

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NASSAU COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 09-4230
)
NANETTE AUTRY,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 28 and 29, 2010, and February 10, 2010, in Nassau County, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. Ray Poole, Esquire
 Jeffrey Wilson, Esquire
 Constangy Brooks & Smith
 200 West Forsyth Street, Suite 1610
 Jacksonville, Florida 32202

For Respondent: Glenda L. Simmons-Jenkins
 Qualified Representative
 Post Office Box 70
 Fernandina Beach, Florida 32034

STATEMENT OF THE ISSUE

The issue is whether Petitioner properly determined that Respondent's employment as a continuing contract teacher should be terminated.

PRELIMINARY STATEMENT

In a letter dated February 6, 2009, John L. Ruis, Ed. D., Superintendent of Schools in Nassau County, Florida, advised Respondent Nanette Autry (Respondent) of his intent to recommend to Petitioner Nassau County School Board (Petitioner) that her employment as a teacher on continuing contract be terminated pursuant to Section 1012.33(4)(c), Florida Statutes. The letter stated that Respondent's employment would be suspended with pay until Petitioner's next regular meeting on February 12, 2009. The letter also advised that Dr. Ruis would recommend at the February 12, 2009, meeting that Respondent's "suspension be extended without pay, pending a hearing conducted by an administrative law judge"

The February 6, 2009, letter did not provide Respondent with her due process rights pursuant to Sections 120.57, Florida Statutes. Instead, the letter stated as follows: "If you decide to contest this action you may be present at any subsequent hearings, and are entitled to be represented by counsel of your choice at your own expense."

The February 6, 2009, letter goes on to state that Dr. Ruis' recommendation is based upon Respondent's unsatisfactory performance for two school years. The letter states that it is intended to satisfy the requirements of Section 1012.33(4)(b), Florida Statutes.^{1/}

On February 12, 2009, Petitioner issued an Order Deferring Decision and Transferring Matter to the Division of Administrative Hearings (DOAH). The Order deferred Petitioner's decision relating to the termination of Respondent's continuing contract pending receipt of a recommended order from DOAH.

The February 12, 2009, Order was sent to DOAH under cover of a letter dated February 13, 2009. The cover letter states that the case was transferred to DOAH for an administrative hearing pursuant to Section 1012.33(6)(a)(2), Florida Statutes.^{2/}

Petitioner's February 12, 2009, Order was received by DOAH on February 17, 2009. However, the Order was not assigned a case number or assigned to an Administrative Law Judge because the Order did not contain the charges against Respondent and did not include a request from Respondent for an administrative hearing involving disputed issues of material facts.

In a letter to Respondent dated February 20, 2009, Dr. Ruis advised that Petitioner had approved Respondent's suspension without pay pending a DOAH hearing. The letter then stated as follows in pertinent part: "Should you wish to contest the charges in this matter, you must submit a written request for a hearing within fifteen (15) days after receipt of this notice to my office." The letter refers once again to a hearing pursuant to Section 1012.33(6)(a)2., Florida Statutes.

In a letter to Petitioner dated March 2, 2009, Respondent advised Petitioner as follows in relevant part: (a) that she had not received Petitioner's written charges as required by Section 1012.33(4)(c), Florida Statutes; (b) that DOAH did not have jurisdiction because, under Section 1012.33(4)(a), Florida Statutes, Petitioner had to make the decision; and (c) that she would decide whether to appeal Petitioner's February 12, 2009, decision after she received the charges.

In a letter dated April 7, 2009, Petitioner responded to Respondent's March 2, 2009, letter. In the letter, Petitioner advised Respondent as follows: (a) that a teacher on continuing contract could be dismissed pursuant to Section 1012.33(4)(c), Florida Statutes; (b) that DOAH had authority to hear cases involving discipline or discharge of teachers on continuing contracts, but that Petitioner had refused to participate in such a proceeding, and therefore, had waived her right to a hearing; and (c) Petitioner had been given adequate notice of the charges against her.

In a letter to Petitioner dated May 23, 2009, Respondent continued to allege that Petitioner had not provided her with, among other things, a response to her requests for information concerning the charges against her and her rights under the appeal process.

In a letter dated May 29, 2009, Petitioner responded to Respondent's May 23, 2009, letter. The response consisted of enclosing another copy of Petitioner's April 7, 2009, letter.

In a letter to Respondent dated June 16, 2009, Dr. Ruis advised that he intended to recommend Respondent's dismissal at Petitioner's meeting on June 25, 2009. The letter also stated as follows: "The [Petitioner] previously deferred this matter to [DOAH] for an evidentiary hearing on February 12, 2009. Based upon your refusal to participate in a DOAH proceeding, my recommendation to the [Petitioner] will be to consider your proposed dismissal as uncontested."

In a letter dated July 2, 2009, Respondent advised Petitioner that she never received written notice of Petitioner's June 25, 2009, decision to terminate her teaching contract. Respondent's letter quoted Section 1012.33(4), Florida Statutes (2009), setting forth her right to written notice of the legal grounds for the decision. Finally, the letter advised Petitioner that Respondent intended to appeal the decision.

On July 15, 2009, Respondent filed a request for administrative hearing directly with DOAH. The letter enclosed Respondent's July 2, 2009, letter to Petitioner.

On August 6, 2009, Respondent filed an Amended Petition for Evidentiary Hearing. According to the document, Respondent

never received a notice of agency decision or a clear point of entry to request an administrative hearing. The petition also sets forth the disputed issues of material facts.

On August 6, 2009, Petitioner filed a letter dated August 6, 2009, asserting the following: (a) that Respondent had not requested a hearing; (b) that Respondent had not availed herself of the opportunity to participate in a hearing by contending that DOAH lacked jurisdiction; and (c) that Petitioner had taken "final agency action" with respect to Respondent's employment, depriving DOAH of jurisdiction.

On August 7, 2009, DOAH assigned a case number to this matter. The undersigned issued an Initial Order that same day.

On August 12, 2009, Respondent filed a response to Initial Order. On August 14, 2009, Petitioner filed a response to Initial Order.

On August 19, 2009, the undersigned sua sponte issued an Order Directing the Filing of Pleadings, and in the Alternative, Order to Show Cause. The Order reviewed the procedural history as set forth above, then provided an opportunity for Petitioner to provide Respondent with the legal basis of the charges against her and a clear point of entry for Respondent to request a hearing. The Order provided Respondent with an opportunity for her to request a hearing. In the alternative, the Order provided the parties with an opportunity to show cause why

DOAH's file should not be closed due to a lack of jurisdiction based on Petitioner's failure to provide Respondent with the charges against her and a clear point of entry to request a hearing.

Respondent filed a Response to the Show Cause Order on September 9, 2009. Petitioner filed a Response to Order to Show Cause and Supporting Memorandum of Law on September 18, 2009.

During a telephone conference on September 24, 2009, Petitioner maintained its position that Respondent had adequate notice of the charges against her and her right to a hearing but that she had waived that right by refusing to participate in a hearing. Respondent asserted that Petitioner failed to provide her with the following: (a) notice of statutory charge(s) against her; (b) a point of entry to request a hearing; and (c) sufficient notice of her right to appeal.

Later on September 24, 2009, Petitioner filed a letter stating that it would provide Respondent with formal notice of the charges against her if the undersigned denied its request to dismiss this case for lack of jurisdiction.

On September 24, 2009, the undersigned issued an Order Denying Request to Dismiss for Lack of Jurisdiction based on Respondent's waiver of a right to a hearing.

On October 6, 2009, Petitioner filed its Formal Notice of Charges Against Respondent. Respondent filed her request for a hearing on October 16, 2009.

On October 18, 2009, Respondent filed a Motion for Summary Judgment. The motion was denied in an Order dated December 23, 2009.

On October 26, 2009, the undersigned issued a Notice of Hearing. The notice scheduled the hearing for January 20, 2009.

On January 11, 2010, Respondent filed letter relating to discovery matters. On January 13, 2010, Petitioner filed a Motion to Compel and a Motion to Continue. After a telephone conference on January 14, 2010, the undersigned issued an Order Granting Motion to Compel.

On January 15, 2010, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing dated January 15, 2010. The Order scheduled the hearing for January 28 and 29, 2010.

The hearing convened as scheduled on January 28 and 29, 2010. Because the parties did not have an opportunity to complete the presentation of all evidence, the undersigned issued an Order Re-scheduling Hearing dated February 2, 2010, scheduling a final day of hearing on February 10, 2010.

On February 5, 2010, Respondent filed a Motion for Reconsideration of Evidence. The motion was denied on the record during the hearing on February 10, 2010.

During the hearing, Petitioner presented the testimony of six witnesses. Petitioner offered 30 exhibits (P2-P31) that were accepted as evidence. Petitioner's Exhibit P1 was withdrawn during the hearing.

Respondent testified on her own behalf and presented the testimony of eight witnesses. Respondent offered the following exhibits that were accepted as evidence: R2-R10, R12-35, R37-R73, R76, R80-82, R84-R87, Ra-Rz, and Raa.

Respondent's Exhibits R1, R83, Rbb, Rcc, and Rdd were withdrawn. Petitioner's Exhibits R11, R36, R74-R75, R77-R79, and R88-R89 were excluded/proffered.

The final volume of the five-volume Transcript was filed on March 5, 2010. Petitioner and Respondent filed their Proposed Recommended Orders on March 25, 2010.

All references hereinafter shall be to Florida Statutes (2009), except as otherwise indicated.

FINDINGS OF FACTS

1. Petitioner operates, controls, and supervises the public schools within Nassau County, Florida.
2. Respondent graduated from the University of Florida in 1978 with a Bachelor of Arts degree in English. She began

working for Petitioner in the 1980/1981 school year at Emma Love Hardee Elementary School. That year, Respondent gave Petitioner an out-of-field assignment as a teacher of emotionally handicapped students.

3. Respondent received her Master of Arts degree in Special Education from the University of North Florida in 1985. She began working as an Exceptional Student Education (ESE) instructor at Fernandina Beach High School in the 1983/1984 school term.

4. Beginning with the 1999/2000 school year, Respondent's primary teaching assignment was as a performing arts instructor at Fernandina Beach High School. Respondent worked in that capacity until the 2006/2007 school year when she became a full-time English and ESE co-teacher. For the 2007/2008 term, Respondent taught English III and English IV.

5. In 2008/2009, Respondent worked as a regular education English teacher. She also served as an ESE co-teacher for intensive language arts.

6. Jane Arnold began working as Principal at Fernandina Beach High School for the 1998/1999 school term. Ms. Arnold completed a performance appraisal of Respondent in 1999 that resulted in an overall unsatisfactory rating.

7. Of particular concern to Ms. Arnold in the 1998/1999 appraisal was Respondent's problem with completing documentation

of lesson plans, including daily instructional strategies as well as specific examples showing how the subject matter would be delivered. The failure to provide proper lesson plans made it difficult to know whether Florida's Sunshine State Standards were being met.

8. Respondent was also having problems with grading students' work and recording the grades. Student work papers were disorganized and some papers were missing. Therefore, it was hard to discern what work was completed and when it was completed. The failure to timely grade and record students' work made it difficult for students to know what they needed to do to improve.

9. Ms. Arnold subsequently placed Respondent on a professional development plan (PDP). The one-page PDP required Respondent to improve three job-service categories. After Respondent satisfactorily completed the PDP within the prescribed 90-day period, Ms. Arnold recommended that Respondent's employment continue.

10. Respondent received a satisfactory or above-satisfactory rating on all of her teacher performance evaluation from the 1999/2000 school year through the 2006/2007 school year. However, Respondent admits that she has had consistent problems with time management and organization throughout her career.

11. In October 2007, Respondent received a mini-grant from the Fernandina Beach High School Foundation. Respondent used the grant to provide her students with novels she used to teach literature.

12. Additionally, in October 2007, Respondent earned continuing education credits toward recertification by attending a conference sponsored by the Florida Association for Theatre Arts. During the conference, Respondent participated in the "In Search of Shakespeare" workshop, which she hoped would prepare her to introduce Shakespeare as part of the British literature curriculum.

13. Respondent's problem with providing focused instruction became critical during the 2007/2008 school year. Students in Respondent's classes were receiving failing grades and did not know why. Respondent made errors when reporting grades and had difficulty submitting them on time.

14. Respondent was easily upset in the classroom. She would become emotional, lose her temper, and say things that were less than professional. Ms. Arnold heard disruptions in Respondent's classroom, which was behind a curtain, behind a stage, and behind double doors.

15. Curtis Gaus was the assistant principal at Fernandina Beach High School from 2004 to 2008. Mr. Gaus also witnessed

periods with the level of noise in Respondent's classroom was so loud that it could be heard in the cafeteria during lunchtime.

16. Respondent was frequently tardy. As a result, Mr. Gaus would have to unlock Respondent's room and wait with her students until Respondent arrived.

17. In October 2007, Respondent was required to complete progress monitoring plans and schedule parent conferences. The conferences were scheduled on October 14, 15, and 16, 2007. Petitioner did not turn in the progress monitoring plans until two months after holding the conferences.

18. As observed by Ms. Arnold and Mr. Gaus, Respondent frequently failed to provide her students with any explanation of expectation as to a lesson or any modeling of what it was she expected the student to do. She provided no immediate feedback or clarification for the work they were attempting.

19. In January 2008, Ms. Arnold observed Respondent using instructional time to read questions to students, expecting them to write the questions as she read them. Ms. Arnold advised Respondent that she should not use class time to dictate questions. On January 31, 2008, Ms. Arnold met with Respondent and gave her type-written comments, suggesting areas for Respondent to improve classroom instruction.

20. Mr. Gaus observed teacher classroom at least once a month. Many times Respondent would be unaware that Mr. Gaus was

in her classroom. For the majority of Mr. Gaus' visits, Respondent's students were off task. On one occasion, while Respondent was handing out notebooks, the students were playing video games and talking to each other.

21. In February 2008, Respondent's English IV students presented a Renaissance Faire. The students researched and prepared exhibits, presented projects, and competed in a soliloquy contest sponsored by the National Endowment for the Arts to earn extra credit toward their semester grade.

22. In support of the Renaissance Faire, Respondent wrote lesson plans, developed a project rubric, implemented classroom assignments and kept a record of student project grades. Respondent invited parents, current and former teachers, as well as community leaders to act as judges for an evening program presented by the students.

23. Respondent took a six-week medical leave effective March 5, 2008. On March 8, 2008, Respondent attended a teacher's conference entitled Super Saturday. As a result of participation at the conference, Respondent earned the points she needed to renew her teaching certificate.

24. Petitioner's Classroom Teacher Assessment Handbook for the 2007/2008 school year states that a continuing contract teacher must receive one formal observation, followed within 10 days by a post-observation conference. During the post-

observation conference, a PDP must be developed for teachers receiving unsatisfactory performance appraisal reports.

25. The formal observation must be completed by March 14. Performance appraisals are required to be completed and submitted to the Superintendent no later than April 7. However, Petitioner was on medical leave on these dates.

26. In May 2008, Respondent provided Petitioner with a physician's written recommendation for extension of Respondent's medical leave. Petitioner approved extension of the leave through August 11, 2008.

27. On May 29, 2008, Ms. Arnold wrote a letter to Respondent, who was still on medical leave. A Notification of Less Than Satisfactory Performance was included with the letter.

28. The May 29, 2008, letter reminded Respondent that they needed to arrange a time in July to complete Respondent's 2007/2008 performance appraisal and to discuss the implementation of a PDP for the 2008/2009 school year. The letter refers to written comments that addressed Respondent's performance and that were provided to her earlier in the school year.

29. In July 2008, Petitioner sponsored vertical and horizontal curriculum development workshops for English teachers of advanced placement and honors students. Some English

teachers of regular/average students also attended the workshops. Respondent did not receive this training.

30. On July 21, 2008, Ms. Arnold and Respondent met to discuss Respondent's 2007/2008 performance appraisal and PDP. The evaluation rated Respondent unsatisfactory with a total overall score of four out of a possible 100 points.

31. Respondent's 2007/2008 performance appraisal contained Ms. Arnold's comments in each of the performance categories as follows:

1. Planning/Preparation: Lack of long and short term planning[.] Detailed lesson plans must identify learning objective and the instructional strategies/activities/assessment planned to accomplish the objective. Work should be clear, compelling and engaging and include representative works and genres from the Anglo Saxon period through the present day. Feedback to students should be timely and specific. Documentation should be organized and accessible.

2. Classroom Management: Classroom environment hostile, negative and chaotic. 3-step discipline procedure not documented. Records not accurate or timely. Classroom procedures lack organization. School & Board policies not consistently enforced. Room in disarray with papers, books, and materials in haphazard piles throughout the room.

3. Assessment/Management: Interventions for academic, attendance and behavioral problems lacking. Parent contacts inconsistent and not documented. 3-step discipline procedure not implemented. Effective instructional strategies lacking.

Work is frequently not meaningful or relevant to unit of study.

4. Intervention/Direct Services: Teacher read test questions to students, refused to repeat questions, and subtracted points from students who requested additional clarification. Papers are frequently "lost," performance expectations for assignments not clearly defined, and grade information not easily available to students and parents.

5. Technology: Teacher web site/Edline not utilized[.] Frequent errors in grade reporting[.] Difficulty meeting deadlines[.]

6. Collaboration: Frequently alienates students and parents by failing to produce documentation for grades or clarification of assignments[.] Does not follow Board Policies for make-up work, and fails to communicate problems to parents to seek their assistance.

7. Staff Development: While Ms. Autry has participated in numerous professional development activities for effective instruction, the strategies identified and recommended have not been implemented with any consistency in her classroom.

8. Parental Input: Parents express frustration and impatience with the problems encountered by their students in Ms. Autry's class. Clear communication of academic and behavioral expectations needs to be provided to all stakeholders. Complaints about "disparaging comments" made by Ms. Autry about the students in her classes are frequent, both from students and teachers.

9. Professional Responsibilities: Ms. Autry must learn to maintain a professional demeanor at all times in the classroom, and must avoid making negative

comments about the students with whom she works. Improvement of instruction must become a priority. Extra-curricular involvement should be limited as it appears to interfere with time that should be devoted to her classes. Deadlines need to be met. Grading and attendance should be timely and accurate. Curriculum deficiencies must be addressed.

10. Interim Student Growth: Academic interventions should be provided and documented for students experiencing difficulty in successfully completing the coursework[.] Parents must be notified and encouraged to participate in the intervention strategies. Grades should be fair, consistent, and easily available to students and parents.

32. The greater weight of the evidence indicates that Ms. Arnold's comments on the 2007/2008 performance appraisal accurately summarized Respondent's professional deficiencies. Many of Ms. Arnold's comments show the same types of problems that Respondent has experienced for years.

33. In 1984, Respondent used sarcasm towards students and failed to submit paperwork on time. In 1988, Respondent had problems with organization, submitting timely grades, and completing paperwork accurately and on time. In June 1998, Respondent was disorganized, late to work, and untimely in submitting paperwork. In August 1998, Respondent had trouble with accurate and punctual recordkeeping, using varied and appropriate educational strategies, and demonstrating effective

classroom management. In the 2001/2002 school term, Respondent had trouble submitting grades on time.

34. The final comment of Ms. Arnold on the last page of the 2007/2008 performance appraisal, states as follows:

As a result of an unexpected medical leave, this evaluation and resulting professional development plan can not be completed until Ms. Autry's return to work.

Ms. Arnold and Respondent signed the evaluation on July 21, 2008.

35. Also on July 21, 2008, Ms. Arnold and Respondent reviewed a 32-page PDP plan. The PDP was designed to meet each area of deficiency on Respondent's 2007-2008 performance appraisal.

36. Respondent did not take advantage of the opportunity to request any specific strategies or otherwise provide input regarding the PDP on July 21, 2008. However, the next day, Respondent sent Ms. Arnold an e-mail, requesting Ms. Arnold to review a folder of documentation to support Respondent's performance in certain areas.

37. Ms. Arnold responded in an e-mail dated July 22, 2008. Ms. Arnold agreed to review the materials provided by Respondent. She also stated that "evaluation specific activities" might help them revise the PDP as needed. Ms. Arnold also invited Respondent to utilize the "Comments of

Evaluatee" section of the performance appraisal. In subsequent e-mail, Respondent and Ms. Arnold agreed on a time to meet.

38. Sometime after receiving the 2007/2008 performance appraisal, Respondent performed a self-assessment on all essential performance functions. She gave herself an overall rating of "needing improvement," with 30 of 100 points.

39. For the 2008/2009 school year, Ms. Arnold assigned Respondent to teach four sections of English IV, first through fourth periods. Respondent had some regular education students and some ESE students in these classes. With only one preparation, Respondent did not have and should not have needed a co-teacher to assist her in teaching four classes of English IV.

40. Respondent also was assigned as a co-teacher in two intensive language classes, fifth and sixth period. Anita Bass, a Reading Coach, was primarily responsible for planning and teaching the two intensive-language classes. Respondent, as a co-teacher, was supposed to provide assistance in general and to specifically provide help to ESE students.

41. When Ms. Bass was absent, Respondent would teach the intensive-language class. On one occasion, Respondent taught a lesson on fables. On another occasion, Respondent taught a lesson on neurosurgeon, Dr. Ben Carson.

42. In August 2008, Respondent was assigned a new classroom. She moved her materials from the room behind the cafeteria to a more traditional classroom.

43. On September 12, 2008, Ms. Arnold visited Respondent's classroom for 15 minutes. During that time, Ms. Arnold observed Respondent reading from a text. Only three students had their books open and there was very little student participation.

44. On September 15, 2008, Ms. Arnold sent Respondent an e-mail, advising that her lesson plans and weekly course outline were past due.

45. On September 16, 2008, Ms. Arnold sent Respondent an e-mail regarding her classroom observation on September 12, 2008. The message also requested submission of Respondent's lesson plans and weekly course outline along with a written explanation as to Respondent's reason for not meeting the deadline.

46. On October 13, 2008, Ms. Arnold visited Respondent's classroom. Ms. Arnold found the students talking, sleeping, and watching CNN because the movie described in Respondent's lesson plan was over. None of the students had books or papers on their desks. Respondent stayed behind her desk for approximately ten minutes then handed some graded brochures back to the students. Respondent spoke to her students for about

five minutes during the 22 minutes of Ms. Arnold's visit. The students did nothing during that time.

47. In an e-mail written later on October 13, 2008, Ms. Arnold noted that Respondent's weekly syllabus dated October 13, 2008, showed that the students were scheduled to watch a movie then complete a reading guide and a quiz. The e-mail discussed Ms. Arnold's observations earlier in the day and requested revised lesson plans for the week. Referring to the lesson observed that morning, Ms. Arnold also requested an explanation of the learning objectives and teaching strategies employed by Respondent. Ms. Arnold reminded Respondent that required tasks were to be completed in a timely and accurate fashion.

48. A subsequent e-mail dated October 13, 2008, stated that Ms. Arnold had received Respondent's ESE Mainstream Report for four students. According to the message, the reports were given to Respondent on September 29, 2008, were due on October 3, 2008, and not given to the teacher of record until October 7, 2008.

49. Because the Mainstream Reports were incomplete for several students, Mr. Arnold requested Respondent to review her Professional Growth Plan, requiring tasks to be completed in a timely and accurate fashion. Ms. Arnold also requested Respondent to provide the missing information.

50. On October 21, 2008, Ms. Arnold sent Respondent an e-mail, requesting lesson plans that were due on October 17, 2008.

51. Joyce Menz is Petitioner's Director of Staff and Program Development. In November 2008, Ms. Menz provided Respondent with an opportunity to attend a workshop related to classroom management. Petitioner did not attend the workshop.

52. In the fall of 2008, Ms. Menz hired Jimi Buck, a retired language arts resource teacher and reading curriculum specialist, to sit and plan a lesson with Respondent. Ms. Buck then demonstrated instruction of the lesson plan in one of Respondent's classes.

53. Ms. Menz arranged for Respondent to observe Ms. Drake, an English IV teacher at another school. Respondent and Ms. Drake spent some time going over Ms. Drake's yearlong plan of how and what she would be teaching. Ms. Menz hired a substitute for Respondent's classes so that she could consult with Ms. Drake.

54. Ms. Menz hired Ms. Mealing, another consultant, to meet with Respondent and work on a week of lesson plans. During their time together, Respondent and Ms. Mealing viewed and discussed a DVD entitled "Strategies for Secondary English Teachers." Ms. Menz purchased the DVD specifically for the purpose of helping Respondent. Ms. Menz provided a substitute

for Respondent's classes while she reviewed the materials with Ms. Mealing.

55. Ms. Arnold made it possible for Respondent to observe Ms. Barlow's classes at Fernandina Beach High School, by hiring a substitute for one-half day. Ms. Barlow taught Advanced Placement and English IV Honors.

56. Ms. Arnold also provided additional help to Respondent when school began in the fall of 2008. First, Ms. Arnold did not assign Respondent as a teacher of record for any ESE students. As a teacher of record, Respondent would have been required to keep track of what was happening with her ESE students.

57. Ms. Arnold also excused Respondent from participating in any extracurricular activities. Ms. Arnold hoped that Respondent would devote all of her energy to improving her instruction.

58. At times, Ms. Arnold would go into Respondent's class to get it under control in response to disruptive behaviors. Ms. Arnold then would make suggestions to Respondent about how to keep control, reminding her of the need to use the three-step discipline procedure.

59. On November 6, 2008, Ms. Arnold and Respondent signed a performance appraisal. Respondent's overall rating on the evaluation was unsatisfactory. Respondent indicated that she

thought her overall rating should have been "needs improvement," which would have still required a plan of assistance.

60. Mr. Gaus observed Respondent during the PDP period and completed a performance evaluation. Mr. Gaus found that there was no improvement in keeping students on task. During the post-observation conference with Respondent, she continually acknowledged that she had problems with administrative tasks, lesson plans, submitting grades and managing the behavior of her students.

61. On November 17, 2008, Ms. Menz observed Respondent's classroom. Ms. Menz found that Respondent's overall planning was not based on students' needs and was not clear and engaging. Ms. Menz observed two students who appeared to be sleeping and another texting. While Ms. Menz was in Respondent's class, six students lost their early-lunch privilege.

62. On the November 17, 2008, performance appraisal prepared by Ms. Menz, Respondent received an overall rating of unsatisfactory. Respondent made a comment on the evaluation form, indicating that she had learned a lot from the post-observation conference with Ms. Menz and looked forward to receiving further assistance.

63. On November 21, 2008, Mr. Gaus, sent Respondent an e-mail. The message advised that Respondent had not posted her grades on Edline since October 21, 2008, and should do so as

soon as possible. Edline is the computer program that Petitioner uses to record grades.

64. Despite the PDP, Respondent's deficiencies did not improve. In her semester exam, she used materials that the students had not read. When the students questioned Respondent, she told them, "If you want to read it, look it up on the internet."

65. In response to the PDP, Respondent developed a behavioral incentive plan to implement in the reading classes where she was the co-teacher. Respondent sent a letter to inform parents about the plan.

66. The behavior incentive plan sought to reward positive student behavior with bathroom passes, snacks, and paper money. However, there were school rules against having food in the classroom and allowing bathroom passes except for emergencies. Moreover, the plan was not well received because the students thought Respondent was tallying their actions.

67. As a co-teacher, Respondent was required to help implement a computer-directed reading program. Because Respondent was unable to provide assistance with the program, a third person had to be called in to perform the task for Respondent.

68. An additional concern of Ms. Arnold's was that Respondent continued to ignore Petitioner's policy regarding

makeup work. Ms. Arnold was also concerned that Respondent was losing her temper and taking points from students who asked for clarification on assignments.

69. In January 2008, Ms. Arnold observed Respondent's classroom again. Her comments on the performance appraisal were as follows:

1. Planning/Preparation: Second 9-weeks spent on "Pygmalion" [.] Based on lesson plans, there were no novels, short stories, or poems by British writers included in the material taught (See eval. #1)[.] Classroom activities lack relevance and timeliness. (See eval. #2) Strategies and Objectives listed in lesson plans were not reflected in actual classroom activities.

2. Classroom Management: Inappropriate student behavior during classroom observation was addressed and corrected by instructor. Developed behavioral incentive plan for students in Reading Classes with reward system for positive student behavior and achievement (bathroom passes, snacks, paper money)[.]

3. Assessment/Management: Portions of the semester exam do not correlate to stated learning objectives, learning strategies, or class activities listed in the semester outline, lesson plans, or weekly syllabus. Students have not read "Julius Caesar" or "Heart of Darkness." Neither have they studied the three poems they are to compare. Students were told to "look up" the meaning of the literary terms that they were given to use in analyzing the poems on the exam. Many questions given to student in advance.

4. Intervention/Direct Services: Ms. Autry does not demonstrate knowledge and understanding of the English IV curriculum.

Significant works by British writers have not been taught. (See observation #1) Pacing is slow, with 9-weeks spent on "Pygmalion" to the exclusion of British novels, short stories and poems. Activities are not aligned with student needs. In-depth skills development is lacking.

5. Technology: Ms. Autry utilizes technology for administrative and instructional tasks[.] However, on December 16th, Edline grades had not been updated since 10/23[.] Also on that date, the last weekly syllabus posted was for week 11.

6. Collaboration: Ms. Autry's written complaints about ESE co-workers in which she stated the need for colleagues to provide accommodation for her [medical condition] resulted in strained working relationships. Ms. Autry attends department meeting and faculty meetings as outlined in the Plan of Assistance.

7. Staff Development: Completed training in ESE/IEP, Tablet PC, Edline/Grade Quick and ELMO. Received direct training by Ms. Menz, Ms. Mealing & Ms. Buck to address instructional deficiencies. Declined suggested training opportunities in Discipline & Motivation Strategies, Behavior Management Strategies, Classroom Management, Lesson Planning, Parental Input, Classroom Assessment and Professional Responsibilities. (Based on identified needs in PDP and classroom observations.)

8. Parental Input: Edline/Grade Quick posting irregular. Few documented parent contacts.

9. Professional Responsibilities: Ms. Autry is teaching four sections of English IV and is the co-teacher in two sections of Reading taught by the Reading Coach. She in (sic) not the teacher of

record for any ESE students. During the 90-day plan of assistance, lesson plans were submitted late 15 out of 18 weeks. Grades were not posted in a timely fashion on Edline. (Ms. Autry was excused from participating in extra curricular activities in order to focus on her plan of assistance.

10. Interim Student Growth: Students who had not passed the FCAT were assigned to the Reading Coach who provided individual/group instruction during the first 9-weeks. 96% of Ms. Autry's students received semester grades of 70% or higher. No other assessments are available at this time.

Ms. Autry and Ms. Arnold signed the performance appraisal dated January 7, 2009. Ms. Autry requested that Ms. Arnold attach information about a disability and its accommodations to the evaluation. Ms. Arnold complied with the request.

70. Two weeks before the expiration of the PDP, Respondent requested a two-month extension because she could not comply with the plan. Respondent's request was denied.

71. Petitioner's Superintendent, Dr. John Ruis, placed Respondent on paid suspension when she did not improve. Dr. Ruis then recommended that Respondent be suspended without pay pending termination.

CONCLUSIONS OF LAW

72. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 1012.34(3)(d)2.b.(II), Florida Statutes.

73. The first question is whether Petitioner committed procedural and or substantive errors that preclude consideration of the merits of this case. Specifically, Respondent argues that Ms. Arnold failed to conduct a formal classroom observation by March 14, 2008, followed by a post-observation conference within 10 days to discuss the performance appraisal. Respondent also argues that Ms. Arnold failed to send a copy of the performance appraisal to Petitioner's personnel office by April 7, 2008.

74. Respondent took a medical leave of absence effective March 5, 2008, and extended that leave through August 11, 2008. Therefore, Petitioner cannot be faulted for failing to meet the deadlines set forth above.

75. The greater weight of the evidence indicates that Respondent was aware of her unsatisfactory performance based on Ms. Arnold's November 2008 and January 2009 performance appraisals, as well as her written comments addressing Respondent's performance earlier in the school year. Respondent also was aware that she had not performed satisfactorily when she did not complete the PDP in 90 days and when Petitioner did not extend the time for her to do so. Under the facts of this case, Petitioner's failure to follow the timelines set forth in the 2007/2008 Classroom Teacher Assessment Handbook does not preclude consideration of the merits.

76. Petitioner has the burden of proving by a preponderance of the evidence that Respondent's continuing contract as a teacher should be terminated based on a charge of incompetency. See Dileo v. School Bd. of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990); § 1012.33(4)(c), Fla. Stat.

77. Incompetency is defined in Florida Administrative Code Rule 6B-4.009(1), as follows in relevant part:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity . . . 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)[former statute]; (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

78. Respondent admitted that she has always had problems with organization and completing paperwork on a timely basis. In the 2008/2009 school year, Respondent failed to comply with the requirements of long and short term planning. As for the plans she created, Respondent failed to adequately teach the required content of the Sunshine State Standards. She also failed to satisfactorily and effectively implement her plans in the classroom.

79. Respondent was unable to consistently maintain discipline in her classes. The environment in Respondent's classroom was frequently hostile, negative, and chaotic. At times, Respondent failed to maintain a professional demeanor.

80. Respondent's student assessment strategies were weak, and at times, confusing to the students. Respondent never developed a system to make grade information easily available to students and parents.

81. Respondent made some improvement in learning to use the computer software for recording grades. However, she made frequent errors and had difficulty meeting deadlines.

82. Respondent participated in numerous professional development activities. Nevertheless, Respondent failed to consistently implement the new instructional strategies.

83. In this case, the greater weight of the evidence indicates that Respondent is incompetent. Petitioner provided Respondent with more than enough assistance to help her meet the goals of the PDP. Despite the extraordinary help, Respondent did not show adequate improvement.

RECOMMENDATION

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

RECOMMENDED:

That Petitioner enter a final order terminating Respondent's employment as a teacher.

DONE AND ENTERED this 22nd day of April, 2010, in Tallahassee, Leon County, Florida.



SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of April, 2010.

ENDNOTES

^{1/} Unsatisfactory performance is not one of the enumerated grounds for terminating a continuing contract as set forth in Section 1012.33(4)(c), Florida Statutes (2009).

^{2/} Section 1012.33(6)(a), Florida Statutes (2009), does not apply to teachers on continuing contract.

COPIES FURNISHED:

Dr. John L. Ruis
Superintendent of Schools
Nassau County School District
1201 Atlantic Avenue
Fernandina Beach, Florida 32034

Leonard T. Hackett, Esquire
Vernis & Bowling
4309 Salisbury Road
Jacksonville, Florida 32216

Nanette S. Autry
2352 Cashenwood Drive
Post Office Box 1025
Fernandina Beach, Florida 32035

Glenda L. Simmons-Jenkins
96091 L.S. Morrison Drive
Post Office Box 70
Fernandina Beach, Florida 32034

Ray Poole, Esquire
Constangy, Brooks & Smith
200 West Forsyth Street, Suite 1610
Jacksonville, Florida 32202

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.