

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                        )  
  )  
vs.    )     Case No. 10-0175  
  )  
CHERYL RAYAM,                            )  
  )  
          Respondent.                      )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on March 31, 2010, in Leesburg, Florida, before J.D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen W. Johnson, Esquire  
McLin & Burnsed P.A.  
Post Office Box 491357  
Leesburg, Florida 34749-1357

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether Cheryl Rayam (Respondent) should be dismissed from her employment with the school district.

PRELIMINARY STATEMENT

This case began on December 22, 2009, when Lake County School Board (Petitioner or School Board) took action to

initiate termination proceedings against Respondent. Petitioner claims that there is just cause for the termination of employment based upon Respondent's failure to comply with a material term of her contract for employment. More specifically, Petitioner alleged that Respondent failed to take and pass the Middle Grades Integrated Curriculum subject area examination (MGIC) as required by her agreement with the School Board. Although Respondent had taken and achieved accomplishments in other areas of study, Petitioner specifically required that she pass the MGIC as part of their effort to establish Respondent as a highly qualified teacher. Respondent timely challenged the proposed dismissal and the matter was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings on January 13, 2010.

The case was scheduled for hearing for March 31, 2010, pursuant to a Notice of Hearing entered January 25, 2010. On March 30, 2010, a Motion to Continue Hearing was filed on Respondent's behalf by an attorney not previously of record in the cause. The motion was not timely filed, did not state that counsel had conferred with opposing counsel, did not state the opposing party's position on the request, and did not represent other factors that would suggest an unforeseeable emergent situation justified a continuance. The motion merely stated that counsel had been retained on March 29, 2010, for the

hearing scheduled two days later. The Motion to Continue was denied.

At the hearing, Petitioner presented testimony from Michele Hoppenstedt, a human relations tracking analyst; Julie Robinson-Lueallen, principal at Eustis Middle School (EMS); Laurie Marshall, executive director of human resources and employee relations; Louis (Rusty) Dosh, also a principal at EMS; and Sharon Gosnell, senior human relations specialist for Petitioner. Petitioner's Exhibits 1-3, 5-8, and 12-13 were admitted into evidence. Petitioner also submitted designated pages of the transcript of Respondent's deposition into evidence. The pertinent pages are identified on page 38 of the hearing transcript.

Neither Respondent nor her counsel appeared at the hearing. No evidence was presented on Respondent's behalf. The Transcript of the proceeding was filed on April 26, 2010. The parties were granted twenty days from the filing of the transcript to file a proposed recommended order, and Petitioner did so. Respondent filed a Response to Recommended Order on May 26, 2010. Although untimely (as to the latter filing), both parties' documents have been fully considered in the preparation of this Recommended Order. References to factual allegations outside the record have not been used for a finding of fact.

FINDINGS OF FACT

1. Petitioner is a duly constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Lake County Public School District. As such, it has the authority to regulate all personnel matters for the school district. See §1001.32, Fla. Stat. (2009).

2. At all times material to the allegations of this case, Respondent was an employee of the School Board assigned to middle schools within the district. As such, it was expected that Respondent would faithfully perform the duties assigned to her and would comply with all terms of her agreement with the School Board. Respondent's assignment at EMS as an exceptional education teacher led to the instant case.

3. At all times material to this matter, Respondent's employment relationship with Petitioner was subject to a Professional Service Contract of Employment for Instructional Personnel of the Public Schools. Additionally, on April 20, 2007, Respondent signed a compliance plan so that she would become eligible for the designation of "highly qualified" instructor. Respondent elected to seek the two-year option within which to obtain the designation as she intended to obtain the reading endorsement. The document executed by Respondent (Petitioner's Exhibit 2) noted that Respondent would have to

successfully pass the MGIC together with achieving the reading endorsement designation.

4. The compliance plan also specified that failure "to complete the components of this compliance plan by the specific timeline may result in the termination of employment."

Respondent was to obtain the reading endorsement and pass the MGIC no later than June 30, 2009.

5. In short, Respondent failed to pass the MGIC. Although she achieved the reading endorsement and has successfully completed the requirements for ESOL endorsement, Respondent did not successfully complete the MGIC examination.

6. The "highly qualified" designation requirement came as a result of the No Child Left Behind provisions of law. As an exceptional student educator in a self-contained classroom, Respondent was identified as one of the teachers who were required to pass the MGIC examination. Other teachers in the school district were also within the category of those who were required to achieve highly qualified status.

7. On January 7, 2008, and March 18, 2009, Respondent was reminded by Petitioner of her continuing obligation to achieve highly qualified status. Respondent did not successfully pass the MGIC by June 30, 2009. Thereafter, she was granted an extension in order to afford her more time to pass the exam.

8. By memorandum dated May 7, 2009, Respondent was given until the end of the first term of the 2009/2010 school year to pass the exam. When the winter break came in December 2009, Respondent had still not passed the MGIC.

9. Although Respondent claimed that medical problems interfered with her ability to take the exam, she never sought a medical accommodation from Petitioner.

10. Although Respondent achieved the reading endorsement, Petitioner was not obligated to place her in a reading endorsement position. All job positions held with Petitioner required Respondent to achieve highly qualified status.

11. Petitioner treated all teachers who were required to achieve highly qualified status similarly. Respondent did not get singled out for any reason. Other teachers who signed compliance plans were also required to pass examinations to remain employed with the district.

12. Respondent was duly notified of the Petitioner's intention to terminate her employment by letter dated December 22, 2009. Thereafter, Respondent timely challenged Petitioner's decision.

#### CONCLUSIONS OF LAW

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

14. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent committed the violations alleged. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

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

All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

16. In this case Petitioner maintains that it has just cause for termination due to Respondent's failure to pass the MGIC. Clearly, Respondent did not willfully fail the exam. Nevertheless, Respondent was contractually obligated to achieve highly qualified status by the end of the first term of the 2009/2010 school year. Respondent knew from 2007 (at the latest) that achievement of highly qualified status was required for her employment with the school district. Petitioner has established it gave Respondent sufficient notice that it expected her to pass the exam. It was Respondent's employment duty to achieve highly qualified status.

17. Secondly, repeated failure to perform duties described by law constitutes inefficiency. In this cause Petitioner notified Respondent that pursuant to No Child Left Behind, she was required to achieve the highly qualified status. Further, by executing the compliance plan Respondent knew or should have known that achieving highly qualified status was her duty to the school district. She simply failed to meet that duty.

18. Florida Administrative Code Rule 6B-4.009 provides in pertinent part:

The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for each of such charges is hereby defined:

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

(a) Inefficiency:

(1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes);

(2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent



that pupils are deprived of minimum educational experience; or

(3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity:

(1) lack of emotional stability;

(2) lack of adequate physical ability;

(3) lack of general educational background;  
or

(4) lack of adequate command of his or her area of specialization.

19. For clarity, Section 231.09, Florida Statutes, referred in the foregoing rule, is now Section 1012.33, Florida Statutes (2009). Thus the definitions utilized are still appropriate in this matter.

20. In order for Respondent to remain an exceptional student educator as employed by Petitioner, her area of specialization demanded compliance with the highly qualified status. By failing to achieve that status Respondent failed to demonstrate an adequate command of her teaching specialty. This failure demonstrates a lack of capacity to perform the educational duties required by the employer.

21. It is concluded that Petitioner has demonstrated by a preponderance of the evidence that Respondent's employment with the school district may be terminated.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lake County School Board enter a final order terminating Respondent's employment for the position requiring highly qualified status but allowing Respondent leave in the future to reapply for employment with the district for any position that may fall open for which she is qualified and certified to teach.

DONE AND ORDERED this 28th day of May, 2010, in Tallahassee, Leon County, Florida.



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J. D. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of May, 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.