

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BREVARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-0957
)
JOYCE D. ILOKA,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on February 2, 3, and 5, 2010, in Viera, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph R. Lowicky, Esquire
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For Respondent: Thomas L. Johnson, Esquire
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STATEMENT OF THE ISSUE

Whether Brevard County School Board (Petitioner or School Board), has just cause to terminate the professional services contract held by Joyce D. Iloka (Respondent).

PRELIMINARY STATEMENT

On February 2, 2009, Petitioner, through its acting superintendent, notified Respondent that a recommendation would be made to terminate Respondent's employment as a teacher at Titusville High School (THS) at the February 10, 2009, meeting of the School Board. Thereafter, Respondent timely requested an administrative hearing to challenge the decision and the matter was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings on February 19, 2009. Petitioner seeks to terminate Respondent's employment with the school district based upon alleged deficiencies that were not timely corrected and Respondent's alleged incompetency.

In accordance with a Joint Response to Initial Order filed by the parties, the case was scheduled for hearing April 28-29, 2009. An Order of Pre-hearing Instructions was entered on February 26, 2009.

On April 7, 2009, the parties filed a Joint Motion for Continuance that was granted. The case was then rescheduled to be heard August 25-26, 2009. A second request for continuance of the case was filed on July 22, 2009. The motion, entitled Respondent's Agreed Motion for Continuance, was granted and the case rescheduled to September 30 and October 1, 2009.

On September 23, 2009, a Joint Motion to Stay Proceedings was filed. The parties represented that they were negotiating a

settlement to resolve the case. By order entered September 24, 2009, the case was placed in abeyance and the parties were required to report as to the status of the matter no later than October 23, 2009.

The case was transferred to the undersigned on September 29, 2009. Thereafter, in accordance with the Joint Status Report the case was scheduled for hearing. A Motion for Leave to File an Amendment to Grounds for Petitioner's Termination was granted. The amendment added no substantial allegations of fact.

A second Order of Pre-hearing Instructions was entered on November 2, 2009, to remind the parties of their continuing obligation to prepare a pre-hearing stipulation. The parties' Joint Pre-hearing Stipulation was filed on January 22, 2010. At that time it was presumed the parties were prepared for hearing. The stipulation acknowledged that there were no pending motions to be addressed.

On January 27, 2010, Respondent filed a Motion for Continuance. The Order of Pre-hearing Instructions entered on February 26, 2009, directed the parties to confer and specified that they:

- (a) Discuss the possibility of settlement;
- (b) Stipulate to as many facts and issues as possible;

(c) Prepare the pre-hearing stipulation as required by this Order;

(d) Examine all exhibits (except for impeachment exhibits) proposed to be offered into evidence at the hearing;

(e) Furnish opposing counsel the names and addresses of all witnesses (except for impeachment witnesses); and

(f) Complete all other matters which may expedite the hearing in this case.

The Order entered on November 2, 2009, contained the identical language. Respondent's Motion for Continuance was opposed by Petitioner. On January 29, 2010, an Order Denying Continuance was entered. The case then proceeded to hearing.

At the hearing, Petitioner presented the testimony of the following witnesses: Dr. Lori Spinner, principal at THS; Jane W. Speidel, a peer-mentor teacher at THS; John M. Hays, a school district peer-mentor teacher; David Baldia, a resource teacher in the technical education programs for the school district; Jerri Mallicoat, an assistant principal at THS, Dr. Deborah G. Albright, assistant principal for curriculum at THS; and Joy Salamone, director of human relations for the school district. Petitioner's Exhibits 1-6, 8-23, 30-41, 54-57, 60, 62-66, and 70-72, were received into evidence.

Respondent testified in her own behalf and presented the testimony of Ron Philpot, an assistant principal at THS. Respondent's Exhibits 15-24, 29, 30, 37, 65, 66, 68, and 69 were

admitted into evidence. Respondent's Exhibit 73 was proffered for the record but was not received.

The three-volume Transcript of the hearing was filed with DOAH on February 24, 2010. The parties stipulated at the conclusion of the hearing that they would submit their proposed recommended orders within 30 days from the filing of the transcript. Subsequently, they requested an extension of that time and by order entered March 26, 2010, were granted leave until April 5, 2010, to file their proposals. Both timely filed Proposed Recommended Orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a duly-constituted entity charged with the responsibility and authority to operate, control, and supervise public schools within the Brevard County Public School District. As such, it has the authority to regulate all personnel matters for the school district, including those personnel decisions affecting the professional teaching staff at THS.

2. At all times material to the allegations of this case, Respondent was an employee of the School Board and was subject to the statutes, rules, and regulations pertinent to employees of the school district.

3. At all times material to this case, Respondent was assigned to teach drafting at THS. All allegations relate to Respondent's tenure at THS and the performance of her duties as a drafting instructor.

4. By letter dated February 2, 2009, Petitioner notified Respondent that a recommendation would be made to the School Board to terminate her employment with the school district.

5. At its meeting on February 10, 2009, Petitioner accepted the recommendation of the school administration and voted to approve Respondent's employment termination.

6. Respondent timely requested an administrative hearing to challenge the decision of the School Board.

7. Petitioner charged Respondent with failure to correct deficiencies identified in a performance plan designed to assist Respondent to remediate unacceptable defects in her teaching performance. Second, Petitioner alleged that the deficiencies noted by THS personnel also constituted an additional basis for termination: incompetency. Respondent maintains that student performance must be considered in the review of her performance and that she was competent and qualified to perform her teaching responsibilities and had done so for a number of years without concern from the THS administration.

8. Respondent began employment with the school district in 1996. She was assigned to THS from 2004-2008. From her first

assignment until the 2007/2008 school year, Respondent received satisfactory performance evaluations.

9. Petitioner utilizes an instructional personnel evaluation system known as the Performance Appraisal System (PAS). PAS was approved by state authorities and was cooperatively developed by teachers and administrators for use in Brevard County. PAS details the procedures, method, and forms to be utilized in the completion of instructional personnel evaluations. All such criteria were met in the evaluations performed of Respondent's work.

10. Additionally, school administrators who perform employee evaluations must be thoroughly trained in PAS and must conform to the uniformity afforded by the PAS instrument.

11. All administrators identified in this cause who performed evaluations of the Respondent were trained and were fully certified to evaluate personnel based upon the PAS instrument.

12. Ron Philpot is an assistant principal at THS. He has worked in Brevard County for approximately 37 years and has been assigned to THS for the last 17.

13. Lori Spinner is the principal at THS. For the 2006/2007 school year, Mr. Philpot was assigned to evaluate Respondent. Dr. Spinner signed off on Respondent's 2006/2007 performance evaluation on February 14, 2007. Respondent's

2006/2007 PAS evaluation found her to be overall "high performing." Mr. Philpot was the only administrator/observer who visited Respondent's classroom in order to complete the 2006/2007 evaluation. In his many years of performing evaluations, Mr. Philpot has given only one unsatisfactory evaluation.

14. On December 4, 2007, Dr. Spinner visited Respondent's classroom for the purpose of observing the class and Respondent's performance. On that date there were 17 students present and Dr. Spinner made visual sweeps of the classroom every ten minutes to determine the engagement level of the students. For the time period from 12:25-12:55 p.m., no fewer than two and no more than four students were off-task or not engaged in the lesson. Dr. Spinner remained in Respondent's class for 45 minutes and completed notes from her observation. Pertinent to the allegations of this case are the following observations entered by Dr. Spinner:

Instructional Organization -

- No teacher-based questioning was used during the entire lesson.
- No learning objective is evident and no agenda or objectives are noted on the board.
- Materials are not organized and six incidents of non-instructional/unrelated talk were noted.

- In the middle of the lesson, the teacher states, "Where are you third block?" "What are you working on?"
- Directions for activity are vague and non-specific. Teacher states "Put in a window anywhere"; "Put in a door somewhere".
- Teacher circulated several times to address individual concerns.

Presentation of Subject Matter -

- Only 1 concept was presented during the lesson (rotating windows and doors) and appeared to be a review. No new concepts were presented.
- Instructions for the project were inadequate and vague.
- Visuals on the board are illegible and difficult to see.
- Students demonstrated confusion with assignment. Several questions went unanswered or ignored.

Communication -

- Vague and sporadic.
- No teacher questioning for comprehension.
- Student questions went unanswered or hands-raised were ignored.
- In response to one question, teacher states, "I think it says something about that in your book, I think it says . . ."
- Teacher expressed confusion in demonstrating a plot plan. Was not able to implement the correct commands with Mechanical Desktop Architect program.

Management of Conduct -

- Several students not engaged during lesson.
- Five incidents of misconduct were not addressed during the lesson.

15. Based upon the observations noted above, Dr. Spinner met with Respondent to provide her with an interim evaluation of her performance. Of the nine individual assessment categories, Dr. Spinner identified only two items that needed improvement. Both were noted under the "Instructional Strand" heading.

Comments entered by Dr. Spinner advised Respondent:

Ms. Iloka had several students off task or not engaged in the lesson, throughout the class period. She did not have materials prepared in advance which resulted in lost instructional time. Teacher-student interactions often included unrelated talk and off-task discussions. There were long delays during the instructional lesson and instructions/directions were not clear for students. Requirements for the activity were not presented in advance and directions were vague. This resulted in delays in learning and gaps in instructional activities.

Presentation of instructions and project directions were vague and difficult for students to follow. Requirements were not presented in advance. There was no instructional questioning during the lesson to ensure comprehension. Concepts were presented with examples only. Students did not have an instructional visual to reference as they worked with the program.

16. Dr. Spinner attempted to communicate the areas of concern noted above but Respondent was resistant. Further,

Dr. Spinner sought to encourage Respondent to continue her education and professional development as a means of continuous professional growth. Dr. Spinner hoped that Respondent would recruit more students into the drafting program because the enrollment had steadily declined during Respondent's tenure at THS. None of Dr. Spinner's suggestions were well-received by Respondent.

17. On January 30, 2008, Dr. Spinner observed Respondent's class from 1:55-2:40 p.m. As before, Dr. Spinner made a visual sweep of the class to determine student engagement every ten minutes. Again, as before, Dr. Spinner observed two to four students not engaged during the sweeps. Many of the comments generated by the January 30, 2008, observation mirrored the prior observation. Dr. Spinner felt Respondent had made no serious effort to improve the areas of concern that needed improvement.

18. The interim PAS evaluation signed by Dr. Skinner and Respondent on February 1, 2008, included three categories that needed improvement and noted that Respondent's overall evaluation needed improvement.

19. To provide assistance for Respondent, Dr. Skinner assigned a teacher/peer mentor at the school level to provide direction and help to the Respondent in order to remediate the deficient areas of performance. Respondent did not avail

herself of the mentor and did not implement meaningful changes to her instructional content or delivery.

20. Later Dr. Skinner secured a mentor teacher from outside the school to assist the Respondent. Again, Respondent did not implement the suggestions made by that mentor.

21. Dr. Spinner prepared professional development assistance (PDA) forms for areas of concern in order to identify the behaviors that were deficient, the strategies for improvement of the deficiency, and the assistance that the school would provide to Respondent. For example, the PDA dated February 1, 2008, to improve management of student conduct noted that peer mentor, Jane Speidel, would assist Respondent to develop a classroom management plan so that students who are off-task can be appropriately engaged in the learning process. According to Ms. Speidel, Respondent did not want assistance in this regard and had "no desire to adopt any new changes."

22. On February 19, 2008, Dr. Spinner again observed Respondent's class. Many of the same deficiencies in the categories of instructional organization, presentation of subject matter, communication, and management of conduct were noted. At one point during the observation, Respondent received a sub sandwich and a drink from a colleague. As Respondent had just finished a duty-free lunch time prior to the observation

time, the delivery of food during a class period seemed inappropriate to Dr. Skinner.

23. Dr. Skinner's next observation of Respondent's class was on February 28, 2008. Deficiencies were listed in the areas of instructional organization, presentation of subject matter, communication, and management of conduct. Many of the problems noted in prior observations were continuing.

24. The common thread running through each observation was the failure on Respondent's part to even attempt to incorporate new strategies or concepts into her teaching effort. Specifically, with regard to student performance, students remained off task. Students continued to be confused by vague or confusing directions and exhibited an indifference to drafting. Students were observed sleeping, eating, playing solitaire, and computer games or surfing the Internet when they should have been working on projects or completing appropriate drafting assignments.

25. On March 6, 2008, Dr. Skinner gave Respondent her annual evaluation. Unsurprisingly, Respondent was given an overall evaluation of unsatisfactory. As Respondent had made little or no effort to improve in the areas noted as deficient during the school year (as delineated in prior observations), Respondent was advised:

Ms. Iloka is expected to improve in the areas noted as unsatisfactory. A formal plan and support has been provided to assist her in becoming more effective with her students. She is expected to demonstrate improvement as an expectation for continued employment.

26. At the conclusion of the annual PAS evaluation, Respondent was advised that a 90-day probationary period would begin at the start of the 2008/2009 school year. Accordingly, from August 11, 2008, Respondent was subject to PDA plans to address deficiencies in the categories of instructional organization and development, presentation of subject matter, and management of student conduct. The same three areas of concern that were identified throughout the 2007/2008 school year continued to be a concern.

27. On August 11, 2008, Respondent signed a letter acknowledging that she would be on probationary status for 90 days and that she would be evaluated periodically during that time. A resource teacher from the county, John Hays, was identified to Respondent as someone who would provide support and information for presenting the subject matter appropriately and developing a classroom management plan.

28. During the fall of 2008, Respondent was observed on several occasions. None of the visits to Respondent's classroom evidenced any significant improvement on her part to address the deficient areas of performance. Assistant Principal Jerri

Mallicoat completed PAS evaluations that noted the same deficiencies.

29. Respondent did not complete lesson plans with sufficient detail so that a substitute could understand and step in for an absence.

30. Respondent did not develop a classroom management plan to ensure that off-task students could be redirected to the assignment. Further, students committing violations of school rules (such as eating in the classroom) were not appropriately disciplined and redirected.

31. Respondent did not avail herself of resources available through the school site mentor or county resource opportunities.

32. Petitioner afforded Respondent with opportunities for improvement through in-service classes and mentor teachers.

33. Respondent is a non-degreed vocational industrial arts teacher. Drafting and other vocational industrial arts classes are commonly taught by credentialed persons who achieve some industry-recognized authorization as sufficient to demonstrate knowledge of the subject matter. Respondent's knowledge of her subject area is not questioned. Her ability to translate that knowledge in a meaningful manner to a classroom of students while maintaining order and on-task behavior and her failure to recognize her need to improve performance in these areas is the

subject of this cause. For whatever reason, Respondent would not or could not improve performance in the deficient areas.

34. During the 2008/2009 school year THS used block scheduling. Teachers would have students for 90-minute blocks. Respondent was challenged to fill that time with educational content and maintain students in on-task efforts. Respondent had two blocks of drafting students. Enrollment in drafting declined such that the remainder of Respondent's work day was spent as a substitute for other teachers.

35. Within a block, Respondent had multiple levels of drafting students, first-time drafting students up to the more advanced levels. Each level of proficiency required appropriate instruction.

36. Drafting, like other vocational industrial arts classes, does not have a state-mandated performance assessment tool. Drafting students are recognized in the private sector by whether they are able to achieve an industry-recognized testing standard of performance. Classroom performance at THS was based upon proficient use of the program utilized to create plans and the written materials that accompanied the computer work. Students eating, sleeping, playing solitaire, computer games, or surfing the Internet did not demonstrate proficient use of drafting skills. All of these behaviors were repeatedly observed in Respondent's class.

37. Respondent did not remediate the performance deficiencies noted in the evaluations of the 2007/2008 and 2008/2009 school years.

CONCLUSIONS OF LAW

38. DOAH has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569, 120.57(1), and 1012.33(6), Fla. Stat. (2009).

39. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent's employment with the school district should be terminated. See McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

40. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

41. Section 1012.33, Florida Statutes (2009), provides, in pertinent part:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule

of the State Board of Education:
immorality, misconduct in office,
incompetency, gross insubordination, willful
neglect of duty, or being convicted or found
guilty of, or entering a plea of guilty to,
regardless of adjudication of guilt, any
crime involving moral turpitude.

42. Section 1012.34, Florida Statutes (2009), provides:

(1) For the purpose of improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the district school superintendent shall establish procedures for assessing the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The Department of Education must approve each district's instructional personnel assessment system.

(2) The following conditions must be considered in the design of the district's instructional personnel assessment system:

(a) The system must be designed to support district and school level improvement plans.

(b) The system must provide appropriate instruments, procedures, and criteria for continuous quality improvement of the professional skills of instructional personnel.

(c) The system must include a mechanism to give parents an opportunity to provide input into employee performance assessments when appropriate.

(d) In addition to addressing generic teaching competencies, districts must determine those teaching fields for which special procedures and criteria will be developed.

(e) Each district school board may establish a peer assistance process. The plan may provide a mechanism for assistance of persons who are placed on performance probation as well as offer assistance to other employees who request it.

(f) The district school board shall provide training programs that are based upon guidelines provided by the Department of Education to ensure that all individuals with evaluation responsibilities understand the proper use of the assessment criteria and procedures.

(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.

(b) All personnel must be fully informed of the criteria and procedures associated with the assessment process before the assessment takes place.

(c) The individual responsible for supervising the employee must assess the employee's performance. The evaluator must submit a written report of the assessment to the district school superintendent for the purpose of reviewing the employee's contract. The evaluator must submit the written report to the employee no later than 10 days after the assessment takes place. The evaluator must discuss the written report of assessment with the employee. The

employee shall have the right to initiate a written response to the assessment, and the response shall become a permanent attachment to his or her personnel file.

(d) If an employee is not performing his or her duties in a satisfactory manner, the evaluator shall notify the employee in writing of such determination. The notice must describe such unsatisfactory performance and include notice of the following procedural requirements:

1. Upon delivery of a notice of unsatisfactory performance, the evaluator must confer with the employee, make recommendations with respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.

- 2.a. If the employee holds a professional service contract as provided in s. 1012.33, the employee shall be placed on performance probation and governed by the provisions of this section for 90 calendar days following the receipt of the notice of unsatisfactory performance to demonstrate corrective action. School holidays and school vacation periods are not counted when calculating the 90-calendar-day period. During the 90 calendar days, the employee who holds a professional service contract must be evaluated periodically and appraised of progress achieved and must be provided assistance and in-service training opportunities to help correct the noted performance deficiencies. At any time during the 90 calendar days, the employee who holds a professional service contract may request a transfer to another appropriate position with a different supervising administrator; however, a transfer does not extend the period for correcting performance deficiencies.

b. Within 14 days after the close of the 90 calendar days, the evaluator must assess whether the performance deficiencies have been corrected and forward a recommendation to the district school superintendent. Within 14 days after receiving the evaluator's recommendation, the district school superintendent must notify the employee who holds a professional service contract in writing whether the performance deficiencies have been satisfactorily corrected and whether the district school superintendent will recommend that the district school board continue or terminate his or her employment contract. If the employee wishes to contest the district school superintendent's recommendation, the employee must, within 15 days after receipt of the district school superintendent's recommendation, submit a written request for a hearing. The hearing shall be conducted at the district school board's election in accordance with one of the following procedures:

(I) A direct hearing conducted by the district school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the district school superintendent's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

(II) A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the district school

board. A majority vote of the membership of the district school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

(4) The district school superintendent shall notify the department of any instructional personnel who receive two consecutive unsatisfactory evaluations and who have been given written notice by the district that their employment is being terminated or is not being renewed or that the district school board intends to terminate, or not renew, their employment. The department shall conduct an investigation to determine whether action shall be taken against the certificate holder pursuant to s. 1012.795(1)(c).

(5) The district school superintendent shall develop a mechanism for evaluating the effective use of assessment criteria and evaluation procedures by administrators who are assigned responsibility for evaluating the performance of instructional personnel. The use of the assessment and evaluation procedures shall be considered as part of the annual assessment of the administrator's performance. The system must include a mechanism to give parents and teachers an opportunity to provide input into the administrator's performance assessment, when appropriate.

(6) Nothing in this section shall be construed to grant a probationary employee a right to continued employment beyond the term of his or her contract.

(7) The district school board shall establish a procedure annually reviewing instructional personnel assessment systems to determine compliance with this section. All substantial revisions to an approved

system must be reviewed and approved by the district school board before being used to assess instructional personnel. Upon request by a school district, the department shall provide assistance in developing, improving, or reviewing an assessment system.

(8) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54, that establish uniform guidelines for the submission, review, and approval of district procedures for the annual assessment of instructional personnel and that include criteria for evaluating professional performance.

43. Delays in resolving this case were attributed to the parties jointly seeking continuances. Thus it is concluded, that the parties waived the requirement of the statute directing that the hearing be conducted within 60 days of filing.

44. Florida Administrative Code Rule 6B-4.009 sets for the criteria for suspension and dismissal of instructional personnel and provides in pertinent part:

The basis for each of such charges is hereby defined:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

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

45. In this case it is concluded that Respondent denied the drafting students the minimal educational experience required. The off-task behavior of the students, the observed deficiencies noted by school administrators, and the resistance to change exhibited by Respondent all contribute to this conclusion. Respondent was afforded adequate opportunity to improve her performance. All areas of deficiency were clearly delineated and assistance was offered to afford Respondent with sufficient resources to make the changes necessary.

46. The decision in this case must consider the application of Section 1012.34, Florida Statutes (2009), cited above. It is concluded that in evaluating instructional personnel performance student performance is one of the criteria

to be considered; it is not, however, the sole criterion. It cannot be concluded that off-task behavior demonstrates insufficient student performance. Whether any students were qualified to achieve an industry recognized, standardized certification is unknown. When Respondent was questioned as to how many of her first level drafting students went on to the more advanced drafting levels she was unable to respond. Brevard County does not have a standardized test to assess drafting student performance. Drafting is not a core curriculum subject assessed by standardized testing instruments. If Respondent's students performed well on standardized achievement tests this performance would not relate to drafting skills or knowledge.

47. Further, whether Respondent attempted to correct deficiencies noted in the PAS would not relate to student performance. In this case it is undisputed that Respondent did not do the basic items of remediation identified in the PAS and requested by her PDA. Willfully refusing to accept assistance, make changes, and demonstrate a modicum of effort to accommodate the areas identified in the PAS establish that Respondent was unwilling to perform the duties of her employment.

48. Respondent was unable to maintain appropriate discipline, a duty of her employment.

49. Respondent was unable to plan and deliver instruction with the use of technology available to her in the classroom, also a duty of her employment.

50. Respondent did not carry out her professional responsibilities as required by the PDA. Based upon the foregoing, it is concluded Petitioner has demonstrated by a preponderance of the evidence that Respondent is inefficient and therefore, incompetent as those terms are defined by rule. The students in Respondent's class were deprived of minimum educational experience.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Brevard County School Board enter a final order terminating Respondent's employment with the School District.

DONE AND ENTERED this 8th day of June, 2010, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
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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.