

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COMMUNITY COLLEGE,)
)
 Petitioner,)
)
vs.) Case No. 08-3265
)
DR. LORAIN BROWN,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this case before Administrative Law Judge Carolyn S. Holifield of the Division of Administrative Hearings on September 10 and 11, 2008, in Sanford, Florida.

APPEARANCES

For Petitioner: Sandra K. Ambrose, Esquire
 Stenstrom, McIntosh, Colbert, Whigham,
 Reischmann & Partlow, P.A.
 1001 Heathrow Park Lane, Suite 4001
 Lake Mary, Florida 32746

For Respondent: Larry H. Colleton, Esquire
 The Colleton Law Firm, P.A.
 Post Office Box 677459
 Orlando, Florida 32867

STATEMENT OF THE ISSUE

The issue is whether the Board of Trustees of Seminole Community College's termination of the continuing contract of Respondent was proper.

PRELIMINARY STATEMENT

On May 6, 2008, the Board of Trustees of Seminole Community College ("Board"), terminated the continuing contract of employment for Respondent, Dr. Lorraine Brown, effective, June 17, 2008. By letter dated May 7, 2008, Respondent was notified of the Board's decision and advised of her right to challenge this action. Respondent challenged the Board's decision and timely filed a Petition for Administrative Hearing. Subsequently, Respondent filed an Amended Petition for Administrative Hearing ("Amended Petition"). In addition to challenging the Board's decision, the Amended Petition alleged that through its actions against Dr. Brown, Petitioner, Seminole Community College, violated "the Americans with Disabilities Act, the Civil Rights Act, as amended, and the Florida Civil Rights Act." The matter was referred to the Division of Administrative Hearings (Division) on July 3, 2008, and was set for hearing, as noted above.

Prior to hearing, an Order of Pre-Hearing Instructions was issued requiring the parties to file a pre-hearing stipulation. In separately filed pre-hearing statements, the parties specified admitted facts that required no proof at hearing. Respondent's unilateral Pre-Hearing Statement also listed the issues as whether the employment action (termination of Respondent's contract) by the Board was based on racial

discrimination, hostile work environment, retaliation, Americans with Disabilities Act, and age discrimination. As the undersigned indicated at the final hearing, those issues were not properly before this tribunal and, thus, were not addressed in this proceeding. See § 760.11, Fla. Stat. (2007).¹

At hearing, Petitioner called ten witnesses: (1) Dr. Carol Hawkins; (2) Angela Kersenbrock; (3) Angela Laxton; (4) Alan Kraft; (5) Lois Hopkins; (6) Maureen Tremmel; (7) Dr. Claudia Salvano; (8) Patty Yorty; (9) Mari Rains; and (10) Cheryl Cicotti. Petitioner's Exhibits 1 through 8, 10 through 17 and 19 through 33 were admitted into evidence. Respondent testified on her own behalf, and Respondent's Exhibits 3, 13, 15 and 21 were admitted into evidence.

The four-volume Transcript of the proceeding was filed with the Division on October 21, 2008. Petitioner timely filed its Proposed Findings of Fact and Conclusions of Law, which has been considered in preparation of this Recommended Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, Seminole Community College (SCC), is a community college in Seminole County, Florida, governed by a District Board of Trustees.

2. At all times relevant to this proceeding, Carol Hawkins was vice-president for educational programs/chief learning

officer at SCC. As vice-president, all college deans report to Vice-President Hawkins, and she is responsible for all academic programs, including the curriculum, academic quality and delivery of instruction to students.

3. At all times relevant to this proceeding, Angela Kersenbrock ("Dean Kersenbrock") was the dean of Career and Technical Educational Programs at SCC, which included the Nursing Department. In this position, Dean Kersenbrock had administrative responsibilities for all departments within those programs.

4. At all times relevant to this proceeding, Respondent, Lorraine Brown (Dr. Brown or Respondent), was a nursing professor under continuing contract pursuant to Florida Administrative Code 6A-14.0411 and was a full-time faculty member at SCC.

5. Dr. Brown has been employed as a faculty member in the Nursing Department at SCC for about ten years, having first been employed there in 1997 or 1998. During the time she has been employed at SCC, Dr. Brown was given a sabbatical to complete the post-graduate requirements for her doctoral degree. She successfully completed the program and earned a Ph.D.

6. Dr. Brown's nursing specialty is pediatrics, and she is recognized and respected by her professional colleagues for her expertise in that area. During her tenure at SCC, Dr. Brown has

also has been recognized for her expertise in curriculum development.

7. In or about January 2005, Dr. Brown was assigned to the position of clinical coordinator for the Nursing Department. As clinical coordinator, Dr. Brown was the liaison between the Nursing Department and the medical facilities at which SCC's nursing students did their clinical experiences. In that role, Dr. Brown was required to work cooperatively with both faculty members in the Nursing Department and the designated representatives of the various medical facilities.

8. Dr. Brown served as the clinical coordinator until she was removed from the position, effective December 2007.

2006-2007 Academic Year

9. During the 2006-2007 academic year, Respondent met with several SCC administrators, including Vice-President Hawkins; Dean Kersenbrock; and Claudia Salvano, Human Resources director, and discussed issues in the Nursing Department that were of concern to her.

10. In her meetings with the administrators, Dr. Brown discussed several issues in the Nursing Department that, based on her perception, needed to be investigated and/or addressed. The concerns that Respondent raised included the following: (1) disparity in faculty workload; (2) student admission and disciplinary practices; (3) the application of policies and

procedures; and (4) employee recruitment and hiring practices.

Dr. Brown also expressed concern and her perception that:

(1) she had been discriminated against and/or treated unfairly by the Department Chair Ruth Corey; (2) she had challenges interacting with other faculty; and (3) the Nursing Department faculty's failure to function as a team.

11. During the 2006-2007 academic year, both Dean Kersenbrock and Ms. Salvano met with Dr. Brown numerous times about the issues that she had reported to them. They also talked to Chair Corey about the issues that Dr. Brown raised.

12. As a result of the claims Dr. Brown made against her, Chair Corey approached Dean Kersenbrock and told her she was not comfortable directly supervising Dr. Brown. As a result, in the 2007 spring semester, Dean Kersenbrock and Ms. Salvano took on a larger role in regard to issues involving Dr. Brown.

13. In or about May 2007, Ms. Salvano met with Dr. Brown regarding some of the issues she had previously raised. This meeting was held after the SCC Diversity and Equity Office forwarded the matter to Human Resources because it viewed Dr. Brown's concerns as employee relations issues. Initially, during that meeting, Dr. Brown was very calm, collected and clear about her issues, but, later, she became very upset and agitated and began crying. By the end of the meeting, Dr. Brown had regained her composure. However, as a result of what

occurred in the meeting, Ms. Salvano became concerned about Dr. Brown's well-being.

14. As part of Ms. Salvano's review of the employee relations issues in the Nursing Department, Ms. Salvano talked not only to Chair Corey and Dr. Brown, but also to some faculty members. As of May 2007, Ms. Salvano had reached no conclusion on those issues. However, she had determined the following: (1) There were interpersonal conflicts in the Nursing Department; (2) Dr. Brown believed she was being treated unfairly; (3) There was friction between Dr. Brown and Chair Corey; and (4) Dr. Brown had feelings of anger and hostility related to the foregoing. Until the issues in the Nursing Department could be sorted out, Ms. Salvano believed Dr. Brown might need some time off and/or be allowed to work at home. Ms. Salvano recommended this course of action, and upon approval by the SCC president, Dr. Brown was offered the option of taking some time off or working at home.

15. Dr. Brown accepted the accommodation offered and approved by the SCC administration and chose the option of working at home. This accommodation was offered and approved by SCC to assist in improving Dr. Brown's health and well-being. During this time, Dr. Brown's course load was reduced, and she was allowed to work from home beginning in May 2007 for the first part of the summer semester. Subsequently, Dr. Brown's

time at home was extended to include the entire summer after she took medical leave for shoulder surgery. As a result of the medical leave, Dr. Brown returned to work in August 2007.

16. Although SCC looked into the matters raised by Dr. Brown, the ultimate findings and resolution, if any, of most of those issues were not presented as part of this proceeding.²

17. In or about April 2007, Chair Corey announced that she would be resigning from SCC. Soon thereafter, SCC began to search for a new Department chair for the Nursing Department.

18. Between late spring and August 2007, the Nursing Department was going through significant transitions, including a change in the Department chair and the Department's impending move from the SCC Sanford campus to the new Altamonte Springs campus. Also, there was interpersonal conflict among faculty³ and some faculty distress about all the changes within the Department. In an effort to address some of these issues, the SCC administration hired a consultant specializing in organizational development and training.

19. Mari Rains was the consultant hired to work with the Nursing Department faculty to address primarily the functioning of the faculty as a team. In a preliminary meeting, Ms. Salvano told Ms. Rains that Dr. Brown had expressed some concerns about employee relations issues and interacting with Department faculty. Because Dr. Brown was a part of the Nursing Department

and had these concerns, Ms. Rains believed that the session she planned to conduct would be more effective if Dr. Brown could attend. However, because most of the faculty would not be working later in the summer, Dean Kersenbrock decided to proceed with the consultant's session(s) during the first summer term, even though Dr. Brown was not working on campus.

20. Ms. Rains met with the faculty on May 30, 2007. The majority of faculty members were at the meeting, but Dr. Brown, who was working at home, and a few other faculty members did not attend the meeting. After Ms. Rains explained the reason she was there, some faculty members voiced concern about the confidentiality of any statements that they might make during the session. In light of the faculty's concerns, Ms. Rains, concluded that the faculty was not going to give or discuss with her any information which would allow her to assess and/or determine the Nursing Department faculty's challenges. Thus, instead of engaging in activities designed to assess how the Department faculty worked together, with the faculty's consent, Ms. Rains observed the interaction among the faculty during their strategic planning meeting. The observation lasted about 90 minutes.

21. During the strategic planning meeting, Ms. Rains observed the faculty members being respectful to each other and problem-solving appropriately. No one overbearing person

commanded the attention of the team. Ms. Rains also observed that the faculty members presented active listening skills, active healthy dialogue, and constructive conflict resolution.

22. Based on her 90-minute observation of the Nursing Department strategic planning meeting, Ms. Rains made two optional recommendations: (1) treat the interpersonal conflict among faculty as an independent employee relations problem, offer the faculty member (i.e., Dr. Brown) individual leadership coaching, and utilize a member coach and/or consultant to integrate Dr. Brown back into the team; or (2) prior to undertaking full and in-depth organizational assessment, SCC should provide confidentiality for the Department members.

23. Ms. Rains was not retained to do any further work with the Nursing Department, in part, because SCC could not legally guarantee confidentiality to employees for this kind of matter.

24. In late June 2007, based on Ms. Rains' recommendation, Dean Kersenbrock and Ms. Salvano offered to provide Dr. Brown with a coach or consultant in order to make her transition back to campus smooth and to improve her communication skills. With regard to the latter, Dr. Brown understood that the coach would help her reduce her rate of speed and tone of her voice that seems to convey urgency and shocking. Dr. Brown declined the offer, stating that she would opt to work on these areas on her own.

August 2007 through November 2008

25. In late July or early August 2007, Cheryl Cicotti was hired as the SCC director of nursing, previously referred to as chair of the Department. Director Cicotti began working in that position in late August 2007. As the director, Ms. Cicotti has administrative responsibilities, supervises faculty, and is responsible for the Nursing Department's curriculum and courses, faculty development, leadership, and budget.

26. Dr. Brown returned to work at SCC in August 2007, about the same time Director Cicotti began as director of the Nursing Department.

27. Prior to being hired as head of the SCC Nursing Department, Director Cicotti had known Dr. Brown for two or three years through their involvement in nursing-related projects and/or community organizations. During that time, Director Cicotti and Dr. Brown had a good working relationship. Through that work, Director Cicotti's opinion was that Dr. Brown was a "very smart woman" who had special skills and capabilities in curriculum development and on-line teaching.

28. In mid-September 2007, Director Cicotti met with Dr. Brown and discussed her management style, as well as her expectations of Dr. Brown. At some point during the meeting, Dr. Brown began to tell Director Cicotti of the past "wrongs" that she (Brown) perceived had been done to her over the past

two or three years by the former Department chair and the SCC administration. Director Cicotti listened, but then advised Dr. Brown to start "new" with her as the Director. Director Cicotti also talked to Dr. Brown about professionalism and the need for those working in the Department to be professional at all times.

29. Director Cicotti first learned that Dr. Brown was dissatisfied with and had complaints about the previous Nursing Department administration when Dr. Brown disclosed that information in their initial meeting.

30. At the end of September 2007, while at a Nursing Department faculty meeting, Director Cicotti observed Dr. Brown exhibiting behavior that she believed was unprofessional. There was a discussion about which faculty member would develop a certain curriculum. After a while, Dr. Brown stated that she would develop the course and/or curriculum, but added that she would not coordinate the course or curriculum. As Dr. Brown was speaking, her voice got loud. At that point, one faculty member said she would help Dr. Brown and also volunteered the assistance of another faculty member, who apparently was not at the meeting. Although assistance had been offered to Dr. Brown, she continued talking about the same topic for three to five minutes, asking who was going to help her. Dr. Brown also made comments such as, "I will not do this alone. I do not want to

do all this work and be shot down again by the faculty."

Dr. Brown's voice got louder as she made those statements.

Finally, because Dr. Brown refused to move on to another topic after the issue had been resolved, Director Cicotti stepped in and told Dr. Brown that faculty had volunteered to help her and that she (Brown) had her answer.

31. After the faculty meeting, Dr. Brown voluntarily came to Director Cicotti's office and apologized for her behavior at the faculty meeting. The next day, Dr. Brown came to Director Cicotti's office again and apologized for her behavior. On both days, Director Cicotti counseled Dr. Brown about her unprofessional conduct and expressed concern about that conduct. Director Cicotti explained that as a result of Dr. Brown's unprofessional conduct, she had to "step in" at the faculty meeting to neutralize the escalating situation.

32. The second time that Dr. Brown apologized for her conduct in the faculty meeting, she agreed that her behavior was not appropriate. Dr. Brown stated that she was very stressed the day of the faculty meeting; that during the day of the meeting, her level of stress was growing; and by the time of the faculty meeting, she was very stressed. Director Cicotti complimented Dr. Brown, telling her she was a very smart woman with "very strong teaching abilities," and "abilities in the classroom." Director Cicotti then told Dr. Brown that being

such a smart woman, she should know how to handle stressful situations professionally. After Dr. Brown confided that she had lost her perspective and could not read others, Director Cicotti talked to Dr. Brown about how she could regain that perspective and offered to intervene when necessary to assist Dr. Brown. Dr. Brown then talked about how difficult it was for her to return to work in August 2007 for the fall semester, and while talking, she started crying. Director Cicotti tried to encourage Dr. Brown by telling her that she was brave for coming back. At the end of the meeting, Dr. Brown began to talk about some things that had happened in the Department, but Director Cicotti ended the conversation.

33. Due to an oversight, during the 2007 summer, the Nursing Department did not load certain software that was provided by Florida Hospital, one of the Department's community partners. Because the software was not loaded, the mechanism for charting was not available for SCC nursing students scheduled to do clinicals at Florida Hospital in the 2007 fall semester. Consequently, it appeared that those students would not be able to do their clinicals that term.

34. The software issue did not come to light until the 2007 fall term, after Director Cicotti was hired and Dr. Brown returned to work. Upon learning of the oversight, Dr. Brown, in her capacity as clinical coordinator, sent an e-mail to the

community partner, Florida Hospital, in which she apologized that the software had not been loaded during the summer when she was on leave.⁴

35. Director Cicotti believed that Dr. Brown's e-mail apologizing for the software not being loaded put the Nursing Department in a negative light. Director Cicotti's opinion is that the Nursing Department should be united and that "if something is not done, rather than saying it was not done, the issue should be put in a positive light" (i.e., by saying what could be done to make it better).

36. In or about September or October 2007, Director Cicotti spoke to Dr. Brown about sending the e-mail to the community partner apologizing for the Nursing Department's oversight in not loading the software.

37. Due to the software issue discussed in paragraph 33, Director Cicotti told the faculty that they "must arrange care" so that students could do clinicals and not have to chart during the time the charting mechanism was not available to them. After Director Cicotti made that decision, Dr. Brown sent an e-mail to the Nursing Department faculty stating that it went against what the Department teaches--to send students into a medical facility and not chart.⁵

38. Director Cicotti determined that it was inappropriate for Dr. Brown to send the e-mail to faculty that was in direct opposition to her decision.⁶

39. The job description for nursing faculty requires such faculty to abide by the decisions of the Nursing Department. According to Director Cicotti, Dr. Brown violated that provision by, initially, failing to abide by her decision to facilitate the students going to clinical and not charting. However, Director Cicotti also acknowledged that Dr. Brown eventually did abide by her (Cicotti's) decision as evidenced by Dr. Brown's contacting the community partner and successfully resolving the issue so that the nursing students were allowed to go to their clinicals, as scheduled.

Academic Goals

40. SCC Procedure 2.1500 states that the faculty evaluation process/procedure, which provides a basis for personnel action, includes completion of the Faculty Goals and Accomplishments Form (Faculty Goals Form). The Faculty Goals Form lists five broad areas for which goals should be written: (1) teaching; (2) availability to students; (3) curriculum development and enhancement; (4) professional development; and (5) college/community involvement. On the Faculty Goals Form for the 2007-2008 academic year, Dr. Brown listed three goals each under the areas of "teaching," "availability to students,"

"professional development," and "college/community involvement."
Dr. Brown listed two goals under the area, "curriculum development and enhancement."

41. On or about October 4, 2007, Director Cicotti met with Dr. Brown to review her (Brown's) goals for the 2007-2008 academic year. Director Cicotti believed that three of Dr. Brown's 14 goals were negative.

42. Under "professional development," the goal viewed as negative by Director Cicotti was "[c]ontinue to request participation in a national conference funded by SCC until one is approved." Director Cicotti believed this was an inappropriate goal in that she had supported Dr. Brown's request to participate in the National League for Nursing (NLN) project technology conference, which may have included attendance at a national conference.⁷

43. Under "community involvement," Director Cicotti believed that Dr. Brown's following two goals were negative: (1) "Rebuild the direct relationship with community agencies that have been fragmented since my absence from the department in summer 2007"; and (2) "Minimize my interaction with college activities until I re-establish some level of trust and fully overcome the effects of being victimized as a result of bringing forth department practices." Director Cicotti believed the former goal was negative because the use of the term

"fragmented" implied that in Dr. Brown's absence, the Nursing Department had not continued positive on-going relationships with community organizations. Director Cicotti believed that the latter goal simply was not appropriate.

44. Director Cicotti discussed her concerns about the "negative" goals with Dr. Brown and asked her to change them or make them positive rather than negative goals. In asking or suggesting that the goals be changed, Director Cicotti believed that she was "interceding" to help Dr. Brown in accordance with her promise at the meeting discussed in paragraph 32. In response to Director Cicotti's suggestions, Dr. Brown did not get angry, make inappropriate comments or otherwise behave in an unprofessional manner. However, she stated that she did not want to change her goals.

45. Director Cicotti met with Dean Kersenbrock to discuss her concerns about Dr. Brown's "negative" goals and her unwillingness to change them. Dean Kersenbrock decided that the goals should remain as written.

46. On October 5, 2007, Dr. Brown sent an e-mail to Dean Kersenbrock, after learning that three Nursing Department faculty members had attended conferences earlier that month or late September 2007. The e-mail accurately stated that in April 2007, Dr. Brown requested approval to attend an NLN conference, but Dean Kersenbrock denied the request, citing SCC

budget issues as the reason for the denial. Dr. Brown's e-mail noted that while Dean Kersenbrock denied her (Brown's) April 2007 request to attend the NLN conference, a newly hired faculty member in the Nursing Department had been approved and had recently attended that "very same conference." Dr. Brown's e-mail also expressed concern that Dean Kersenbrock initially told her (in May 2007) that the request was denied because of budget issues, but, then, later told her (in August 2007) that the denial was because she (Brown) did not have "good communication and interactions with the Nursing Department faculty."

47. On October 9, 2007, Dean Kersenbrock forwarded Dr. Brown's October 5, 2007, e-mail to Director Cicotti and Ms. Salvano.

48. On October 19, 2007, Dr. Brown sent another e-mail to Dean Kersenbrock. The e-mail stated that she (Brown) had received a second invitation to participate in the NLN ambassador program, which was associated with the conference, referenced in her October 5, 2007, e-mail, but was declining that invitation. Dr. Brown sent a copy of the October 19, 2007, e-mail to SCC President McGee.⁸

49. In October 2007, after learning about the two e-mails discussed in paragraphs 46 and 48, Director Cicotti told Dr. Brown that she (Cicotti) should be copied on any e-mails concerning "departmental functions." Dr. Brown then explained

that because the issue discussed in the e-mails had occurred prior to Director Cicotti's being employed at SCC, she thought it was not necessary for Director Cicotti to be copied on the e-mails. Director Cicotti clarified her concerns and told Dr. Brown that she needed to be copied on such e-mails so that she (Cicotti) would know about those issues. There is no indication that Dr. Brown responded or behaved inappropriately or unprofessionally during this interaction.

50. During the meeting discussed in paragraph 49, Director Cicotti asked Dr. Brown how she felt she was doing with her demeanor. Dr. Brown stated that she was always professional. Dr. Brown then talked about her anger over things that had occurred in the Department over the past few years; her feelings that she was "walking on eggshells" in the Department; and the difficulty she was having working in the Department. Director Cicotti told Dr. Brown that she was the only person who could decide how she was going to react in various situations and that if her reaction was anger, she needed to make "some adjustments." Throughout this exchange, Dr. Brown was calm, listened, and did not raise her voice.

51. A few minutes after leaving the above-referenced meeting, Dr. Brown came back to Director's Cicotti's office to return the ten-year service pin which had been placed in her office. Dr. Brown curtly stated that she was returning the pin

because "longevity doesn't seem to be valued around here." She then handed the envelope containing the service pin to Director Cicotti. During this incident, Dr. Brown's voice got louder and she appeared to be angry. Director Cicotti reminded Dr. Brown of the conversation that they had a few minutes ago about anger.

52. In late October 2007, Director Cicotti learned that Dr. Brown had volunteered to mentor a new faculty member two hours a week. Director Cicotti did not believe this was an appropriate arrangement, and subsequently, met with Dr. Brown to discuss the mentorship. Dr. Brown explained that the mentorship was an "informal" mentorship and not a formal mentorship under the Department's grant program. Nonetheless, Director Cicotti, who viewed spending two hours a week with someone as a formal mentorship, thanked Dr. Brown for volunteering, but told her that mentoring decisions should be made by the Department director. Dr. Brown did not challenge Director Cicotti's decision, nor did she make any inappropriate comments or express anger when told that she could not serve as a mentor.

Beginning Probationary Period--November 2007

53. At the end of October 2007, based on her two months of interacting with and observing Dr. Brown, Director Cicotti had concerns about Dr. Brown's professionalism in the Department and "resistance to [Cicotti's] coaching and counseling." With regard to the effect of the coaching/counseling, Director

Cicotti had mixed feelings. Director Cicotti found that at times, Dr. Brown seemed to understand her inappropriate conduct and would apologize, listen, and interact appropriately with Director Cicotti. However, Director Cicotti believed there were other times that Dr. Brown resisted coaching suggestions. Director Cicotti cited only one example of what she believed was Dr. Brown's resisting or refusing to follow a suggestion made in a coaching session--her decision to not change her three academic goals, viewed by Director Cicotti to be negative goals.⁹

54. In late October or early November 2007, Cicotti recommended to Dean Kersenbrock that Dr. Brown be relieved of her duties as clinical coordinator and placed on probation.¹⁰ Dean Kersenbrock concurred with the recommendation.

55. On November 6, 2007, Dr. Brown was placed on probation for "inappropriate behavior and unprofessional communication skills" by the SCC administration. The probationary period was for the remainder of Dr. Brown's 2007-2008 contract period, which ended June 17, 2008.

56. Dean Kersenbrock and Director Cicotti met with Dr. Brown and gave her the probation letter on November 6, 2007. The probation letters signed by Dean Kersenbrock, stated in pertinent part:

This letter is to provide written notice to you of my concerns regarding your behavior

and my recommendations for corrective action.

* * *

Since returning to campus in late August [2007], you have had at least five counseling sessions with the Director of Nursing. During these sessions, Director Cicotti has spoken with you about your inappropriate behavior and unprofessional communication skills. I would point out to you that SCC Policy 2.200, Code of Ethics for Faculty, states that "Faculty shall respect the rights of others."

In addition, the job description for Professor, Nursing refers several times to the required collaboration with other faculty and staff: "Works well with other faculty to . . .," "Works with staff in . . .," and Collaborates with" Specifically, item 7 under Essential Functions states: "Contributes to a collegial and collaborative work environment."

It is clear that a discrepancy continues to exist between the standards demanded by this institution and what you deem appropriate, collegial, and professional behavior. And, it is regrettable that our many efforts to counsel and assist you have been futile. At this point, I feel compelled to recommend that, effective immediately, you begin disciplinary probation that will continue for the remainder of your 2007-2008 contract period. Your continued employment will be subject to satisfactory work performance (see attached job description)^[11] and adherence to the following [corrective actions]. . . .

57. The probation letter did not reference specific incidents which were deemed to have constituted the alleged

"inappropriate behavior" and "unprofessional communication skills."

58. The probation letter listed the following corrective actions/expectations to which Dr. Brown should adhere:

- a. Contact The Allen Group (TAG), SCC's employee assistance plan (EAP) provider by 5:00 p.m. on November 15, 2007. Schedule an appointment with an EAP representative. Attend and actively engage in any counseling and treatment deemed necessary by the EAP counselor. Authorize the College to (1) monitor attendance; (2) receive intermittent progress reports from EAP staff; and (3) engage in further conversations with EAP counselors should additional information be required.
- b. Carry out teaching responsibilities in a professional manner that fosters collegiality in promoting student learning and success.
- c. Maintain appropriate professional behavior at all times in interactions with faculty, staff, students and public. That is, not be confrontational, not raise voice to others, not engage in behaviors that could be construed as fighting, threatening or intimidating toward others.
- d. Take responsibility for your actions.
- e. Represent Department and SCC in positive and professional manner at all times.
- f. Respond to suggestions and feedback in a professional manner.
- g. Treat others with respect.

- h. Consistently demonstrate professional and appropriate behaviors for duration of employment at SCC.

59. The probation letter notified Dr. Brown that her "failure to achieve [the] expectations and maintain them may result in further disciplinary action up to and including termination of [her] employment."

60. The probation letter advised Dr. Brown that at the end of the current term, or about December 2007, she would resume a full-time teaching faculty load and be relieved of clinical scheduling responsibilities, i.e., her job as clinical coordinator. However, the letter did not provide any information or details about what Dr. Brown's full-time teaching load would include.

Teaching Assignment for 2008 Spring Semester

61. On November 6, 2007, the day Dr. Brown was placed on probation, Director Cicotti gave Dr. Brown several options for her teaching assignments for the term beginning in January 2008. Director Cicotti gave Dr. Brown until November 9, 2007, to provide her choice, but, subsequently, consented to extend the time to November 15, 2007.

62. Many of the course options preferences initially offered were unacceptable because of limitations in Dr. Brown's vision.

63. Dr. Brown submitted a doctor's statement indicating that due to the limitations of her vision, she should not teach night classes or labs involving administration of medicine. Thus, any such courses were not viable options for Dr. Brown.

64. On November 14, 2007, Dr. Brown sent an e-mail to Director Cicotti, indicating the following two preferences: (1) that she be allowed to continue to serve as clinical coordinator through the end of the 2007-2008 academic year; or (2) that she facilitate the on-line obstetrics/pediatrics (OB/PED) transition course and the Basic Medical Surgery (Med Surg) course.¹² The second preference provided ten percent of the 15 contract hours needed for a full load.

65. Dr. Brown explained in the November 14, 2007, e-mail that she did not know "the solution" or additional course or assignment she could include to give her the additional five hours she needed to have a full load. Dr. Brown's submission of two five-hour courses, instead of a course assignment preference that totaled 15 contract hours, does not constitute a failure on her part to comply with Director Cicotti's directive.

66. In or about late November 2007, Director Cicotti approved Dr. Brown's second preference, which required her to facilitate/teach the on-line OB/PED course and the Med Surg course, but added the lab and the simulation clinical for the Med Surg course. With the addition of the lab and the

simulation clinical, Dr. Brown had a full course load for the term beginning January 2008.

67. Dr. Brown was not resistant to teaching classes. However, Dr. Brown was concerned that she may not have enough time to prepare the Med Surg course and to develop the OB/PED on-line course by January 2008.¹³ To address Dr. Brown's concerns, Director Cicotti told Dr. Brown that she would tell Patty Yorty, the coordinator and co-teacher in Med Surg, to arrange the course so that Dr. Brown would not lecture at the beginning of the course, but would have a month or until early February 2008, to prepare her lectures. No evidence was presented that Director Cicotti ever discussed this with Ms. Yorty.

68. Consistent with her understanding, Dr. Brown and Ms. Yorty, the coordinator and co-teacher in the Med Surg course, agreed that Dr. Brown would prepare and give some lectures and would do all labs and the simulation clinical associated with the course. Ms. Yorty, who has been a faculty member at SCC for 22 years, testified credibly that under the new curriculum, co-teachers/coordinators were given the flexibility to determine how the teaching assignments would be divided. The credible testimony of Ms. Yorty was that, prior to Dr. Brown being out on medical leave (mid-February through mid-April 2008), she (Dr. Brown) did "some" lectures, all labs, and

the simulation clinical for the Med Surg course pursuant to their agreement.

69. On or about January 28, 2008, Director Cicotti was advised that Dr. Brown was not teaching, i.e., lecturing in the Med Surg course.¹⁴ Thereafter, Director Cicotti sent an e-mail to Dr. Brown stating that on November 28, 2007, they had discussed Dr. Brown's assignments for Term II 2007-2008. The e-mail noted that during the discussion, Dr. Brown was told that, with respect to the Med Surg course, she was responsible for "1/2 of the classroom component, be[ing] present for all course labs and participat[ing] in the course's clinical simulation." Director Cicotti directed Dr. Brown to revise her load to reflect the responsibilities described in the e-mail and to send the revision to her by February 1, 2008.

70. In an e-mail dated January 30, 2008, Dr. Brown disagreed with Director Cicotti's statement that she had given a directive for Dr. Brown to teach 50 percent of the Med Surg course.

71. On January 31, 2008, Dr. Brown met with Director Cicotti's about the Med Surg course and insisted that Director Cicotti never told her (Brown) that she was required to give 50 percent of the lectures in that course. While expressing her disagreement, Dr. Brown, appeared to be agitated and angry, was shaking, speaking very loudly, and standing over Director

Cicotti. Director Cicotti testified that during this meeting, she was concerned that Dr. Brown might hit her, although she admitted that Dr. Brown had never been violent or physically aggressive. Dr. Brown eventually calmed down, sat and apologized to Director Cicotti.

72. Clearly, there was a misunderstanding between Director Cicotti and Dr. Brown as to what her exact duties were to be in the Med Surg course. The failure to provide any written documentation to Dr. Brown explicitly describing her (Brown's) duties in the Med Surg course contributed significantly to this misunderstanding.

73. Notwithstanding Dr. Brown's and Director Cicotti's disagreement as to what Dr. Brown's duties were in the Med Surg course, Dr. Brown timely complied with Director Cicotti's request and readjusted her schedule to reflect that she was presenting 50 percent of the lectures in that course.¹⁵

74. In late January 2008, soon after Director Cicotti directed that the teaching schedule for the Med Surg course had to be changed, Dr. Brown commented to Ms. Yorty, "In someone's infinite wisdom, I'm going to be spending more time in your course (Med Surg which Yorty coordinated) than in mine (OB/PED being developed and coordinated by Brown)." The following day, Director Cicotti approached Dr. Brown and reported that Ms.

Yorty had told Director Cicotti that Dr. Brown had made a derogatory comment about her (Cicotti).

75. Director Cicotti believed that Dr. Brown's statement was a negative comment about her, as director, and about the Nursing Department. Director Cicotti determined that the comment was also unprofessional. Despite Director Cicotti's opinion about Dr. Brown's comment, when considered in context, the statement did not violate any directive given by Director Cicotti.

76. On or about January 29, 2008, Director Cicotti learned that Dr. Brown was not going to monitor an exam in the Med Surg course the following day. Instead, Dr. Brown was doing a clinical with the adjuncts for the OB/PED on-line course that she was teaching. Dr. Brown had volunteered to assist adjuncts in the clinical for the on-line OB/PED course because that clinical was very important, and the adjuncts were not as "seasoned" as pediatric faculty teaching the course. E-mails exchanged between Dr. Brown and Director Cicotti indicated that Director Cicotti was aware that Dr. Brown had been assisting adjuncts that semester and had expressed no opposition.

77. Given Director Cicotti's concern about her not monitoring the exam for the Med Surg course on January 30, 2008, Dr. Brown asked Director Cicotti if she could attend the clinical to assist the adjuncts on January 30, 2008. Since

there would be one monitor in the Med Surg exam. Director Cicotti denied Dr. Brown's request and told her that because there was a conflict between the OB/PED clinical and the Med Surg exam, Dr. Brown needed to be in the latter class. However, she told Dr. Brown that she could attend the OB/PED clinical on the days the Med Surg class was not meeting (or an exam was not being given). Director Cicotti also advised Dr. Brown to revise her schedule to include the days she was in the OB/PED clinical. There is no evidence that Dr. Brown failed to comply with either of the foregoing directives.

November 2007--Interaction With Community Partner

78. In November 2007, a few days after Dr. Brown was placed on probation, Angie Laxton, a representative of Orlando Health, one of the Nursing Department's community partners, was visiting the Department. Dr. Brown, who appeared to be upset, told Ms. Laxton that she had been removed as clinical coordinator, that she was on probation and did not know why, and that she was being mistreated by the Department.

79. Having only recently been placed on probation, Dr. Brown was understandably upset. Nevertheless, she used poor judgment in confiding in Ms. Laxton, who was a community partner, not a friend.

80. Ms. Laxton went to Director Cicotti's office and reported the comments that Dr. Brown had made to her.

81. Director Cicotti first talked to Dr. Brown about her lack of professionalism and making negative comments about the Nursing Department to Ms. Laxton on February 4, 2008. Dr. Brown never denied that she had talked to Ms. Laxton about her probationary status and related matters.

Conduct in Nursing Department--Week of November 12, 2007

82. In November 2007, after being placed on probation, Director Cicotti observed Dr. Brown in the hall engaged in conduct that she perceived as unprofessional or inappropriate. In the first instance, Director Cicotti testified that Dr. Brown was "muttering" while in the hall of the Nursing Department building. This incident happened when faculty members were packing for the move to the new campus. There was no evidence that the conduct was disruptive or that anyone except, Director Cicotti observed this incident.

83. Director Cicotti witnessed a second incident which also occurred in November 2007, when the faculty was packing. According to Director Cicotti, Dr. Brown was walking down the hall of the Nursing Department building and made the comment, in a loud voice, that contrary to popular belief, she had not been fired but was moving to the new campus. It is unclear who, if anyone, Dr. Brown was talking to at the time. Moreover, there is no evidence that anyone other than Director Cicotti heard the comment or that the comment was disruptive.

December 2007--Interaction With Colleague

84. In December 2007, Lois Hopkins, a faculty member, and Dr. Brown were in a planning meeting to schedule labs for their respective classes for the term beginning in January 2008. Dr. Brown suggested that their respective classes go to the lab at the same time. On the other hand, Ms. Hopkins recommended that the two classes be scheduled for different times so that the students would have greater opportunities for "hands-on" experiences. After Ms. Hopkins made her recommendation and gave her rationale for that recommendation, Dr. Brown agreed to the lab schedule recommended by Ms. Hopkins. Nonetheless, Ms. Hopkins's perception, based on the tone of Dr. Brown's voice, was that Dr. Brown was angry.

85. In December 2007, at the end of a faculty meeting, Dr. Brown stated she was on probation and added that if anyone had questions, they should talk to her. Dr. Brown made these comments in response to the rumors in the Nursing Department concerning her probationary status. Except for Director Cicotti, there is no evidence that any one heard Dr. Brown make that statement. Ms. Yorty, the only faculty member to testify on this issue, stated that she did not hear Dr. Brown make that comment.

86. Later, at an unidentified time, Director Cicotti talked to Dr. Brown about the comment she made at the

December 2007 faculty meeting. Director Cicotti told Dr. Brown that the comment was unacceptable. She also stated her opinion that the comment undermined Director Cicotti's authority as the disciplinary process had been held confidential.

87. Dr. Brown did not report for work on December 10, 2007, due to a scheduled medical appointment. However, two weeks before the scheduled medical procedure, Dr. Brown filed the appropriate paperwork with Director Cicotti's secretary in accordance with Department procedures. Also, prior to December 10, 2007, Dr. Brown told Director Cicotti that she would be out for the procedure on Monday, December 10, 2007.

Probation Status Assessment and Written Warning--February 2008

88. On February 4, 2008, Director Cicotti issued a memo to Dr. Brown, captioned "Probation Status and Written Warning." The memo stated that the purpose of the memo was to give Dr. Brown feedback regarding her progress during the time she had been on probation. The memo purported to assess Dr. Brown's performance and/or compliance in four areas: (1) employee assistance plan (EAP); (2) teaching assignments; (3) responsibility; and (4) professionalism.

89. The Probation Status/Written Warning memo noted that Dr. Brown had timely complied with the directive to participate and complete a program provided through the EAP. That program consisted of two counseling sessions on two days.

90. In regard to "teaching assignments," the Probation Status/Written Warning memo stated in pertinent part:

Teaching Assignments. On November 6, I asked you to notify me by November 9, of your preferences for teaching in Term II. You asked me to extend the deadline until November 15. You did not communicate your preferences to me by November 15. On November 16, I contacted you about your preferences in teaching assignments. You told me that none were acceptable; I reviewed the possible assignments with you again. Still, you would not articulate your preferences. I met with you on November 19, to tell you which courses were assigned to you. You continued to be resistant, citing a lack of time to prepare teaching classes. After several more discussions, your assignments were finalized on December 5. This entire process was more difficult than it needed to be and took longer than it should have.

During the week of January 28, I learned that, contrary our previous agreement, you were not teaching in the classroom in NUR 1210C. In addition, you had decided that you would not be present for the course exams because you intended to go to clinical to support adjunct faculty. I reminded you that course needs supersede support needs and requested that you adjust your clinical time accordingly.

91. The Probation Status/Written Warning memo assesses Dr. Brown's progress in the area of "responsibility" as follows:

Responsibility. You were advised to take responsibility for your actions. On a couple of occasions since the meeting on November 6, you have denied making remarks that others had reported to me (incident with clinical partners; incident involving a co-worker.) I reminded you on November 28

that, as you were advised on November 6, you must take responsibility for your actions and correct your perception that you have not caused or contributed to any of the interpersonal or department problems in which you have been involved.

92. Finally, in the area of "professionalism," the Probation Status/Written Warning memo states in pertinent part the following:

Professionalism. The other problems discussed with you on November 6 were your unacceptable behavior interactions with faculty, staff, students, and the public; your inconsiderate or disrespectful treatment of others; your inappropriate responses to feedback and suggestions; your lack of collegiality; and your confrontational and intimidating communications and behaviors.

* * *

Since being placed on disciplinary probation on November 6, you have continued to make poor choices with regard to your conduct and the level of professionalism that is required of you. On several occasions, you have exhibited a lack of self-control and a flagrant disregard for your colleagues, your workplace and our educational environment. You have inappropriately discussed your personal situation and department business with our clinical partners. You have made negative comments about me and the leadership of the department. You have embarrassed your colleagues by making inappropriate statements during a faculty meeting. And, on December 10, you did not report for work nor did you call in to report your absence.

93. The Probation Status/Written Warning memo advised Dr. Brown that her failure to adhere to the terms of her probation jeopardized her prospects for continued employment at SCC. The memo noted that Dr. Brown had not corrected the deficiencies that were brought to her attention and had failed to maintain the levels of work performance and professionalism required by the college. Finally, the memo notified Dr. Brown that this was her final warning and notice to correct and that she would be re-evaluated within the next 30 days.

94. With one exception, the factual allegations set forth in the Probation Status/Written Warning memo are not supported by the evidence presented in this case. The evidence established that Dr. Brown inappropriately discussed her personal situation and Department business with only one clinical (community) partner after being placed on probation. However, the more persuasive evidence showed that Dr. Brown never denied making those inappropriate comments.

95. The remaining allegations in the Probation Status Memo/Written Warning memo, relative to Dr. Brown's teaching assignments and lack of professionalism, are not supported by the evidence. In addition to the foregoing, the memo alleged that Dr. Brown: (1) exhibited lack of self-control and flagrant disregard for her colleagues, workplace, and educational environment; (2) made negative comments about Director Cicotti

and the leadership of the Department; (3) embarrassed colleagues by making inappropriate comments in a (December 2007) faculty meeting; and (4) did not report to work on December 10, 2007, and did not call in to report her absence. The forgoing factual allegations are not supported by the evidence and, in some instances, are contrary to the evidence.

96. As discussed below, Dr. Brown was on authorized medical leave from the mid-February through April 13, 2008, and no re-evaluation was ever done.

February 2008--Simulation Laboratory Incident

97. On February 13 or 14, 2008, there was a program at the new SCC campus in Altamonte Springs designed to introduce nursing students to the new simulation lab. Maureen Tremmel, a faculty member, was in charge of the program.

98. Ms. Tremmel got to the lab at 7:00 a.m., two hours before the students were to arrive, in order to set things up. While doing so, Ms. Tremmel encountered "quite a few snafus," some of which she attributed to being in a new building.¹⁶ Ms. Tremmel acknowledged that she was "a little stressed" as she was preparing for the first simulation activity in the new lab, after several weeks of pre-planning.

99. About 8:00 a.m., several faculty members, including Dr. Brown, began coming into the simulation lab. Dr. Brown went to Ms. Tremmel and volunteered to help. Ms. Tremmel asked

Dr. Brown to make extra copies for one of the simulation stations and to retrieve the computer "clickers," which were locked in a storage room in a secretary's office. Dr. Brown made the copies, but was unable to get the "clickers" because they were in a locked office.

100. Before students arrived, Ms. Tremmel asked the faculty to select the station they wanted to be in charge of during the simulation activity. Ms. Yorty selected one station and Ms. Tremmel selected another one.

101. After Dr. Brown returned to the simulation lab, Ms. Tremmel asked Dr. Brown which of the two remaining stations she wanted to work at during simulation activity. Dr. Brown told Ms. Tremmel that it didn't really matter. Ms. Tremmel was bothered by that response because she misinterpreted Dr. Brown's comment to mean that she (Brown) did not care and was not really interested in what she would be doing. Instead, Dr. Brown actually meant that she was willing to work at either one of the two stations.

102. Ms. Tremmel asked Dr. Brown a second time to choose either the diabetic station or the IV station and told her that she (Tremmel) really needed her to choose. Dr. Brown said she did not want to choose because "choosing gets me in trouble." Ms. Tremmel then became a "little annoyed" and showed that she was annoyed. At that point, Ms. Yorty and Dr. Marge Thompson,

(Dr. Thompson), director of the lab, got involved and Ms. Yorty told Dr. Brown to do the diabetic station.

103. Dr. Brown willingly accepted that assignment. There were five or six "lab people" in the simulation lab when the foregoing exchange occurred. However, the evidence established that the only persons who heard the interaction between Dr. Brown and Ms. Tremmel were Patty Yorty and Dr. Thompson.

104. Ms. Yorty, Dr. Thompson, and Dr. Brown went into the room where the diabetic simulation patient was and reviewed the orientation for that station. Meanwhile, Ms. Tremmel left the simulation lab and went to the Director Cicotti's office to report the simulation lab incident that had just occurred. Director Cicotti was not in her office, so Ms. Tremmel told Lydia Gaud, a program manager, about the incident in the simulation lab.

105. After reporting the incident, Ms. Tremmel returned to the simulation lab. Ms. Tremmel acknowledged that she was still angry when she returned to the lab, but decided that she wanted to "lay the matter to rest" before the simulation program started. Ms. Tremmel went into the room where the diabetic station was located and approached Dr. Brown, who was alone in the room. Ms. Tremmel started yelling at Dr. Brown and telling her that she was being inflexible. She told Dr. Brown, "All you needed to do was choose a station and I just needed you to be a

team player." Dr. Brown responded that she was being a team player by saying that she would take any station. As Dr. Brown walked away, Ms. Tremmel told her, "You get back here, I'm not done talking to you yet." There is no evidence that anyone else was in the room during the foregoing exchange or heard the exchange between Ms. Tremmel and Dr. Brown.

106. The day of the incident and at Ms. Tremmel's request, Director Cicotti met with Dr. Brown and Ms. Tremmel to discuss the incident in the simulation lab. Ms. Gaud also attended the meeting. Both Dr. Brown and Ms. Tremmel gave their version of what happened in the lab.¹⁷

107. Director Cicotti concluded that Dr. Brown and Ms. Tremmel exhibited inappropriate unprofessional behaviors in the situation.

108. Both Ms. Trammel and Dr. Brown apologized for the simulation lab incident.¹⁸

109. Dr. Brown's conduct in the simulation lab incident consisted of not choosing a station. Dr. Brown did not make a decision, because she was uncomfortable doing so and did not know "where it would lead." Having been given a written warning only a few days earlier, Dr. Brown believed that rather than making a decision, it was in her best interest to do what was assigned.

110. The mere failure of Dr. Brown to choose a station because she was uncomfortable, was not unprofessional. Moreover, it is unreasonable to attribute wrong-doing to Dr. Brown as a result of the inappropriate and/or unprofessional conduct of another faculty member simply because she (Brown) was the person involved in the verbal exchange.

111. During the simulation incidents, Dr. Brown did not engage in any unprofessional conduct or violate any directive.

112. On February 13 or 14, 2008, Ms. Salvano came to the Nursing Department to discuss the incident in the simulation lab. Dr. Brown wanted a faculty senate representative present at the meeting. Since no one was available, Dr. Brown was asked to go home for that day. As she was leaving the building, Dr. Brown had a medical issue, which resulted in her collapsing in or near the elevator. After leaving that day, Dr. Brown did not return to work until April 2008.

Pre-Termination Proceeding-Mid February through May 2008

113. For the period between mid-February 2008, and to April 13, 2008, Dr. Brown was on authorized medical leave.

114. Dr. Brown's physician cleared her to return to work on April 14, 2008. When Dr. Brown arrived at work on April 14, 2008, she was advised to go to see Ms. Salvano, whose office was at the Sanford/Lake Mary campus. Dr. Brown went to Dr. Salvano's office as she had been directed. During that

meeting, Ms. Salvano advised Dr. Brown that she was being relieved of her duties due to insubordination and willful neglect of duty.

115. Sometime between February 13 or 14 and April 13, 2008, Director Cicotti, Dean Kersenbrock and Vice-President Hawkins, after reviewing the matters related to Dr. Brown's probation and her behavior during that time, agreed that Dr. Brown's employment should be terminated. In turn, Vice-President Hawkins recommended to SCC President McGee that Dr. Brown be terminated.

116. By letter dated April 15, 2008, Dr. Brown was notified that President McGee was recommending to the Board that she be dismissed for "gross insubordination and willful neglect of duty."

117. On May 6, 2008, the Board of Trustees of SCC voted to terminate the continuing contract for employment of Dr. Brown.

118. On May 7, 2008, the president of SCC notified Dr. Brown that her continuing contract for employment was terminated, effective June 17, 2008.

119. Prior to recommending Respondent's termination, SCC administrators employed the college's progressive discipline procedures which includes five distinct steps--with each step being more serious. These steps are: 1) counseling; 2) verbal reprimand; 3) written warning; (4) suspension/probation; and

(5) dismissal/termination. Pursuant to the policy, SCC administrators are permitted to begin disciplinary proceedings at any step, depending on the severity of the offense.

120. Here, Director Cicotti started her discipline of Respondent at the fourth step, probation. Based on alleged violations committed thereafter, Director Cicotti imposed the third step in the progressive discipline process, a written warning. The written warning was followed by recommendation that Dr. Brown's employment be terminated.

121. There is no evidence of any prior disciplinary action against Dr. Brown during her tenure at SCC.

CONCLUSIONS OF LAW

122. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Subsection 120.57, Florida Statutes (2008). See Fla. Admin. Code R. 6A-14.0411(5)(a).

123. Pursuant to Florida Administrative Code Rule 6A-14.0411(5)(a), upon recommendation of the SCC president, the Board is authorized to dismiss an employee under continuing contract or return the employee to an annual contract upon the recommendation by the president.

124. The Board is authorized to adopt rules, procedures and policies, consistent with law and rules of the State Board of Education, related to, among other things, its mission and

responsibilities as set forth Section 1001.65, Florida Statutes, and its personnel. See § 1001.64(4)(b), Fla. Stat (2007).¹⁹

125. The president of SCC is required to establish and implement policies and procedures to "recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline and remove personnel." See § 1001.65(3), Fla. Stat. Such policies and procedures must be within the law and rules of the State Board of Education and in accordance with the rules and policies approved by the Board. Id.

126. Pursuant to its rulemaking authority, the Board of Trustees has adopted the policies addressing among other issues, employee discipline and the hearing rights associated therewith. See SCC Policies 2.011 and 2.0500.

127. SCC Policy 2.1900, titled "Employee Discipline," sets forth "a non-exclusive list" of types of employee behavior which could give rise to disciplinary action, up to and including suspension or dismissal. Among the behaviors listed in the policy are "immorality, misconduct, incompetency, insubordination, willful neglect of duty, [and] conviction of any crime involving moral turpitude"

128. SCC Policy 2.1900 provides that the purpose of that "Employee Discipline" policy is to identify inappropriate behavior and provide a progressive system of corrective action designed to encourage improvement. That policy, which

identifies, defines, and prescribes the five progressive steps that may be utilized, states:

The following progressive steps may be employed by the College in its efforts to correct inappropriate employee behavior. The College at its discretion, and in consideration of the severity of the offense, may begin the progression at any step.

Counseling:

Counseling is an offer of assistance to correct behavior and/or warning that disciplinary action could follow if improvement is not noted. A non-detailed written record of the counseling session may be placed in the limited access section of the employee's personnel file.

Verbal Reprimand:

A verbal reprimand is a formal warning. A non-detailed memorandum acknowledging that a verbal warning was issued is placed in the limited access section of the employee's personnel file.

Written Warning:

A written warning is a formal notice that inappropriate behavior, or a violation of a rule, policy, or procedure has occurred. It outlines the specific steps which must be taken to correct the problem. The warning usually includes notice that another offense or failure to improve could result in more serious disciplinary action. This formal warning is placed in the limited access section of the employee's personnel file.

Suspension/Probation:

An employee may be placed on probation or suspended from employment if previous attempts to correct inappropriate behavior are ineffective. A suspension may be with

or without pay and will be for a specified period of time. An employee may be put on probation as a condition of returning to work after suspension, or as a condition of continued employment without suspension. Probationary periods will be for a specified time and will specify the corrective action required of the employee to successfully complete the probation. A record of the suspension or probation is placed in the limited access section of the employee's personnel file.

Dismissal/Termination:

Contract employees may be terminated or dismissed in accordance with this procedure, Florida Statutes and the Rules of the State Board of Education. . . .

129. The manner in which Director Cicotti implemented the progressive discipline policy does not violate SCC Policy 2.1900.

130. The Board terminated Respondent's continuing contract for gross insubordination and willful neglect of duty, effective June 17, 2008.

131. The offenses with which Respondent is charged, "gross insubordination" and "willful neglect of duty" are not defined in any statute or rule applicable to community colleges in Florida or in any SCC policy. However, the definitions in Florida Administrative Code Rule 6B-4.009, which relate to the suspension and dismissal of instructional personnel by school districts, are instructive.

132. Florida Administrative Code Rule 6B-4.009(4) defines "gross insubordination" and "willful neglect of duty" as follows:

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 the proper authority.

133. To prevail, SCC must demonstrate by a preponderance of the evidence that each element of the charged offense which may warrant termination of Respondent's continuing contract. McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); and Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). SCC must also establish by a preponderance of evidence the underlying factual allegations.

134. To meet its burden, SCC first must establish that a direct order was given, that it was reasonable in nature and was given by and with proper authority. Next, SCC must demonstrate that Respondent refused to obey a direct order and that her actions were "constant" and "continuing."

135. SCC has not met its burden.

136. The evidence established, and it is not disputed, that the "direct orders" given were reasonable and given by someone with authority to give such orders.

137. The second element necessary to prove "gross insubordination" and "willful neglect of duty," has not been

established. The evidence failed to establish that Respondent refused to obey any direct orders, and if she did so, that such actions were "constant" and "continuing." To the contrary, the evidence established that when given a direct order, Respondent complied with such order.

138. The evidence does not establish that Respondent committed the offenses of gross insubordination and willful neglect of duty.

RECOMMENDATION

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

RECOMMENDED that the Board of Trustees of the Seminole Community College enter a final order: (1) finding that Respondent, Dr. Lorraine Brown, did not commit the offenses of gross insubordination and willful neglect of duty; and (2) reversing its decision to terminate her continuing employment contract as a professor of nursing.

DONE AND ENTERED this 13th day of March, 2009, in
Tallahassee, Leon County, Florida.

Carolyn S. Holifield

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

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of March, 2009.

ENDNOTES

^{1/} Subsections 760.11(1), (3) and (4), Florida Statutes, provide that:

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation. . . .

* * *

(3) Except as provided in subsection (2), the commission shall investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred in

violation of the Florida Civil Rights Act of 1992. When the commission determines whether or not there is reasonable cause, the commission by registered mail shall promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section.

(4) In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(b) Request an administrative hearing under ss. 120.569 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this act.

^{2/} Dean Kersenbrock reviewed issues related to Dr. Brown's complaint that she was being treated unfairly as it related to release time and approval for attending national conferences. As a result of her review, Dean Kersenbrock concluded that Dr. Brown was not treated unfairly in either of those areas.

^{3/} The interpersonal issues within the department were initially raised by Dr. Brown, but other faculty members also had complaints.

^{4/} This e-mail was not introduced into evidence so the wording of the e-mail is not known. However, Dr. Brown does not dispute sending an e-mail apologizing for the Nursing Department's oversight.

^{5/} The e-mail was not introduced into evidence, so the exact wording and substance of the e-mail and the faculty members to whom it was sent, are not known.

^{6/} There is no indication that Cicotti discussed this with Dr. Brown.

^{7/} On September 20, 2007, Dr. Brown asked Director Cicotti for approval to participate in a technology project sponsored by the National League for Nursing (NLN). Director Cicotti agreed to support Dr. Brown's application to participate in the project. The NLN actually selected candidates, but the college would have to pay expenses for travel.

^{8/} Dr. Brown closed the e-mail by stating that she did not intend to lie to the NLN about the reason the college chose not to support their NLN program and had "no intention of lying again-that is not in my nature." This comment appears to be related to Dr. Brown's comment in the previous e-mail that she had been told that her April 2007 request to attend an NLN conference was denied for budget reasons but later found out that a new department faculty member had been allowed to attend that same conference.

^{9/} Despite Cicotti's view that this reflected Dr. Brown's resistance to coaching/counseling, Dean Kersenbrock ultimately decided that the goals could remain as written.

^{10/} Prior to Cicotti's recommending that Dr. Brown be placed on probation, Dean Kersenbrock had raised the issue with Director Cicotti.

^{11/} The job description was not included as an exhibit in this proceeding.

^{12/} In her November 14, 2007, e-mail to Director Cicotti, Dr. Brown indicated that she had discussed the scheduling issues with Vice-President Hawkins, who had advised Brown to work through these issues with Director Cicotti. Vice-President Hawkins was copied on the e-mail.

^{13/} The Med Surg course was part of the Department's new curriculum that included only "adult" surgery content. Dr. Brown had previously taught the Med Surg course in the former curriculum that covered "adult" and "pediatric" surgery issues. She and Ms. Yorty had co-taught that course for many years. In that course, Dr. Brown had taught the component dealing with "pediatric" surgery. Ms. Yorty had taught the "adult" surgery component.

^{14/} Director Cicotti had suggested that the course be organized so that Dr. Brown would start teaching at the end of January or early February 2008, rather than the beginning of Term II, in order to give Dr. Brown additional time to prepare her lectures.

^{15/} Due to an inadvertent error, the lecture time was one hour off. Director Cicotti requested that this be corrected. Due to Dr. Brown's beginning an extensive medical leave two days later, this error was not corrected. However, this became a non-issue as Dr. Brown did not teach after mid-February 2008.

^{16/} For example, keys to some of the rooms could not be found, the copy machine on the same floor as the simulation lab was not working, and equipment had been moved to another location.

^{17/} Director Cicotti testified that she also collected witness statements. However, no witness statements were introduced at hearing and only one witness, Ms. Yorty testified that she provided such a statement.

^{18/} Director Cicotti testified that she was concerned that Dr. Brown, unlike Ms. Tremmel, accepted no responsibility for the simulation lab incident and did not apologize. However, on cross-examination, after reviewing her notes, Director Cicotti recalled that Dr. Brown did apologize. Director Cicotti also testified that Dr. Brown stated that she should have counted to ten before responding to Ms. Tremmel's questions.

^{19/} All statutory references are to Florida Statutes (2007), unless otherwise noted.

COPIES FURNISHED:

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

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

Sandra K. Ambrose, Esquire
Stenstrom, McIntosh, Colbert, Whigham,
Reischmann & Partlow, P.A.
1001 Heathrow Park Lane, Suite 4001
Lake Mary, Florida 32746

Larry H. Colleton, Esquire
The Colleton Law Firm, P.A.
Post Office Box 677459
Orlando, Florida 32867

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.