

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 08-6398
)
MARYEUGENE E. DUPPER,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on April 28 and 29, 2009, in Key West, Florida.

APPEARANCES

For Petitioner: Scott C. Black, Esquire
 Joshua T. Hauserman, Esquire
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For Respondent: Mark Herdman, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner, Monroe County School Board, has "just cause" to terminate the employment of Respondent, Maryeugene E. Dupper, as a teacher for Petitioner.

PRELIMINARY STATEMENT

By letter dated November 14, 2008, the Monroe County School District Superintendent, Randy Acevedo, informed Respondent, that he was going to recommend to Petitioner at its December 16, 2008, meeting that her employment as a teacher for Petitioner be terminated. By letter dated November 18, 2008, Respondent requested an administrative hearing pursuant to Section 120.57, Florida Statutes (2008), to challenge her anticipated termination of employment.

Petitioner accepted the Superintendent's recommendation at its December 16, 2008, meeting, suspending Respondent without pay, pending a final determination of whether her employment should be terminated.

Respondent's request for hearing and an Administrative Complaint were filed with the Division of Administrative Hearings on December 22, 2008. The matter was designated DOAH Case No. 08-6398 and was assigned to the undersigned.

The final hearing was scheduled to be conducted on February 24 and 25, 2009, by Notice of Hearing entered

January 7, 2009. By a joint request of the parties, the hearing was rescheduled for April 28 and 29, 2009.

At the final hearing, Petitioner presented the testimony of Ann Francis Herrin, Principal at Gerald Adams Elementary School and Grace Willis, Assistant Principal at Gerald Adams Elementary School. Petitioner also had 26 Exhibits admitted.

Respondent testified and presented the testimony of two mothers of former students of Respondent, N. P. and O. U.

On May 22, 2009, a Notice of Filing Transcript was issued informing the parties that the two-volume Transcript of the final hearing had been filed. The parties were also informed that, pursuant to their agreement at the conclusion of the final hearing, their proposed recommended orders were to be filed on or before June 11, 2009. The parties were subsequently granted leave to file their proposed orders on or before June 19, 2009. Both parties filed Proposed Recommended Orders on June 19, 2009. Their submittals have been fully considered in preparing this Recommended Order.

All references to the Florida Statutes in this Recommended Order are to the 2008 codification unless otherwise noted.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, Monroe County School Board (hereinafter referred to as the "School Board"), is a duly-constituted school

board charged with the duty to operate, control, and supervise all free public schools within the School District of Monroe County, Florida. Article IX, Florida Constitution; § 1001.32, Fla. Stat. Specifically, the School Board has the authority to discipline employees. § 1012.22(1)(f), Fla. Stat.

2. Respondent, Maryeugene E. Dupper, has been a classroom teacher with the School Board since August 2000. She began her employment as a substitute teacher and was subsequently employed as a full-time teacher at Poinciana Elementary School (hereinafter referred to as "Poinciana"), where she worked with profoundly handicapped students. She remained at Poinciana through November 2006. Throughout her employment at Poinciana, Ms. Dupper received good performance evaluations, although they did decline over time.

3. On November 17, 2006, Ms. Dupper transferred to Gerald Adams Elementary School (hereinafter referred to as "Gerald Adams"), where she taught a Pre-K Exceptional Student Education or ESE class for the first time.

4. At the times pertinent to this proceeding, Ms. Dupper was employed as a teacher pursuant to a professional services contract.

B. 2006-2007 School Year.

5. From the beginning of her employment at Gerald Adams, Ms. Dupper evidenced difficulty implementing the curriculum in a

meaningful way. In particular, Ann Herrin, Principal at Gerald Adams, whose testimony has been credited, found that Ms. Dupper was having a difficult time establishing the scope and sequence of lessons and effective classroom management techniques.

6. Among the deficiencies Ms. Herrin found with Ms. Dupper's performance was the lack of progress notes for her students. Ms. Dupper failed to keep any notes indicating that she had performed any formal evaluation of her students. When Ms. Herrin asked Ms. Dupper how she could tell whether her curriculum was successfully reaching each student, Ms. Dupper simply replied that "I am a teacher and I just know."

7. After conducting two formal observations and a number of informal observations of Ms. Dupper, Ms. Herrin, in her 2006-2007 annual teacher evaluation concluded that Ms. Dupper "Needs Improvement" in Management of Student Conduct, Instruction Organization and Development, Knowledge of Subject Matter, and Evaluation of Instructional Needs. Ms. Herrin used a Teacher Annual Assessment Plan Comprehensive Assessment Form for this evaluation. Overall, Ms. Herrin rated Ms. Dupper as "Needs Improvement" noting that "Curriculum content is lacking - making the learning environment unacceptable and unmanageable."

8. Subsequent to Ms. Herrin's evaluation of Ms. Dupper, Ms. Herrin issued a Professional Development Plan for Ms. Dupper dated May 30, 2007. Ms. Dupper, who had been provided

assistance throughout the school year by Gerald Adams administrative staff, was offered guidance in the Professional Development Plan intended to improve her performance as a teacher. That guidance is accurately described in paragraph 9 of the School Board's Proposed Recommended Order.

9. At the beginning of the 2007-2008 school year, the School Board instituted a new curriculum for use by Pre-K teachers. That curriculum, the Galileo Curriculum (hereinafter referred to as "Galileo"), is a computer-based program which includes lessons plans and benchmarks and goals for teachers to use in assessing student performance. Although Galileo includes a means for teachers to keep track of student progress, Galileo is not a student evaluation instrument intended for use in "testing" student progress.

C. 2007-2008 School Year.

10. During the 2007-2008 school year, Ms. Dupper was observed on October 11, November 8, and December 18, 2007, and on March 20 and 26, and May 6 and 22, 2008. Despite efforts to provide Ms. Dupper with professional assistance and making several changes in the teacher's aide assigned to assist her, Ms. Dupper's performance remained inadequate. Ms. Dupper was provided with assistance by teachers at Gerald Adams, including a "mentor," and by the head of the Exceptional Student Education

department and an Exceptional Student Education Program Specialist.

11. Ms. Dupper was observed on one occasion by Ms. Herrin when every student in Ms. Dupper's "learning center" left the area while she continued to "teach." One student stood on a table dancing, uncorrected by Ms. Dupper. On two occasions, a student left Ms. Dupper's classroom altogether and were taken back to Ms. Dupper's classroom before she realized they were gone.

12. On nine different occasions during the 2007-2008 school year, Ms. Herrin requested a discipline plan from Ms. Dupper. No plan was ever provided.

13. Ms. Dupper's use of Galileo was minimal during the 2007-2008 school year. The system contained a checklist, by domain or skill, which was intended for use by a teacher in determining whether each student was learning the listed skills. Ms. Dupper rarely used the system, however, only logging into the Galileo system 19 times. Nine of those times were on the same day and four were on another day. Other Pre-K teachers utilized Galileo an average of 100 times more than Ms. Dupper.

14. Ms. Herrin's 2007-2008 annual evaluation of Ms. Dupper, dated April 4, 2008, found that her performance had declined and was "Unsatisfactory." Ms. Herrin found Ms. Dupper "Unsatisfactory" in Management of Student conduct, Instruction,

Organization and Development, Knowledge of Subject Matter, and Evaluation of Instructional Needs. Ms. Dupper's performance in Professional Responsibilities also declined due to her failure to complete Individual Education Plans on time, incomplete and inaccurate progress notes, and her failure to follow suggestions for improvement.

D. The 90-Day Probation Period.

15. As a result of her continuing decline in performance, Ms. Dupper was informed on April 9, 2008, that she was being placed on a 90-day probation period pursuant to Section 1012.34, Florida Statutes. She was informed that her deficiencies included the inability to manage student conduct, lack of lesson planning, inadequate knowledge of subject matter, lack of student progress evaluation, and inadequate professional responsibility. Ms. Dupper was given suggestions for how to improve her deficiencies over the summer break, suggestions which Ms. Dupper did not follow.

16. While on probation, Ms. Dupper was also offered an opportunity to transfer to another school, an offer which was not accepted.

17. On June 6, 2008, at the request of Ms. Dupper's union representative, a second annual evaluation was performed by Ms. Herrin. While Ms. Herrin found some improvement, she found that, overall, Ms. Dupper's performance was "Unsatisfactory."

18. Ms. Dupper was on probation during the 2007-2008 school year a total of 62 days, excluding holidays and "professional days."

19. During the summer months between the 2007-2008 and 2008-2009 school years, Ms. Dupper, who was not teaching, failed to follow any of Ms. Herrin's suggestions for personal improvement opportunities.

20. The first day of school for the 2008-2009 school year and the commencement of the 90-day probation period was August 11, 2008.

21. Ms. Herring formally observed Ms. Dupper during the third week of September 2008, and on October 2, 2008. Assistant Principal Willis observed Ms. Dupper on October 8, 2008. Ms. Dupper's performance and use of Galileo continued to be unsatisfactory, despite continuing efforts of the administration staff to assist her, as more particularly and accurately described in paragraphs 30 through and including 35 of Petitioner's Proposed Recommended Order.

22. Additionally, Ms. Dupper continued to fail to prevent her very young students from leaving the classroom without her knowledge.

23. Excluding non-school days, Ms. Dupper was given more than 120 days from the commencement of her probation period until her probation period was considered ended in October 2008.

By the middle of October 2008, Ms. Herrin concluded that Ms. Dupper had not evidenced satisfactory improvement in her teaching skills. Ms. Herrin's conclusions concerning Ms. Dupper's unsatisfactory performance as a teacher, which were not contradicted, are credited.

E. The Decision to Terminate Ms. Dupper's Employment

24. By letter dated October 30, 2008, Ms. Herrin recommended to Randy Acevedo, Superintendent of the Monroe County School District, that Mr. Acevedo review documentation concerning Ms. Dupper's 90-day probation period and make a recommendation pursuant to Section 1012.33, Florida Statutes, concerning her continued employment.

25. Ms. Herrin provided Mr. Acevedo with the following information for his review:

Attached please find a copy of the professional development plan and this year's observations conducted by Assistant Principal, Grace Willis and me. The remaining documentation for the 2007 and 2008 school years have been submitted to personnel. I have also attached the follow up documentation, the review of the 90-Day plan and the observations that outline the deficiencies that still remain. This teacher's performance remains unsatisfactory.

Petitioner's Exhibit 7. Missing from the information provided for Mr. Acevedo's consideration was any information concerning

student performance assessed annually by state or local assessment.

26. By letter dated November 14, 2008, Mr. Acevedo informed Ms. Dupper that he was going to recommend to the School Board at its December 16, 2008, meeting that her employment as a teacher be terminated. By letter dated November 18, 2008, Ms. Dupper requested an administrative hearing pursuant to Section 120.57, Florida Statutes, to challenge her anticipated termination of employment.

27. The School Board accepted the Superintendent's recommendation at its December 16, 2008, meeting, suspending Ms. Dupper without pay, pending a final determination of whether her employment should be terminated.

F. Student Performance Assessment.

28. The Florida legislature has specified in Section 1008.22, Florida Statutes, a "Student assessment program for public schools." This assessment program is to be considered in evaluating student performance as part of a teacher's evaluation. The assessment program, however, does not apply to Pre-K students.

29. "FLICKRS" is a state assessment tool intended for use in evaluating Kindergarten students. FLICKRS allows schools to evaluate whether a Kindergarten student is actually ready for

Kindergarten-level work. FLICKRS is not utilized by the School Board to evaluate the progress of Pre-K students.

30. The School Board has not developed any means of annually assessing the performance of Pre-K students. As a consequence, the decision to terminate Ms. Dupper's employment by the School Board was not based upon any annual assessment of her students' performance.

CONCLUSIONS OF LAW

A. Jurisdiction.

31. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569, 120.57(1), and 1012.33(6)(a)2., Florida Statutes (2009).

B. The Burden and Standard of Proof.

32. In an administrative proceeding in which a School Board seeks to suspend or dismiss a member of its instructional staff, the School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter County School Board, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); and MacMillan v. Nassau County School Board, 629 So. 2d 226 (Fla. 1st DCA 1993).

C. The Administrative Complaint.

33. The Superintendent of Schools of Monroe County, Florida, issued an Administrative Complaint setting out the following allegations in support of the preliminary decision of the School Board to terminate Ms. Dupper's employment:

6. At all times pertinent hereto, the Respondent was employed as a Teacher at Gerald Adams Elementary School in the Monroe County School District.

7. On May 20, 2007, Assistant Principal Grace Willis met with Respondent, MARYEUGENE E. DUPPER, to discuss Respondent's 2007 annual assessment, attached hereto as Exhibit "A" and incorporated herein, because many items were listed as "Needs Improvement" and Unsatisfactory." The annual assessment, as evaluated by supervisor/Principal Fran Herrin, and subsequent meeting to discuss the assessment were done pursuant to Florida Statute [sic] 1012.34(3)(c). Items that needed improvement discussed at the meeting included talking less, staying on subject, keeping lessons simple and relevant, providing more opportunities for the students to communicate, using Creative Curriculum to connect themes to the material, and organizing centers to reflect the curriculum. Subsequently, on May 30, 2007, a Professional Development Plan was provided to the Respondent in an effort to improve classroom performance, attached hereto as Exhibit "B" and incorporated herein.

8. On April 9, 2008, pursuant to Florida Statute [sic] 1012.34(3)(d)(2)(a) [sic], Principal Fran Herrin notified Respondent of her official placement on 90 Day Performance Probation due to Respondent's 2008 annual assessment, attached as Exhibit "C" and

incorporated herein, which overwhelmingly described Respondent's performance as "Unsatisfactory." The annual assessment was done pursuant to Florida Statute [sic] 1012.34(3)(a) and discussed with the Respondent. Listed deficiencies included managing student conduct, planning and developing lessons, knowledge of subject matter, lack of supporting data regarding student progress and missing deadlines. The notification letter I s [sic] attached hereto as Exhibit "D" and incorporated herein. Pursuant to Florida Statute [sic] 1012.34(3)(d)(1) [sic], a 90 Day Probation Period Professional Development Plan was provided to the Respondent in order to improve Respondent's instructional effectiveness, attached hereto as Exhibit "E" and incorporated herein.

9. Respondent was given 90 calendar days, not including school holidays and vacation periods, to demonstrate corrective action, as required by Florida Statute [sic] 1012.34(3)(d)(2)(a) [sic].

10. Pursuant to Florida Statute [sic] 1012.34(3)(d)(2)(a) [sic], classroom observations on September 22, 2008, October 2, 2008, and October 8, 2008, were conducted in an effort to evaluate implementation and incorporation of the 90 Day Probation Period Professional Development Plan. On October 30, 2008, pursuant to Florida Statute [sic] 1012.34(3)(d)(2)(b) [sic], the Final Evaluation prepared by Principal Fran Herrin to be send [sic] to Petitioner, attached hereto as Exhibit "F" and incorporated herein, concluded from those observations that Respondent "is still performing in an unsatisfactory manner," and recommended termination.

11. Pursuant to Florida Statute [sic] 1012.34 (3)(d)(2)(b) [sic], on November 14, 2008, Petitioner sent written notice to Respondent advising that Petitioner

concurred with Principal Fran Herrin's recommendation for termination, and further advised Respondent of Respondent's right to request a hearing to contest the charges, attached hereto as Exhibit "G" and incorporated herein.

. . . .

34. Although the bottom line is that the School Board has decided to terminate Ms. Dupper's employment pursuant to the "Assessment procedures and criteria" provided in Section 1012.34, Florida Statutes, the more specific allegations of the Administrative Complaint are quoted in order to emphasize what the School Board did not base its decision on or, more importantly, prove in this case: that the School Board, in assessing Ms. Dupper's performance as a teacher, "primarily used[d] data and indicators of improvement and student performance . . . measured by state assessments required under s. 1008.22 and by local assessments for subject and grade levels not measured by the state assessment program." § 1012.34(3)(a), Fla. Stat.

D. Assessment Procedures and Criteria.

35 The decision in this case ultimately turns on the proper application of Section 1012.34(3), Florida Statutes, which provides in pertinent part:

(3) The assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to

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

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

1. Performance of students.
2. Ability to maintain appropriate discipline.
3. Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.
4. Ability to plan and deliver instruction and the use of technology in the classroom.
5. Ability to evaluate instructional needs.
6. Ability to establish and maintain a positive collaborative relationship with

students' families to increase student achievement.

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

36. As anticipated by the School Board, Ms. Dupper cites Sherrod v. Palm Beach County School Board, 963 So. 2d 251 (Fla. 4th DCA 2006); and Young v. Palm Beach County School Board, 968 So. 2d 28 (Fla. 4th DCA 2006), in support of her argument that the School Board's failure to consider student performance as a part of the evaluation of her performance requires that she be reinstated to her employment as a teacher.

37. The Sherrod and Young cases, which have been accurately summarized in Ms. Dupper's Proposed Recommended Order, essentially stand for the proposition that simply relying upon the assessment by professional educators of a teacher's performance through the 90-day performance probation period process, without primary consideration of the performance of the teacher's students, was insufficient to justify termination of that teacher's employment pursuant to Section 1012.34, Florida Statutes (2003).

38. An analysis of the Sherrod and Young cases, however, as both parties recognize, does not end the inquiry in this case. Subsequent to those decisions, the legislature, in 2004, amended the statutory language applied by the court in Sherrod

and Young by adding the following language to Section 1012.34(3), Florida Statutes: "a school district's performance is not limited to basing unsatisfactory performance of instructional personnel and school administrators upon student performance, but may include other criteria approved to assess instructional personnel . . . or any combination of student performance and other approved criteria. . ." (hereinafter referred to as the "2004 Amendment"). See Ch. 2004-295, § 11, Laws of Fla.

39. Citing the Florida Third District Court of Appeal's decision in Harrell v. School Board of Miami-Dade County, 866 So. 2d 704 (Fla. 3rd DCA 2003), rehearing denied, 2004 Fla. App. LEXIS 3120 (Feb. 6, 2004), and the Recommended Order in Miami-Dade County School Board v. Gomez, DOAH Case no. 04-2335, 2004 WL 2434340 (Fla. DOAH Recommended Order October 29, 2004; Final Order December 15, 2004), the School Board has argued that the 2004 Amendment allows the termination of a teacher's employment without consideration of student performance.

40. The School Board's reliance on Harrell is misplaced. The decision in that case was limited to a consideration of whether the findings of fact of the Administrative Law Judge could be modified by the school board. The issue of the proper interpretation of the 2004 Amendment was not considered by the

court because the school board's decision in that case had been made in 2002 and, therefore, the 2004 Amendment did not apply.

41. The decision of the Administrative Law Judge in the Gomez case, a decision which was accepted by the school board, did address the issue of the impact of the 2004 Amendment on teacher evaluations, and does support the School Board's decision in this case. In Gomez, Administrative Law Judge Stuart M. Lerner, states in an endnote, the following:

This second sentence was added by Section 3 of Chapter 2004-295, Laws of Florida, effective June 10, 2004, to clarify that, contrary to the holding in Palm Beach County School Board v. Young, Case No. 03-2740, 2004 WL 542732 *14 (Fla. DOAH March 17, 2004) (Recommended Order), a finding of unsatisfactory teacher or administrator performance may be made under Section 1012.34(3), Florida Statutes, without consideration of student performance. Because this legislative addition merely clarified and did not substantively modify the version of Section 1012.34(3), Florida Statutes, in effect when the observations/evaluations at issue herein were conducted, it should be considered in determining the outcome of this case. . . . [Emphasis added].

Apparently, Judge Lerner concluded that a school board could terminate a teacher based upon three separate and distinct considerations: student performance; other criteria approved to assess instructional personnel performance; or any combination of the two.

42. Ms. Dupper, rejecting the School Board's interpretation of the 2004 Amendment, cites the decision in Miami-Dade County School Board v. Hannibal Rosa, DOAH Case No. 08-1495 (Fla. DOAH Recommended Order December 16, 2008; Final Order January 12, 2009). In that case, Administrative Law Judge Claude B. Arrington, reaching the opposite conclusion from Judge Lerner, concluded the following concerning the 2004 Amendment:

54. In applying Sherrod and Young, supra, the undersigned is constrained to conclude that the provisions of Section 1012.34(a), Florida Statutes (2007), when read in conjunction with Section 1008.22, Florida Statutes (2007), required Petitioner to assess Respondent's performance primarily based on the performance of the students assigned to his classroom utilizing an annual assessment instrument required by Section 1008.22, Florida Statutes (2007), which for Respondent's first grade class at Caribbean, would be the Stanford Achievement Test.

43. Consistent with Judge Arrington's decision in Rosa, Administrative Law Judge John G. Van Laningham analyzed the 2004 Amendment in endnote 8 of Miami-Dade County School Board v. Sergio H. Escalona, DOAH Case No. 04-1654 (DOAH Recommended Order November 23, 2004; Final Order January 19, 2005), as follows:

In 2004 the legislature added a sentence to § 1012.34(3), effective June 10, 2004, See ch. 2004-295, § 11, Laws of Fla. The board maintains, and the undersigned agrees,

that this recent amendment merely makes clear what was already reasonably apparent from the statute's preexisting language, namely, that student performance is not the only factor to consider in evaluating a teacher. Rather, as the amendment underscores, unsatisfactory performance can be found to exist even if the student performance data are acceptable, where the teacher's performance, as measured by against other approved criteria, is so poor as to outweigh the favorable indicators of student performance. As a clarifier, the amendment does not change the statutory directive that teacher evaluations be based primarily on student performance as measured by the FCAT and other standardized tests. Thus, in short, while a teacher's performance might be deemed unsatisfactory for reasons other than student performance, student performance on standardized tests cannot be ignored (or given short shrift) in a teacher's evaluation, for an assessment that gives little or no weight to students' test scores obviously is not one "primarily based on the performance of students" "as measured by [specific] state [and local] assessments" under any reasonable understanding of those unambiguous words.

44. The conclusions concerning the effect of the 2004 Amendment reached by Judges Arrington and Van Laningham are persuasive. While the legislature made it clear with the 2004 Amendment that "other criteria approved to assess instructional personnel," may be considered when determining whether to terminate a teacher's employment, consideration of such criteria may only come after consideration of student performance, which the legislature continued to require the assessment the teacher to be "primarily based" upon.

45. There is no real dispute that the School Board did not give any real consideration to the performance of Ms. Dupper's students in reaching its decision to terminate her employment. The suggestion in Petitioner's Proposed Recommended Order that it was essentially Ms. Dupper's fault that there was no local assessment available for her students because she had failed to utilize Galileo is not persuasive. Galileo is not the type of objective "testing" program the legislature has specified should be the basis of evaluating student performance. Galileo, while providing a tool for a teacher to evaluate his or her students, is not an objective, independent method of testing student performance.

46. Had the School Board first placed primary emphasis on the performance of Ms. Dupper's students, and then concluded, based upon the evaluation process conducted by the School Board described in this case that she was performing unsatisfactorily, the decision to terminate her employment would likely have been appropriate. Having failed to consider some objective measure of student performance, however, Section 1012.34, Florida Statutes, requires that she be reinstated.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order: (a) dismissing the charges of the Administrative Complaint; (b) providing that

Ms. Dupper be immediately reinstated to the position from which she was terminated; and (c) awarding Ms. Dupper back salary, plus benefits, to the extent benefits accrued during her suspension, together with interest thereon at the statutory rate.

DONE AND ENTERED this 22nd day of July, 2009, in Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
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Filed with the Clerk of the
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this 22nd day of July, 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.