STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 09-2404
	)	
CYDNEY ABRAMS,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on November 30 and December 1, 2009, in Sanford, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ned N. Julian, Jr., Esquire
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For Respondent: Tobe M. Lev, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists for termination of Respondent's contract of employment with the Seminole County School Board.

PRELIMINARY STATEMENT

Respondent is an employee of the Seminole County School Board (the "School Board"). By letter dated March 27, 2009, the superintendent of public schools for Seminole County notified Respondent that she was being suspended without pay and that a recommendation would be made to the School Board to terminate Respondent's employment. A Petition for Termination was thereafter filed at the Division of Administrative Hearings ("DOAH") by the School Board. The matter was assigned to the undersigned for the purpose of conducting a formal administrative hearing. The hearing was held on the dates set forth above, and both parties were in attendance.

At the final hearing, Petitioner presented the testimony of four witnesses: P.M., parent of a child in Respondent's classroom; Cydney Abrams; John Reichert, executive director of Human Relations for the School Board; and Michael Blasewitz, principal of Winter Springs High School (the "School"). Petitioner's Exhibits 1 through 13 were admitted into evidence.

Respondent called ten witnesses: Joseph L. Trim, a mental health counselor who was offered and accepted as an expert in the field; T.L., parent; M.M., parent; L.R-B., parent; D.B., parent; Cornelius Pratt, former assistant principal at the School; Jimmie Blake, ESE teacher at the School; Joyce Smith, paraprofessional at the School; Margo Rolle, ESE teacher; and

Cydney Abrams. Respondent's Exhibits 1 through 9 were admitted into evidence.

At the conclusion of the final hearing, the parties advised the undersigned that a transcript of the proceeding would be ordered. The Transcript was filed at DOAH on December 16, 2009. Due to the upcoming holiday schedule, the parties asked that their proposed recommended orders be due on January 18, 2010. Each party timely submitted a Proposed Recommended Order and each was duly considered in the preparation of the Recommended Order.

FINDINGS OF FACT

1. The School Board is responsible for hiring, monitoring and disciplining teachers for the School. The School Board is the governing board of the School District of Seminole County, Florida, pursuant to Section 4, Article IX, Florida Constitution, and Sections 1001.32, 1001.33, 1001.41, 1001.42 and 1012.33, Florida Statutes (2009). (Unless stated specifically otherwise herein, all references to the Florida Statutes shall be to the 2009 codification.)

2. Respondent is a licensed school teacher, certified by the State of Florida. She began teaching in 1992; her employment at the School started in 2002. Respondent is certified as an Exceptional Student Education (ESE) teacher and an Emotionally Handicapped (EH) teacher for grades K through 12.

3. In the 2008-2009 school year, Respondent was teaching social studies and math classes for mentally handicapped students at the School. On March 11, 2009, during her third period math class, Respondent engaged in an argument with one of her female students (J.P.). J.P. was a junior (11th grade student) at that time. The argument between J.P. and Respondent forms the basis of the School Board's decision to seek termination of Respondent's employment.

4. On the date in question, another student (B.) had been disciplined by Respondent and sent to the dean's office, because the student lied to Respondent about why she was tardy to class. J.P. was upset about B. being disciplined, because B. was J.P.'s friend.

5. After B. was sent to the office, there were five students remaining in Respondent's class. J.P. was observed by Respondent talking to one of the other students, L.S. Respondent told J.P. to stop talking and to do her work. J.P. took great offense to this and began to berate Respondent about not being an effective teacher.

6. Up until this point in time, Respondent considered J.P. to be one of her favorite students. Respondent had taught J.P.'s brother in previous years and had taught J.P. for three years. The relationship between J.P. and Respondent had always been cordial, friendly, and positive. Respondent would purchase

food for her students (including J.P.) and would subsidize her students' field trips out of her own funds.

7. On the March 11, 2009, date, however, J.P. was very upset with Respondent and made several derogatory comments about Respondent. J.P. told Respondent that she (Respondent) did not teach well and did not help her students when they needed help. Among other comments, J.P. said that Respondent talked on the phone too much, did not go over work with students, and did not know how to teach. (There was no non-hearsay corroboration of these allegations by any other students at final hearing.)

8. When J.P. first started talking, Respondent was calm and seemed amused by J.P.'s accusations. The discussion, however, then degenerated into a veritable shouting match between the student and the teacher. During that shouting match, ugly things were said by both Respondent and J.P. Respondent used several curse words that were inappropriate in the classroom setting. J.P. initiated the cursing between the parties, but Respondent, apparently in an effort to show J.P. that she was not going to be shocked by J.P.'s language, repeated the offensive words in response to J.P.

9. Respondent made disparaging remarks bout J.P. and J.P.'s family and even made comments about J.P.'s mental capacity and inability to learn. The tone of the comments was very harsh.

10. During the entire tête-à-tête between Respondent and J.P., there were other students in the classroom. While the debate was going on, some students were working on their assigned tasks. One student (L.S.) began taping the conversation at some point in time on her MP3 player. That recording was provided to administration at the School and formed the basis of an investigation by the School Board.

11. The argument lasted for the majority of the class period on that date. The MP3 recording lasted 26 minutes and ended when the bell rang for the end of class. While the argument was going on, it seems that Respondent was moving around the classroom, but she was obviously not helping any students with problems at that time. Her entire energies were devoted to the argument with J.P.

12. The tone used by Respondent and words she used were, she admits, inappropriate and wrong. It is clear the student was somewhat out of control, but engaging in a vicious debate with her was not the appropriate response from a teacher. Respondent is extremely remorseful about what transpired between her and the student on that day.

13. Respondent had been previously reprimanded for using inappropriate words in a classroom setting in the 2003-2004 school year. In the 2004 incident, however, Respondent had written various curse words on the board after hearing a

mentally handicapped student utter such a word. Respondent used that incident as a teaching moment to instruct her class that some words were not acceptable in the classroom or in public. For some reason, the School Board determined that the presentation of those words, even when intended to be instructional in nature, was wrong. (Apparently the only cursing condoned at all at the School is by sports coaches during practice times.) Respondent was issued a written reprimand for that incident and warned not to utilize those words in class again.

14. During the March 11, 2009, argument with J.P. (five years after her prior reprimand), Respondent did utter some of the words she had been instructed not to repeat. Granted, her use of the words was in direct response to J.P.'s initiation of the words, but Respondent did technically violate her directive from the earlier reprimand.

15. Besides the use of inappropriate language during the argument with her student, Respondent also overstepped the boundaries of professionalism in other ways. First, she disclosed certain confidential information about J.P. to other students. Respondent stated out loud that J.P. was seeking a special diploma, because J.P. was incapable of earning a regular diploma. Second, Respondent made disparaging remarks about J.P.

and J.P.'s family, comments which were intended to embarrass or hurt J.P.

16. The tone of the argument, though heated, carried an underlying hint of the long (and friendly) relationship between Respondent and the student. Respondent said she could not conceive of J.P.'s speaking that way to any other instructor; it was outside her normal behavior. J.P. apparently told the School administrators that she had never spoken to another teacher in that fashion. But J.P. obviously felt comfortable enough with Respondent to voice those opinions to Respondent in that manner.

17. Respondent's tenure at the School has been generally positive. Her teaching skills have resulted in very laudatory annual evaluations. In September 2008, Respondent was provided an investigative summary of an incident, but there was no discipline imposed. A memorandum was issued by Assistant Principal Nash in May 2004 concerning an incident, but, again, no discipline was imposed. Respondent did receive a reprimand for the March 2004 incident concerning curse words mentioned above.

18. Each of the students' parents who had met with Respondent and observed her teaching skills was complimentary about her. (The single parent testifying at the final hearing, who had negative comments about Respondent's working with ESE

students, had never met Respondent, never attended his child's IEP meetings with Respondent, and had never had any communication with Respondent. Even that parent, however, said he believes Respondent "needs another chance.")

19. Respondent has a good reputation with other educators and administrators.

20. The School Board is seeking termination of Respondent's employment for the March 11, 2009, incident. The basis for the recommendation for termination seems to be that the argument was serious in nature and followed on the heels of a prior warning against using improper language in the classroom. However, other disciplinary cases against educators guilty of somewhat similar (though different in some respects) violations have resulted in much less severe punishment. For example:

- A letter of reprimand and two-day suspension without pay was given to an instructor who cursed at students in the stairwell of the school.
- A teacher who became upset over the change in her own son's schedule at the school simply left the campus, saying that she was sick of the place. She was charged with abandoning her classes and leaving the students without supervision. The teacher was docked pay for the time she was absent without

leave and also suspended without pay for three days.

- A teacher who cursed at a school administrator in front of other staff members was disciplined with two days' suspension without pay.

21. In the case of Respondent, it is clear that her actions are deserving of some form of discipline. Each witness who testified, including Respondent, agreed that some sort of discipline was warranted because Respondent's actions were wrong.

22. At the time of the incident in question, Respondent's supervisor was Assistant Principal Cornelius Pratt. Respondent was considered by Pratt to be an exceptional teacher; he often used Respondent as a "lead" teacher, i.e., an experienced teacher, who could help new or struggling teachers succeed. Pratt considers Respondent's teaching style and skills to be first rate.

23. Pratt, as Respondent's supervisor, was not asked to make a recommendation to the School Board as to what degree of discipline should be imposed on Respondent for this incident. Pratt believes termination is too severe a discipline based on Respondent's history, skills, and the fact that other teachers have been disciplined far less for similar violations.

24. Respondent's behavior toward J.P. is contrary to her normal interaction with students. There is no evidence that Respondent ever acted in such a fashion prior to this incident.

25. Respondent has been seen by a licensed mental health counselor, Dr. Trim. It is the opinion of Dr. Trim that Respondent would be able to safely return to the classroom and that, in the short term without any intervention, there is little likelihood of Respondent repeating her unprofessional behavior. (This is due to the amount of trauma experienced by Respondent as a result of her actions.) Dr. Trim further opined that Respondent could benefit from anger management counseling in order to ensure no further outbursts in the long term.

26. The director of Human Resources for the School Board testified that in his experience, there was no other incident as severe as the one at issue in this proceeding. He recommended termination as the appropriate penalty. However, the director was not aware of the relationship between Respondent and J.P., he was not aware of the situation in Respondent's classroom as to the use of assistants (or lack thereof), and he had not talked to J.P. or J.P.'s parents. His recommendation, while reasonable based on his experience, lacks weight due to his unfamiliarity with other salient facts about the matter.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

28. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this matter, Petitioner has the burden to prove, by a preponderance of the evidence, that the allegations against Respondent are true and warrant termination of Respondent's contract. See Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995); and Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990).

29. The School Board has proven, by a preponderance of the evidence, that Respondent's behavior on March 11, 2009, was inappropriate and a violation of the standard of conduct expected of school teachers.

30. The superintendent of schools for Seminole County, Florida, has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. § 1012.27, Fla. Stat.

31. Dismissal of an annual contract teacher within the contract period must be for good and sufficient reasons. Any

dismissal or disciplinary action for continuing contract teachers shall be for just cause in compliance with Florida Statutes and the Florida School Code. See Official Agreement Between Seminole Education Association, Inc., and the School Board of Seminole County, Sanford, Florida (the "Collective Bargaining Agreement"), Article VIII, Sec. D.

32. In the absence of a rule or written policy defining just cause, Petitioner has discretion to set standards which subject an employee to discipline. See Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994). Nonetheless, just cause for discipline must rationally and logically relate to an employee's conduct in the performance of the employee's job duties, and which is concerned with inefficiency, delinquency, poor leadership, lack of role modeling or misconduct. State ex. Rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948); In Re: Grievance of Towle, 665 A. 2d 55 (Vt. 1995).

33. In determining whether an action constitutes just cause, one may consider Section 1012.33, Florida Statutes, which states:

> 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 and found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

34. Of the prescribed acts constituting just cause above, Respondent's actions most closely align with the "misconduct in office" violation. Fla. Admin. Code R. 6B-4.009(3) states:

> Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C. which is so serious as to impair the individual's effectiveness in the school system.

35. The School Board did not prove, by a preponderance of the evidence, that Respondent's effectiveness in the school system had been impaired by her actions. The incident, while egregious in its own right, does not seem indicative of Respondent's normal demeanor. Despite having engaged in the admittedly wrong behavior, Respondent has shown the requisite remorse and willingness to prevent any further outbursts.

36. Respondent should be disciplined in some fashion for her unprofessional behavior with student J.P. Respondent has, in fact, already suffered financially and emotionally a great deal as a result of the incident.

37. The use of vulgar language, especially in the context of its usage by Respondent in the two incidents concerning her classroom, is not a singular basis for termination of a teacher's contract. The incidents involving foul language by other teachers resulted in suspension without pay. Respondent

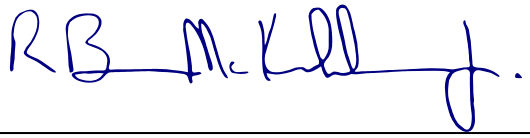
has already been suspended without pay for an entire school year.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Seminole County School Board: (1) finding Respondent's behavior to be inappropriate; (2) upholding the suspension without pay to-date; (3) reinstating Respondent as a classroom teacher; and (4) placing Respondent on probation for a period of two years.

DONE AND ENTERED this 2nd day of February, 2010, in Tallahassee, Leon County, Florida.



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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.