

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-3004
)
EDNA BOWMAN,)
)
 Respondent.)

)

RECOMMENDED ORDER

After appropriate notice this cause came on for formal hearing before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was conducted in Jacksonville, Florida, on October 26, 2009. The appearances were as follows:

APPEARANCES

For Petitioner: David J. D'Agata
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General Counsel's Office
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

For Respondent: Edna Jane Bowman, pro se
1043 Talbot Avenue
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STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether the Respondent, Edna Jane Bowman, should be terminated

from her position as a teacher with the Duval County School Board (DCSB) for good cause, based on alleged incompetence, as that status is defined at Section 4(e) of the Duval County Teacher Tenure Act, Chapter 21197, Laws of Florida (1941), as amended (Tenure Act).

PRELIMINARY STATEMENT

This case arose when the Respondent was informed, by a Notice of Discharge, that her employment as a teacher for the DCSB was terminated. The notice was issued May 7, 2009, and was based upon alleged professional incompetencies defined in Section 4(e) of the Tenure Act. The Notice of Discharge was predicated upon the Respondents' receiving two consecutive unsatisfactory annual evaluations, from two different principals, at two different schools, for the school years 2007-2008 and 2008-2009, as well as the issues which culminated in those unsatisfactory evaluations.

Upon being informed of the discharge, the Respondent elected to have the matter referred to the Division of Administrative Hearings for adjudication of a formal dispute by which she contested the Board's decision. The Respondent contends that her termination was not truly based upon poor performance, but rather was the product of the Board's retaliation against her for being "out-spoken" and publicly critical of the School Board, as well as certain administrators.

The cause came on for hearing as noticed on the above date. The Petitioner presented the following witnesses: Addison Davis, former principal of Jefferson Davis Middle School (Jefferson Davis); Leslie Sarjeant, an instructional coach, also formerly assigned to Jefferson Davis; Latanya McNeal, principal of Southside Middle School (Southside); and John Williams, Director of the Board's Office of Professional Standards. The Petitioner offered and had 23 exhibits admitted into evidence.

The Respondent presented no witnesses at the hearing but did testify on her own behalf. The Respondent had 29 exhibits admitted into evidence, as identified in the index at pages 196-199 of the Transcript of this proceeding.

Upon conclusion of the hearing the parties elected to obtain a transcript thereof and to file proposed recommended orders. By agreement of the parties, proposed recommended orders were due 20 days after the filing of the transcript. The Transcript was filed on November 17, 2009. The proposed recommended orders were therefore due on December 7, 2009. The Proposed Recommended Orders were timely filed and have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Respondent has been a full-time "tenured" teacher for the School Board during the 2007-2008 and 2008-2009 school years and for a total of 28 years. She is certified by the

State Department of Education in the area of Social Studies, grades five through nine, as well as other fields such as History (grades six through twelve). Like other teachers in the School District, her performance was evaluated annually by the principals of the schools where she taught.

2. During the relevant school years, referenced above, the Teacher Assessment System (TAS) was the primary method used for evaluating teachers. John Williams has 39 years of experience in the field of K through 12 education and is the Board's Director of Professional Standards. He is familiar with the TAS and manages the District level officials who are responsible for proper administration of the TAS in teacher evaluation.

3. The TAS measures teaching performance based on nine different "Competencies." These include:

- A. Promotes student growth and performance.
- B. Evaluates instructional needs of students.
- C. Plans and delivers effective instruction.
- D. Shows knowledge of subject matter.
- E. Utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline.
- F. Shows sensitivity to student needs by maintaining a positive school environment.
- G. Communicates with parents.
- H. Pursues professional growth.
- I. Demonstrates professional behaviors.

(See Petitioner's Exhibit 22, in evidence).

4. Teachers are evaluated by a school administrator, typically the principal, based on two formal classroom observations, which are announced to the teacher ahead of time. The Teacher Assessment Instrument (TAI) is used to collect data and identify indicators associated with each competency criterion. In evaluating a teacher's performance, administrators or principals may also employ informal, unannounced observations and use the results thus obtained in evaluating the teacher's performance. The "Evaluation of Professional Growth of Teacher" is an evaluation form used during the final annual evaluation conference. The form reflects the teacher's final rating as to each competency area and also reflects the teacher's overall performance rating for the school year.

5. The TAS delineates the steps in conducting a performance assessment or evaluation of the teacher beginning with an instructional session and a pre-observation conference and then proceeding with the observation process.

6. If a teacher demonstrates deficient performance in any competency area, a "success plan" is written in collaboration with the teacher. Although the success plan may be implemented at any time, it must be implemented by February 1st of a given school year for teachers who have the potential to receive an overall annual rating of "unsatisfactory."

7. A success plan identifies areas of weakness by competency category, sets out objectives to be achieved, and provides timelines to meet those objectives. A success plan team is assembled and, in addition to the teacher, it is typically composed of school administrators, teachers with expertise in a subject matter that the deficient teacher is struggling with, and "resources teachers" or "coaches." The various steps and procedures in conducting a success plan and success plan team effort is delineated in the TAS, shown in Petitioner's Exhibit 22, in evidence.

8. Ms. Bowman worked at Jefferson Davis Middle School (Jefferson Davis) during the 2007-2008 school year. Mr. Addison Davis was principal of Jefferson Davis.

9. Mr. Davis made multiple informal observations of Ms. Bowman's teaching and provided her with his opinions, based on his observations, including concerns he had about a lack of lesson plans and failure to implement a District-wide "workshop model." The workshop model requires classroom activities where small groups of students work collaboratively to complete an activity or project and achieve certain curriculum student standards. Mr. Davis explained that model is particularly effective for students whose primary language is not English. Several of such students were assigned to Ms. Bowman's classes during that school year.

10. Principal Davis also noted that the Respondent did not provide students with academic and behavioral expectations, did not adequately assess student performance and failed to use student portfolios. He opined that he observed a disconnection between student needs and the instruction provided, intended to serve those needs.

11. Mr. Davis also observed a lack of instruction in some instances, in which students were directed to sit down, be quiet, or read portions of a text book. Due to observed deficiencies, a Success Plan was put into place on November 8, 2007, with Ms. Bowman's input. The Success Plan outlined areas of weakness, objectives toward improvements in those areas, with timelines.

12. The Success Team included experienced teaching coaches who were available to model appropriate instruction for Ms. Bowman on several occasions. Ms. Bowman opposed the Success Plan, viewing it as unnecessary, essentially as harassment by the School District's administration. She failed to attend any of the bi-weekly meetings which were held throughout the entire school year.

13. Mr. Davis also conducted two formal observations on December 10, 2007 and January 30, 2008. He met with Ms. Bowman before each formal observation to set a date for the observation and to discuss the lesson plan to be observed. They discussed

the data related to the lesson plan, showing the relevance of the lesson to student needs and showing how student learning would be assessed. Ms. Bowman, however, failed to provide any assessment data, and, in lieu of that information, she submitted a "District Learning Guide" from three years past, which was not sufficiently related to the 2007-2008 curriculum.

14. During the formal observation, Mr. Davis witnessed a period of 25 to 30 minutes during class time when there was no instruction. He saw students asleep at their desks and some arguing between the teacher and several students. He observed that there was a continuing failure to implement the "Workshop Model" and to provide students with academic and behavioral expectations. He saw a lack of assessment of student performance and a failure to use student portfolios. There was a continued disconnection between student needs and the instruction being given, supposedly to serve their needs.

15. Mr. Davis gave the Respondent a number of warnings about the above-referenced deficiencies, based upon his observations, and their post-observation conferences. He encouraged the Respondent to participate in her Success Plan but she continued to refuse to cooperate.

16. Ms. Leslie Sarjeant was an instructional coach and Success Team Member. She corroborated the fact that Ms. Bowman rejected the Success Plan process and did not participate.

Rather than participating in the Success Plan for her own remediation Ms. Sarjeant described Ms. Bowman as railing against what she believed were the ill motives of the DCSB in criticizing her performance and embarking on the Success Plan process, which she believed was a pre-conceived effort to terminate her.

17. The TAI forms completed by Principal Davis, and others completed by Assistant Principal Torrence, showed Ms. Bowman's failure to demonstrate competencies in promoting student growth and performance, evaluating instructional needs, and planning and delivering effective instruction. Mr. Davis then issued a "Notice of Potential Unsatisfactory Performance" to the Respondent on January 2, 2008.

18. The evaluation of the Respondent was issued on January 31, 2008, reflecting unsatisfactory performance in the following competency areas: promoting student growth and performance, planning and delivering effective instruction, and demonstrating professional behaviors.

19. Mr. John Williams, a District administrator, issued a formal Notice of Unsatisfactory Performance on May 7, 2008. In accordance with DCSB policy, after a first such unsatisfactory rating, he gave the Respondent the option to transfer to another school. Ms. Bowman elected to transfer to Southside Middle

School, to teach seventh grade Social Studies and Geography for the following school year, 2008-2009.

20. Ms. Bowman introduced a satisfactory evaluation of her teaching by Principal Davis, for the school year 2005-2006, in order to attack his credibility concerning the testimony about the unsatisfactory performance. This evaluation was done shortly after Principal Davis had been assigned to Jefferson Davis, in December of 2005. She maintained that he changed his opinion only after she wrote a letter to a local newspaper critical of DCSB administration, concerning certain policies regarding student attendance, discipline, promotion, etc. She did not, however, criticize DCSB administrators, and particularly not Principal Davis personally. This contention is not persuasive because Ms. Bowman, in past years, had also made similar accusations that other school administrators/principals had retaliated against her by the use of performance evaluations. She, for instance, raised concerns in a memorandum to the DCSB's human resources office in which she contended that the administration was using her evaluations, in 2004, as a means of retaliation.

21. The contention that Principal Davis was retaliating against her at Jefferson Davis Middle School because she wrote the letter to the local newspaper is less than credible, inasmuch as these other complaints as to retaliation, as to her

past evaluations, arose in earlier school years (2004-2005), and the other referenced events at Jefferson Davis Middle School occurred before Principal Davis was ever assigned to that school.

22. The principal at Southside Middle School (Southside) during 2008-2009 school year was Ms. Latanya McNeal. She has 14 years of experience in education, with eight years as a school administrator. Because the Respondent received an unsatisfactory evaluation for the prior year, and in light of her early observations of Ms. Bowman, Ms. McNeal initiated a Professional Development Plan (PDP) on August 28, 2008. Ms. Bowman signed acknowledgement of that plan.

23. The PDP stressed the importance of: (a) maintaining and developing lesson plans based on student data/assessment of needs; (b) maintaining and using classroom materials tied to academic standards; (c) effectively using portfolios containing student work tied to curriculum and academic standards; and (d) continuous use of the workshop model.

24. Although these were announced ahead of time, and despite Ms. Bowman's knowledge of the PDP and the Southside Classroom Observation Checklist, outlining duties she should perform, two subsequent informal observations on September 3, 2008, and September 24, 2008, revealed little progress toward the goals stated in the PDP.

25. The observation checklists and "observation follow-up forms" for each observation showed the following deficiencies: (a) "teacher needs to plan lessons that align to the standard"; (b) "no instruction, students given worksheets, no connection to standard or text"; (c) "no workshop model, no evidence of portfolios"; (d) "no evidence of instruction"; (e) "presents a negative student/teacher environment . . .".

26. After observation of these deficiencies on these occasions, a Success Plan for the Respondent was created and initiated on November 3, 2008. The Success Plan included all the concerns outlined in the PDP and focused on data-driven instruction, use of portfolios, assessment of student needs, measurement and explanation of student progress, and use of the CHAMPS program. The CHAMPS program is classroom management program used through out the School District. All teachers, including the Respondent, have been trained in its use.

27. A "Success Plan Team" was established, consisting of Principal McNeal, other administrators and teachers, as well as a reading coach and an instructional coach. Regularly scheduled meetings were announced, held, and attended by most members of the team.

28. The Respondent did not cooperate with the efforts of the Success Plan Team. At the first meeting she refused to speak about the plan, but insisted upon discussing and

discrediting the evaluations of her by Principal McNeal. The Respondent was provided training and technical support with two computer programs, Compass Odyssey and FCAT Explorer. These are used to assess student needs and to track student progress. Despite the training and the need to use data to drive instruction, the Respondent never used either program or other student assessment programs. She acknowledged and expressed appreciation for the support and assistance provided to her by the Success Team members, but rejected the idea that instruction can be individualized based on student needs. The Respondent also failed to institute a portfolio system and refused to observe another teacher conducting a teacher-parent conference. As of January 30, 2009, five months into the school year, the Respondent had not yet submitted a five-day lesson plan, as required of every teacher at Southside. After conclusion of the Success Plan; Ms. Bowman complained that she was being singled out for purposes of termination.

29. Although the Success Plan was noted as completed on February 25, 2009, Ms. Bowman did not integrate the plans, strategies, or objectives into her classroom instruction.

30. Principal McNeal conducted two formal observations on December 22, 2008, and March 11, 2009. Before each formal observation she met with the Respondent to identify a date for a formal observation and to discuss the lesson plan to be

observed, the data tied to it, showing student needs, the relevance of the lesson, and how student learning would be assessed. Implementation and use of portfolios, small group workshop models, and the CHAMPS program were also discussed.

31. During the formal observations, Principal McNeal observed and documented on the TAI forms that no evidence of student portfolios existed. There was no evidence of differentiated/workshop instruction or data to guide instruction. There were incomplete grade books and no assessment of learning.

32. There was no evidence of use of the CHAMPS program and it was noted that the Respondent engaged in "shouting matches" with students. She allowed one student to sleep throughout the observation, only to yell "wake up" at the student when someone came to the door to pick the student up.

33. A progress report, dated March 5, 2009, shows that a substantial number of Ms. Bowman's students were failing. The progress report shows that her students had only three graded items from January through March 5, 2009. One of these was an undefined "extra credit" entry.

34. In her first class she had 16 students. Five of those students had F's and two had D's. In her second class she had 24 students with 13 having F's and two with D's. In another class of 28 students, nine had F's, four had D's, and two had no

grades at all. See Petitioner's Supplemental Exhibits 32 and 33, in evidence.

35. Although Principal McNeal discussed these and other concerns with Ms. Bowman, at the post-observation meetings, her concerns were unaddressed.

36. Ample opportunity was given the Respondent during that school year to take part in training and workshops. The absentee report showed that 14 of Ms. Bowman's absences that school year were taken for training and workshops. She was also given the opportunity to have instructional and reading coaches come into her class, prepare lesson plans with her and model instruction for her. According to Ms. McNeal, however, as well as Instructional Coach Shakethia Butler, the Respondent rejected the idea of collaborating with others in planning and instruction.

37. On March 13, 2009, Principal McNeal issued the Respondent's evaluation for the year. It showed unsatisfactory performance as to the following competencies: (a) promotes student growth and performance; (b) evaluates instructional needs of students; (c) utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline; (d) shows sensitivity to student needs by maintaining a positive school environment; and (e) communicates with parents.

38. The Respondent received and signed that annual evaluation, but did not accept its contents and wrote a notation on the document to the effect that the evaluation was done on the second day of the FCAT testing and that the principal had not followed the evaluation schedule. However, both the Director of Professional Standards, John Williams, as well as Principal McNeal, established that observations are permitted on FCAT test days and that the FCAT had only been administered in the morning. That left the Respondent with more than three hours of instructional time in the afternoon during which she could be observed. Moreover, the conference form signed by Ms. Bowman on March 6, 2009, indicated her agreement with and approval of the March 11, 2009, observation date.

39. As was the case with Principal Davis, the Respondent attacked the credibility of Principal McNeal, and the evaluation she prepared, with the argument that the evaluations were a pretext for retaliation against her based upon her "outspoken attitude."

40. Ms. Bowman's work history shows a pattern of similar accusations of retaliation against several other principals at other schools where she taught. Thus, she accused the principal at Eugene Butler Middle School of giving her poor evaluations based upon "lies and revenge." She made accusations that she was retaliated against regarding matters concerning her

evaluation for "being outspoken" and complained of being treated unfairly and harassed while at James Weldon Johnson Middle School. She accused the principal at yet another school, (J.E.B. Stuart Middle School) of conjuring up false evaluations of her based upon race discrimination, because, as she testified at hearing, discrimination had occurred "because everyone involved was African-American." She also made complaints, as found above, regarding her 2004-2005 teacher evaluations at Jefferson Davis Middle School as being based on retaliation. This was before Principal Davis was assigned to that school.

41. In summary, the Respondent has demonstrated the above-found deficiencies in the competency areas referenced. This ultimately resulted in the two successive unsatisfactory evaluations, in two successive school years. The parties have stipulated that, under the Tenure Act, two successive unsatisfactory annual evaluations can provide grounds for termination of employment as a teacher. Moreover, when the above-found plans and efforts to help the Respondent improve her performance were inaugurated, the Respondent fairly consistently refused to cooperate with that performance improvement process.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

43. The Petitioner bears the burden of proof of just cause for termination in this case by the standard of preponderance of the evidence. Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995); McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2nd DCA 1996). The Petitioner thus had the burden to prove that the Respondent committed the offenses or the deficiencies found and charged and that those constituted professional incompetence. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Ferris v. Austin, 487 So. 2d 1163 (Fla. 5th DCA 1986).

44. The parties have stipulated that the Respondent's employment is governed by the Tenure Act, referenced above, and have stipulated that two successive unsatisfactory annual evaluations can provide grounds for termination of employment as a teacher.

45. The Petitioner has contended that the Respondent should be discharged from her teaching position "for cause," as that term is defined by the Tenure Act, on the basis of "professional incompetence." See Section 4(e), Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941) (as amended). The term "incompetency," as defined in the Florida Administrative Code, has been accepted as persuasive in determining incompetency under the above-referenced Tenure Act. School Board of Duval County v. Smith, Case No. 89-4132 (DOAH

Aug. 1990). Florida Administrative Code Rule 6B-4.009 states in pertinent part:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. . . . [a finding of incompetence may be based on] a preponderance of evidence showing the existence of one or more of the following:

(a) Inefficiency:

(1) repeated failure to perform duties prescribed by law;

(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.

46. Florida Administrative Code Rule 6B-5.004 sets out the "minimal standards of the education profession in Florida." It requires teachers to:

(2) Select, adapt or develop, and sequence instructional materials and activities for the designated set of instructional objectives and student needs.

(3) Create interest through the use of materials and techniques appropriate to the varying abilities and backgrounds of students.

(4) Use individual student interests and abilities when planning and implementing instruction.

(5) Make assignment of tasks and duties consistent with individual abilities and specialties.

47. Professional incompetence is demonstrated by the following examples:

1. Failure to adequately prepare and plan for instruction of students. See Turlington v. Reaves, 9 FALR 1371 (1986) (giving assignments without proper explanation of the assignment contributed to a finding of incompetency).

2. Failure to employ appropriate disciplinary techniques suitable to the particular situation. See Turlington v. Reaves, supra; Turlington v. Walker, 9 FALR 2305 (1987) (inability to control the behavior of disruptive students within the class constituted incompetence) Department of Education v. Ferrara, 10 FALR 5766 (1987) (inability to handle discipline problems revealed teacher incompetence).

3. The failure to utilize adequate techniques of instruction in the classroom. Turlington v. Reaves, supra; Department of Education v. Ferrara, supra; (failure to provide stimulative and varied learning experiences shows incompetence); Castor v. Brewer, 9 FALR 5339 (1987) (teaching

technique consisting primarily of giving students a reading assignment and having them answer questions in class demonstrates incompetence); Department of Education v. Marshall, 10 FALR 4303 (1987) (failure to use more than one teaching technique shows incompetence).

4. The failure to create a classroom environment conducive to learning. Turlington v. Walker, supra.

5. The failure to maintain proper supervision of students in the classroom is incompetence. Turlington v. Walker, supra; Castor v. Perry, 9 FALR 5291 (1987) (off-task students supported finding of professional incompetence).

48. The Tenure Act, cited above, mandates that a teacher first be given fair written notice containing a clear and detailed statement on which the claim of incompetence is based. The teacher must be given at least one opportunity to transfer to a new school, and adequate opportunities throughout one school year for in-service training, tailored to the correction of the alleged areas of incompetence, before a teacher may be discharged for professional incompetence. The persuasive evidence clearly shows that the Respondent was given those opportunities required by the Tenure Act. Just as importantly, the Tenure Act requires teachers to cooperate and make a fair attempt to participate in such training.

49. The Petitioner provided the Respondent ample notice of her instructional short-comings and provided her ample

opportunities to improve and correct them. The Respondent simply failed to cooperate. She refused to participate in her own success plan at Jefferson Davis Middle School in the 2007-2008 school year. She also resisted and failed to participate, in a substantial way, in her success plan at Southside Middle School in the following year.

50. The deficiencies shown in the above Findings of Fact meet the various standards for demonstrating professional incompetence referenced above. Moreover, the Respondent received two consecutive unsatisfactory evaluations, for the two consecutive school years in question. Therefore, preponderant, persuasive evidence has established that she has demonstrated professional incompetence and that the Petitioner has shown good cause for her termination.

51. Sadly, this result, after a 28-year career with the Petitioner School District, might have been avoided had the Respondent not continually attacked the motives of those who were critical of her performance. Rather, had she taken the criticism seriously, made a good faith effort to use the additional training to adequately address the perceived problems with her performance, and restore her career to a proper professional plane, the outcome may have been different. Unfortunately, that effort did not occur.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses and pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Duval County School Board terminating the Respondent's employment as a teacher.

DONE AND ENTERED this 12th day of January, 2010, in Tallahassee, Leon County, Florida.



P. MICHAEL RUFF
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of January, 2010.

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.