

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COLLIER COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-0728
)
DEBORAH SCHAD,)
)
 Respondent.)

)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of the case for the Division of Administrative Hearings (DOAH) on July 16, 2009, in Naples, Florida.

APPEARANCES

For Petitioner: Jon D. Fishbane, Esquire
Collier County School Board
5775 Osceola Trail
Naples, Florida 34109

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
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STATEMENT OF THE ISSUE

The issue is whether Petitioner may terminate Respondent's employment as an instructional employee under a professional services contract either for failure to timely correct alleged performance deficiencies pursuant to Subsection 1012.34(3),

Florida Statutes (2008),¹ or for just cause, within the meaning of Subsection 1012.33(1)(a).

PRELIMINARY STATEMENT

On December 8, 2008, Petitioner, Collier County School Board (School Board), informed Respondent, Deborah Schad, that the superintendent would recommend at a School Board meeting to be conducted on January 15, 2009, that the School Board terminate Respondent's employment for failing to satisfactorily complete her performance deficiencies pursuant to Subsection 1012.34(3) and for just cause defined in Subsection 1012.33(1)(a). The School Board approved the superintendent's recommendation. Respondent timely requested an administrative hearing, and the School Board referred the matter to DOAH to conduct the hearing.

At the hearing, the School Board presented the testimony of four witnesses and submitted 19 exhibits for admission into evidence. Respondent called no witnesses and submitted no exhibits into evidence. The parties jointly stipulated to the admission of the Collective Bargaining Agreement (CBA).

The identity of the witnesses and exhibits, and the rulings related to each, are reported in the one-volume Transcript of the hearing filed with DOAH on August 11, 2009. The parties timely filed their respective Proposed Recommended Orders on August 21, 2009.

FINDINGS OF FACT

1. The School Board employed Respondent as a resource teacher at Village Oaks Elementary School (Village Oaks) from the start of the 2003-2004 school year until January 15, 2009. Ms. Dorcas Howard was the principal at Village Oaks during Respondent's employment. Ms. Howard served as principal for 20 years and was responsible for evaluating teachers, including Respondent.

2. Respondent's duties as a resource teacher at Village Oaks included working with elementary school students who were not proficient in reading and math. Some of the students that Respondent taught read and spoke English as a second language.

3. Respondent typically met with students in breakout sessions comprised of groups of five. Classroom teachers determined which students were to attend Respondent's breakout sessions on the basis of the individual needs of each student. Respondent typically spent 30 minutes with each group.

4. The Notice of Termination dated December 8, 2008, provides, in relevant part, that the School Board is relying on two statutory grounds for the termination of Respondent's employment contract. One ground is that Respondent allegedly failed to correct performance deficiencies in violation of Subsection 1012.34(3). The second ground alleges that just

cause, defined in Subsection 1012.33(1)(a), exists to terminate Respondent's employment.

5. For reasons stated hereinafter, a preponderance of the evidence does not support a finding that the alleged performance deficiencies violate Subsection 1012.34(3). However, a preponderance of evidence does support a finding that just cause exists to terminate Respondent's employment pursuant to Subsection 1012.33(1)(a).

6. The alleged violation of Subsection 1012.34(3) is based on an evaluation system known as the Collier Teacher Assessment System (CTAS). CTAS consists of 12 educator practices that are evaluated as inadequate, developing, and professional/accomplished.

7. The CTAS evaluation of Respondent for the 2007-2008 school year resulted in developing marks in four practice areas: assessment, communication, learning environment, and planning. Assessment, planning, role of the teacher, and communication are integrated concepts.

8. Respondent was often late in picking up students from regular classrooms for breakout sessions. On those occasions, Respondent did not provide 30 minutes of instruction to that group of students.

9. Respondent was often unprepared. Respondent routinely did not explain the goals of the session. Respondent did not

provide timely assessments to regular classroom teachers, and Respondent did not provide students with directions before reading and did not review the subject matter of the specific class.

10. Respondent routinely did not review tests or prepare test results. Respondent frequently could not answer questions from the principal and other teachers about how students performed on tests.

11. Respondent had no individualized lesson plans. Students often informed her where they were in a given text. Respondent often gave students inappropriate assignments.

12. A professional services contract instructional employee who receives three or more developing marks is placed on a probationary status identified in the record as "Strand 3." As a consequence of receiving four developing marks, Respondent was placed on Strand 3. Ms. Deborah Terry, director of staffing for Human Resources, Recruitment and Retention, notified Respondent that Respondent had been placed on Strand 3.

13. Respondent had 90 days from the beginning of probation to correct identified deficiencies. A professional assistance team at Village Oaks was organized to assist Respondent. The principal directed Respondent to focus on non-proficient, third grade students.

14. Throughout the probationary period, Ms. Howard observed that Respondent did not engage students in class. Respondent exhibited poor planning, and Respondent lacked adequate class preparation in reading.

15. A high percentage of students were second language students, and Respondent did not have appropriate English Language Learners (ELL) strategies in place. Nor did Respondent have appropriate vocabulary instruction and developmental plans for her students.

16. Respondent allowed students to engage in round robin reading in which remedial, struggling readers read one-after-the-other. Respondent did not discuss or prepare the students for what they were to read. Respondent did not use word follow up. Respondent did not engage students in discussion, and Respondent did not introduce word drill or word-attack skills to students. Respondent did not provide individualized, differentiated instruction or lesson planning for students.

17. The students in Respondent's sessions were not gaining academically. The principal and other members of the professional assistance team discussed their concerns with Respondent individually and in group sessions.

18. Respondent did not provide regular classroom teachers with test results or assessments of students. The failure to provide regular test results and assessments was problematic.

Resource intervention grades were important to each student's overall grade. Resource intervention grades were averaged in to overall grades. The failure to receive grades created a gap in the reporting for intervention instructional time.

19. During the professional assistance team meeting conducted on September 24, 2008, the team reviewed with Respondent the team concerns that lesson plans turned in were not used for instruction, follow up activities were inconsistent, daily activities were not based on the academic needs of the children, no formal assessments or reviews of student performance were prepared, and Respondent was continually late in picking up her students.

20. Ms. Olwen Stewart-Bell, a team member, provided Respondent with a timer to assist Respondent in picking up students in a timely manner. In many instances, however, Respondent forgot to turn on the timer.

21. By the end of September 2008, there was no indication of student progress. In addition, regular classroom teachers had become reluctant to send their students to Respondent for instruction.

22. By the end of October 2008, Respondent had not responded to advice and assistance and had not improved. There were several times that Respondent was on the phone when she

should have been teaching students. Respondent fell asleep in class, and Respondent was abusive to low-achieving students.

23. At the meeting on October 30, 2008, it was evident students were not improving under Respondent's tutelage. Planning remained poor, assessments did not drive instruction, no differentiated instruction was being provided, and regular classroom teachers did not want Respondent teaching their students.

24. At the end of the probationary period, the principal determined that of the 12 educator accomplished practice areas, Respondent should receive inadequate marks in assessment, communication, planning, and the role of the teacher. Respondent was still developing in three other areas: continuous improvement, learning environment, and knowledge of subject matter. Ms. Howard informed Respondent of the evaluation.

25. The evaluation fell below appropriate standards provided for in CTAS and set forth in Article 5.03 of the CBA. Article 5.03(f)(4)(vi) of the CBA provides, in relevant part:

[T]en or more EAP areas must be rated at the professional level and no EAP may be at the inadequate level. Employees not meeting these criteria will be recommended for termination.

As a consequence of Respondent's failure to correct identified deficiencies and meeting acceptable standards, the principal

recommended to the superintendent that Respondent be terminated from her employment.

26. The evaluation of Respondent under Subsection 1012.34(3) was not based primarily on standardized testing data showing that students of Respondent performed poorly on standardized tests. The students that Respondent worked with were those most at risk of failing the Florida Comprehensive Assessment Test (FCAT). However, the School Board submitted no evidence that any of the students under Respondent's tutelage performed poorly on standardized tests, including the FCAT. Assuming arguendo that any of the students under Respondent's instruction performed poorly on standardized tests, such as the FCAT, Petitioner submitted no evidence of a nexus showing that Respondent's instruction caused the poor performance on annual standardized testing.

27. A preponderance of evidence supports a finding of just cause to terminate Respondent's professional services contract pursuant to Subsection 1012.33(1)(a). Respondent demonstrated an inability to discharge her educational duties by repeatedly failing to perform her educational duties and by repeatedly failing to communicate and relate to children in her classroom. Respondent deprived children in her classroom of a minimal educational experience.

CONCLUSIONS OF LAW

28. DOAH has jurisdiction over the subject matter of and parties to this proceeding. §§ 120.569, 120.57(1), and 1012.33(b), Fla. Stat. (2009). DOAH provided the parties with adequate notice of the final hearing.

29. Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that Respondent committed the acts alleged in the Notice of Termination and the reasonableness of the proposed penalty. Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995).

30. For reasons stated in the Findings of Fact and not repeated here, a preponderance of evidence does not support a finding that the School Board should terminate the employment contract of Respondent for the alleged violation of Subsection 1012.34(3). A preponderance of the evidence does not support a finding that the School Board applied Subsection 1012.34(3) by relying first and foremost upon data showing that Respondent's students performed poorly on standardized tests, including the FCAT, as the primary basis for the performance-related termination of a tenured teacher. See Young v. Palm Beach County School Board, 968 So. 2d 38 (Fla. 4th DCA 2007); Sherrod v. Palm Beach County School Board, 963 So. 2d 251 (Fla. 4th DCA 2006). See also Miami-Dade County School Board v. Hannibal

Rosa, Case No. 08-1495 (DOAH December 16, 2008), and Miami-Dade County School Board v. Sergio H. Excalona, Case No. 04-1656 (DOAH November 23, 2006)(for similar decisions after statutory amendments in 2004).

31. A preponderance of the evidence does support a finding that Petitioner should terminate the employment contract of Respondent for just cause within the meaning of Subsection 1012.33(1)(a) and Florida Administrative Code Rule 6B-4.009(1). The factual basis of this conclusion is discussed in the Findings of Fact and not repeated here.

RECOMMENDATION

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

RECOMMENDED that the Collier County School Board enter a final order terminating Respondent's professional services contract as an instructional employee for just cause defined in Subsection 1012.33(1)(a).

DONE AND ENTERED this 2nd day of September, 2009, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of September, 2009.

ENDNOTE

^{1/} References to subsections, sections, and chapters are to
Florida Statutes (2008), unless otherwise stated.

COPIES FURNISHED:

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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.