to participate in the training. Here, Respondent did not attend or participate in grade-level meetings until she was forced to do so. Respondent was repeatedly tardy

to workshops and in-service programs. She did not seem to take advantage of and make the most of the expertise of her on-site colleagues and coaches who were willing to plan lessons and model instruction.

57. There is substantial, competent evidence in the record to support Petitioner's decision to terminate the employment of Respondent on the basis of professional incompetence. There is also substantial, competent evidence in the record showing that Respondent's contractual rights were not violated in the process.

RECOMMENDED ORDER

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

RECOMMENDED that:

Petitioner enter a final order terminating Respondent's employment.

DONE AND ENTERED this 17th day of March, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 17th day of March, 2009.

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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.