

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

COLLIER COUNTY SCHOOL BOARD,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 10-0949  
  )  
PEGGY ADDISON,                            )  
  )  
      Respondent.                         )  
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  )

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on April 27 through 29, May 24 through 27, and June 2, 2010, in Naples, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. The parties were represented as set forth below.

APPEARANCES

For Petitioner: Jon D. Fishbane, Esquire  
                  Collier County School Board  
                  5775 Osceola Trail  
                  Naples, Florida 34109

For Respondent: Robert J. Coleman, Esquire  
                  Coleman & Coleman  
                  Post Office Box 2089  
                  Fort Myers, Florida 33902

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Peggy Addison ("Addison"), failed to correct certain performance

deficiencies identified by Petitioner, Collier County School Board (the "School Board"); and whether such failure constitutes just cause for terminating Addison's professional service contract.

PRELIMINARY STATEMENT

By letter dated January 15, 2010, the Office of the Superintendent of Collier County Schools notified Addison that she had not satisfactorily corrected certain enumerated performance deficiencies. As a result of that failure, the superintendent was recommending to the School Board that Addison's contract be terminated. Respondent timely filed a request for hearing to contest the recommendation. The request for hearing was forwarded to the Division of Administrative Hearings so that a formal administrative hearing could be conducted. The hearing was held on the dates set forth above, and both parties were in attendance.

At the final hearing, Petitioner called the following witnesses: Nicole Hughes (formerly known as Nicole Stocking and referred to herein as "Stocking"), principal of Shadowlawn Elementary School (the "School"); Susan Edwards, former assistant principal at the School; Aimee Arcand, teacher; Lori Chamness, teacher; Reka Monoki, assistant principal; Debbie Terry, human resources director; Susan Jordan, specialist; Libby Buck, specialist; Paula Bryant, reading coach; and Jessica

Campbell, math and reading coach. Petitioner Exhibits 1 through 30, 33, 35 through 58, 60 through 70, 72 through 75, 77 through 86, 88 through 90, and 92 through 101 were offered and admitted into evidence.

Respondent called the following witnesses: Peggy Addison; Dorothy Lawrence, teacher; Cynthia Lang, teacher; David "Matt" Williamson, teacher; and Sheryl Creighton, teacher. Respondent's Exhibits 1 through 33 were offered and admitted into evidence. Two joint exhibits were also offered and admitted into evidence.

A transcript of the final hearing was ordered by the parties. The Transcript was filed at the Division of Administrative Hearings on August 2, 2010. By rule, the parties were allowed ten days, i.e., up until August 12, 2010, to submit proposed recommended orders, but the parties subsequently requested a 30-day extension of time. The request was allowed. Respondent filed its Proposed Recommended Order on September 1, 2010; Petitioner attempted to fax and efile its proposed recommended order on that day, but was unable to do so due to electronic problems. The Proposed Recommended Order was filed September 2, 2010, along with a motion asking that it be accepted. The motion is granted, inasmuch as the one-day late filing does not prejudice Respondent. Each of the Proposed

Recommended Orders was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The School Board is the governing body of the Collier County Public School system. The School Board is responsible for hiring, monitoring, supervising and firing all employees of the school system, including all teachers.

2. Addison has been a school teacher since her graduation from college in 1969, with the exception of a few years taken off to raise her family. She has been a teacher within the Collier County School System for 25 years. For 15 years, and for all times relevant to this matter, Addison was a teacher at the School. Addison taught various grades at the School, but primarily first and second grades. She taught first grade at the School for two years prior to the 2009-2010 school year.

3. During the summer of 2008, the School was assigned a new principal, Nicole Stocking. The assignment was Stocking's first as the principal of a school. Previously, Stocking had experience as a school teacher and as an assistant principal. At the time of her appointment, the School had not been making progress for a number of years and was admittedly a "problem" school, meeting only about 60 percent of its goals. In education parlance, the school was not meeting its Annual Yearly Progress (AYP) goals. Stocking was directed by the

superintendent of schools to take all measures necessary to make improvements at the School.

4. Stocking immediately took aggressive actions to ensure improvement at the School. She let all staff and administrators know that there would be a concerted focus placed on reading programs. She advised all teachers that she expected drastic improvements at the School and expected each teacher to work hard toward that end. Stocking established a leadership team made up of her, Vice-Principal Edwards, Reading Coach Bryant, and Reading Coach/Learning Team Coordinator Campbell. The leadership team would conduct weekly walk-throughs of all classrooms and then meet to discuss any problems they had identified. The intent of the walk-throughs was to identify all problem areas needing attention in order to meet the AYP goals for that school year.<sup>1</sup>

5. Stocking was described as "all business" and "not a people person" by her subordinates. It is obvious that Stocking took a fairly hard-line approach to her supervisory responsibilities. At one point, ten classroom teachers filed a group grievance against Stocking due to the harshness of her management style. The grievance was deemed unfounded, but the fact that it was filed is some indication of how teachers perceived their new principal. Some of the teachers who joined in the grievance testified at final hearing, and it is clear

there was a broad view of Stocking as a difficult person to work for. That is not to say that Stocking did anything improper, only that her actions could be perceived more harshly by some than by others.

6. The 2008-2009 school year started with some significant changes. For example: A new literacy program (MacMillan) with a text called "Treasures" was implemented district-wide; focus was placed on "Guided Reading"--a process whereby students were divided into small groups where their reading skills and progress could be monitored closely; and teachers were told to expect "walk-throughs" by the principal and other administrators. It was clear that the new administration would be pressing everyone to make vast improvements at the School.

7. Improvement in student reading was expected to be the catalyst for overall school improvements for the 2008-2009 school year. Specifically, the School was going to be focused on the Guided Reading process. Teachers would divide students into groups according to their needs, and then meet with each of the groups independently while other students busied themselves with other tasks. During the groups, the teacher would evaluate one student individually by doing a "running record," that is, a short checklist to see how many words the student read correctly from an assigned text. By doing running records for one student in each group and four groups per day, the teacher could assess

every child every week. The running records could then be used to help prepare lesson plans for the upcoming weeks. The evidence at final hearing was somewhat contradictory as to how long it took to do a running record, but the consensus seemed to be that it takes about two to three minutes per student.<sup>2</sup>

8. During the 2008-2009 school year, Addison was a first-grade teacher. Addison had taught other grades during her career, but preferred and enjoyed first and second grades the most. She had developed a feel for first-grade curriculum and felt most comfortable in that setting. The first-grade team that year consisted of Arcand, the team leader; Laing; Chamness; Tyler; and Addison.

9. Each of the first-grade classes had a mix of students, including some English language learners ("ELL"), i.e., those for whom English was a second language, and exceptional student education ("ESE") students, those with learning difficulties. Addison's class had some ELL and ESE students, but the overall makeup was not significantly different from the other first-grade classes.

10. Almost immediately upon commencement of the 2008-2009 school year, Stocking began to perceive shortcomings in Addison's teaching skills. Some of the perceptions were based on Stocking's personal observation of Addison's classroom; some were based on reports from her leadership team. Stocking was

concerned that Addison's students were not sufficiently engaged in some classroom activities. She felt that Addison was not appropriately implementing the Guided Reading program, and she had some concerns about safety issues for Addison's children. Stocking began to correspond with the first-grade team leader (Arcand) concerning Addison's teaching abilities. Arcand provided Stocking with somewhat negative information gleaned from her own observation of Addison. At the same time, first-grade team members Laing and Creighton expressed positive feelings about Addison's abilities.

11. Stocking developed the following specific concerns about Addison's teaching skills:

- Classroom management--All of the children were not actively engaged in the classroom work at times; some children seemed not to know what their assignment was about.
- Group reading--Not all children were reading at their appropriate level, i.e., Addison had rated them at too high or low a level. One child appeared to Stocking to be struggling despite assurance from Addison that the child could read well.



- Some children were not being properly supervised or monitored during the transition from lunch back to the classroom.

12. Addison had some difficulties with the new MacMillan reading program, but she continued to employ it as directed. Some of her peers attempted to guide Addison and provide instruction, but Addison continued to struggle. To her credit, as expressed by Stocking, Addison sought help from her co-workers to master the program. Despite Addison's best efforts, Stocking did not feel that Addison's students were being properly rated and assessed by way of running records. Addison, on the other hand, felt comfortable with her teaching.

13. There were instances where Addison appeared not to be properly monitoring her students on their way from the lunch room back to the classroom. However, the first graders all transitioned from lunch to class at about the same time, and all first-grade teachers were involved in the transfer process. While it may be true that another teacher saw one of Addison's students misbehaving or going somewhere they were not supposed to go during this time, that fact does not necessarily indicate a failing on Addison's part. She may have been helping or guiding another teacher's student at the same time. There is no evidence, however, that Addison ignored her responsibilities, vis-à-vis, her students.

14. As for students not being fully engaged during instruction, that determination cannot be made upon the evidence presented. While there were apparently children not actively engaged in the lesson being presented while Stocking or someone observed the classroom, Addison admits that first graders are not always on task. She provided several reasons that some of the children might have been unfocused on any given day. The fact that some child may have been disengaged on a particular day is not sufficient to make a finding that such behavior was rampant or a problem.

15. During the second half of the 2008-2009 school year, Addison received numerous written disciplinary-type reports from Stocking, including: an "Observation" memorandum dated January 21, 2009, wherein Assistant Principal Edwards criticized Addison's teaching; a "Conference Summary" memorandum dated January 26, 2009, concerning Addison's interaction with a student who was out of control; a memorandum dated January 28, 2009, moving Addison to "Developing" status in five Educator Accomplished Practices (EAPs); a Warning of Unsatisfactory Performance memorandum dated February 5, 2009, in which Stocking chastised Addison for turning in lesson plans a day later than they were due; a memorandum warning about being placed on Developing status dated March 5, 2009; a letter of reprimand dated March 12, 2009, relating to Addison being absent without

proper notification; another letter of reprimand one week later saying Addison failed to turn in lesson plans after an illness; another letter of reprimand dated April 3, 2009, addressing Addison's Guided Reading groups; a memorandum concerning an adverse classroom incident dated April 16, 2009; a letter of reprimand dated May 1, 2009, regarding gifts of water pistols Addison had given to two students at the end of the year; and a letter of discipline, with a one-day suspension, dated May 6, 2009. Addison had never received a letter of discipline prior to the 2008-2009 school year, but in that year she received them almost weekly during the second part of the school year.

16. At the end of the 2008-2009 school year, Addison received an annual evaluation in accordance with School Board policies. The evaluation addressed the 12 areas of performance which form the basis of each teacher's assessment. Addison was placed in the "Developing" category for four of those areas. The Developing category indicates that the teacher has not sufficiently mastered the performance required in that particular area of teaching. By School Board policy, a teacher placed in the Developing category for three or more areas of performance is automatically placed on Strand III status. Addison was placed on Strand III commencing with the start of the 2009-2010 school year.<sup>3</sup>

17. Strand III is a probationary category under the School Board's Collier Teacher Assessment System ("CTAS") and is applicable to teachers with a Professional Service Contract. Strand III is covered under Article 5 of the Collective Bargaining Agreement between the School Board and Collier County Education Association. A teacher placed on Strand III has 90 days to demonstrate improvement in the Developing areas of performance in order to return to Strand II.

18. Prior to being placed on Strand III for the 2009-2010 school year, Addison had never been placed on Strand III before. Her past five annual evaluations were as follows:

- 2007-2008--All twelve areas were at Professional. The evaluation was done by Ms. Grieco, whose position was not disclosed in the evidence.
- 2006-2007--Eleven areas were at Professional; one was at Developing. The evaluation was done by Ms. Psenicka, an assistant principal.
- 2005-2006--Ten areas were at Professional; two were at Developing. The evaluation was done by Assistant Principal Manley.
- 2004-2005--Seven of 12 areas were deemed Professional; five were deemed Accomplished. Principal Ferguson did the evaluation.

- 2003-2004--Seven of 12 areas were deemed Professional (the highest level of proficiency); five were deemed Accomplished (meaning that the teacher was not deficient in that area). The evaluation was done by Principal Ferguson.

19. The Strand III process is quite involved. It requires the creation of a team of individuals whose purpose is to help guide the teacher toward improvement in the deficient areas. Stocking actually put three teachers on Strand III at the same time that Addison was designated, although she had never placed a teacher on Strand III before and was not experienced in administering the program. Knowing that the process was very time-consuming, Stocking decided to transfer the other two teachers to other schools, rather than try to run three Strand III processes at once.

20. Each of the other teachers was removed from Strand III once they reached their new schools. Neither of those teachers had received as many disciplinary notices from Stocking as Addison had received, but Stocking testified that she saw the most potential for improvement in Addison versus the other two. There is some incongruity in that statement, but, nonetheless, it is a fact.

21. The Strand III team for Addison was made up of a school administrator (Stocking), an administrative support

person (Terry), Addison, and a person selected by Addison (Creighton). This team then developed a Professional Assistance Plan (the "Plan") which set forth the areas of performance that needed to be addressed and general goals to be accomplished.

22. Addison's Plan contained four areas of concern corresponding with the four Developing areas in her 2008-2009 annual evaluation. However, six additional areas were added to the Plan, because Stocking said they "needed some attention." No authority for adding additional areas was provided by Stocking other than that the human resources department told her it was allowable.

23. As a result of the added areas of concern, the Plan contained ten EAPs to be addressed by Addison and the team. Within each EAP, there were a number of "Indicators" which more specifically addressed a component within the general EAP. By way of example, the first EAP was "Assessment" with nine Indicators such as: diagnose the entry level and skill of students using diagnostic tests, observations, and student records; assess the instructional level of exceptional students; and, correctly administer required grade level and district assessments in identified assessment windows. The EAPs would be deemed to have been "observed" if Addison made significant progress on the individual Indicators. While 117 Indicators are a lot, many of them overlap and addressing one Indicator may

also address several others at the same time. Nonetheless, when written in a Plan, that many EAPs and Indicators could appear quite daunting.

24. At about the same time Addison was notified that she was being placed on Strand III, Stocking decided to move Addison from teaching first grade to a fifth-grade class. Addison had never taught fifth grade, although her certification was for grades one through five. Addison was opposed to the move, because she was more comfortable with first grade, and during the Strand process, she knew that more would be expected of her. She did not feel that a move to fifth grade would be the best scenario for dealing with Strand III. Stocking denied her request to remain in first grade and also denied Addison's request to be transferred to another school. School-to-school transfers are allowed whenever there are openings available at the target school, but it appears no openings were available.

25. Once the new school year commenced, Addison, now in a new teaching environment with fifth grade, had 90 calendar days under the Plan to show improvement in the areas of concern. The Plan is dated August 24, 2009, and contains the following time line:

- Commence on August 24, 2009 (Date of formal notice to Addison);
- September 4, 2009 (Day 10)--Assign assistance team;

- September 14, 2009 (Day 15)--Hold professional assistance plan meeting;
- September 21, 2009 (Day 22)--Write professional assistance plan;
- September 22 through November 24, 2009--Plan, implement and collect data;
- November 24, 2009 (Day 92)--Assessment;
- December 16, 2009--Written recommendation from lead administrator to superintendent;
- January 15, 2010--Written recommendation from superintendent to Addison;
- If termination was recommended; then
- February 2, 2010--Written request for hearing.

26. The amount of time from when the notice was given to Addison until the assessment was done was 92 calendar days, which is consistent with the times set forth by CTAS. While the schedule complied with CTAS guidelines, Addison obviously did not have 90 days to address the ten EAPs and 117 indicators. Nonetheless, the Strand III process was correctly implemented from a timeframe perspective.

27. In order to effectuate the Plan, the team was to meet at least weekly to review Addison's progress, re-focus her efforts, and establish goals for the coming week. The weekly meetings were generally held at 7:40 a.m., 30 minutes prior to



the start of class on Monday mornings. The meetings would sometime run a little long, and Addison would arrive late to her class. In such instances, she was expected to use her teaching skills to catch up with the timed lesson plans. All teachers were expected to teach in accordance with their lesson plans so that at any given time, anyone coming into their classroom would know exactly what lesson was being taught. Strict compliance with the lesson plan schedule was expected from all teachers. There were documented instances of Addison not teaching lessons in strict accordance with the lesson plan schedule. However, there were extenuating circumstances involved. For example, when the weekly team meeting lasted too long, it would adversely affect Addison's teaching schedule. At other times, Addison would teach one course to another teacher's students and vice-versa. As a result, the teachers may not be teaching in accordance with the lesson plan schedule. There was insufficient evidence to find that Addison was in serious violation of the lesson plan schedule requirements.

28. The weekly team meetings were codified in minutes taken by Vice-Principal Monoki. Sometimes two people took minutes of the meetings in an effort to assure correctness. The minutes were ostensibly meant to be a general overview of what the meeting was about, but, in actuality, they were quite detailed concerning some issues. Addison often took exception

to the minutes as printed, and would attempt to submit amendments or changes. Those amendments were generally not accepted by the team. At one point Addison requested the right to tape record the meetings, but that request was denied. The form of the minutes was altered in October 2009, into a sort of chart, rather than regular minute format. The purpose of that change was to allow for better comparison between prior weeks, the current week and the upcoming week.

29. The minutes were provided to each team member at the beginning of the subsequent meeting. All of the team members, except for Addison, would sign the minutes to confirm that they were correct and accurate. Addison did not ever agree that the minutes were correct and accurate. Addison's designated representative on the team, Creighton, did sign the minutes each week.

30. During the approximately 45 school days that Addison was assessed under the Plan, she made progress in some areas, but according to the team, her progress was followed by further shortcomings. However, measurement of Addison's progress was extremely subjective.

31. For example, Addison was found to be deficient in the use of "targets" for her class. Targets are written focus points placed on the bulletin board so that students can remember what topics are currently being taught. Addison was

chastised for having inappropriate targets. However, when compared to other fifth-grade teachers' targets, Addison's were virtually identical. For example, on September 4, 2009, Addison took pictures of the targets posted in her classroom and two other classrooms. The targets are compared below:

<u>Addison</u>	<u>Classroom 2</u>	<u>Classroom 3</u>
Reading: Tall tales, plot development (setting influences plot), reading words with long vowels and many syllables	Tall tales, plot development, setting, subject & predicate, long vowel sounds, dialect	Compound words, setting-> where-> when, words with long vowels, chronological order, building fluency
Science: Make observations, explain how science tools are used, describe the steps of the scientific method . . .	Tools scientist use, scientific method, mass=amount of matter in an object, Inquiry=observe, measure, gather and record data . . .	Tell what causes weather . . . make observations, take measurements, explain how science tools are used, steps of the scientific method. . .
Language Arts: simple and compound subjects and predicates, six traits of writing: idea, voice, organization, word choice, sentence fluency, conventions, Commas used in a series	Six traits: Idea, voice, organization, word choice, sentence fluency	Compound subjects, compound predicates, commas in a series

Math: place value through millions, compare and order decimals, place value patterns, sums and differences of whole number, adding and subtracting decimals	Place value through billions, compare and order numbers, place value patterns, rounding, estimating, adding and subtracting whole numbers and decimals	Sums and differences of whole numbers and decimals, strategies for solving word problems, place value patterns, problem solving
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32. There appears to be only minimal differences between the three teachers' targets set forth above. There was no competent testimony at final hearing as to why Addison's wording of her targets was somehow inferior to that of the other teachers.

33. As another example of subjective measuring, Addison was cited for allowing some children to be disengaged while she was teaching other children. At least one outside observer noted that some children were not on task and others were seen leaving the classroom. But Addison explained that children had the right (and need) to leave the class to go the reading center or restroom; other children were supposed to be busy individually at an assigned center, etc. That is, in a fifth-grade classroom, all children were not always doing the same thing at the same time.

34. During the time period that Addison was undergoing the Strand III process, she received a number of disciplinary notices. On September 1, 2009, Stocking sent Addison a

memorandum entitled "Conference Summary," which was a criticism of Addison's teaching during a class on August 31, 2009 (one week into the new school year). This memorandum was followed by a number of other letters and memoranda.

35. The first such letter was on September 9, 2009, just 16 days into the Strand III process. The "Warning of Unsatisfactory Performance" memorandum issued by Stocking on that date said Addison had failed to post targets and had been teaching outside the stated lesson plans. Thus, rather than assisting Addison, under the Plan, with this perceived shortcoming, a disciplinary action was taken.

36. Six days later, on September 15, 2009, a letter of reprimand was issued by Stocking. Again, Addison was accused of not posting appropriate targets on her board for use by her students. Then on October 30, 2009, another letter of reprimand was issued, this time for not conducting daily running records for her students. Addison was doing the running records, but the records sometimes failed to include a statement by Addison as to the child's reading status. This was a shortcoming that could have been addressed as part of the Plan and discussed in team meetings. Instead, it was handled as a disciplinary matter. The letter also addressed a concern that one student was missing a number of grades in the grade book. Addison

suggests there are reasons for that discrepancy, i.e., the student only recently transferred in to her class.

37. These disciplinary letters were followed on December 3, 2009, with a memorandum from Stocking addressed to Addison (although it refers to Addison in the third person) indicating that Addison had not met "district expectations." No one explained at final hearing as to the necessity of on-going disciplinary reports while Strand III was progressing. Addison was meeting weekly with Stocking and other team members to address all issues, including those addressed in the separate disciplinary charges. One of the discipline letters initially recommended a three-day suspension for Addison. A suspension would be totally inappropriate for someone under Strand III. The recommendation was changed once this fact was brought to Stocking's attention by the union representative.

38. Interspersed with these disciplinary actions were a fairly constant exchange of emails between Addison and Stocking, Monoki, Terry and others. The emails contained concerns about Addison's teaching and responses from Addison. It is clear from the correspondence between Addison and others that there was complete disagreement between them as to Addison's teaching skills.

39. The team meetings to address the Plan attempted to cover some of the 117 EAPs each week. Commencing with the

October 5, 2009, meeting, a chart was utilized to compare the team's focus from the previous meeting to the focus for the coming week. The chart also included feedback from persons who had personally observed Addison the prior week and a statement of the specific support to be provided in weeks to come. During the first several weeks, the "focus from prior week" section of the chart was fairly brief, while the "feedback from formal observations" section was quite long. During the last few team meetings, this trend reversed. It appears that more feedback and support was being provided in the earliest stages of the Strand III process than in the later stages. According to the findings set forth in the team meeting minutes, Addison made progress in some areas and struggled in others. For the most part, the minutes reflected a "Not Achieved" status for many of the EAPs which were addressed.

40. Addison made some attempts to amend the minutes of team meetings, but inasmuch as the minutes were not meant to be verbatim transcripts, her requests were generally denied. It is telling that Addison's selection to the team, Creighton, signed off on each of the minutes despite Addison's refusal to do so. However, Creighton maintains that Addison was doing a fine job teaching, notwithstanding comments in the minutes.

41. Under the Plan, Addison was supposed to receive guidance, training, and support by administrative and other

designated professionals. There is evidence in the record that Addison's class was visited on a number of occasions by other teachers and trainers. However, the preponderance of the evidence is that the classroom visits more often resulted in negative reactions to Addison's teaching than assistance and guidance. The amount of actual assistance received by Addison during the Strand III process is not consistent with the ideals set forth in the Plan. Nor were there any observations made by administrative personnel from the School or from the district office, although the Plan called for such observations.

42. Under the Plan, Addison was supposed to be provided additional planning periods to work on the issues set forth in the Plan. The additional planning periods were never provided, but Petitioner could not explain why. Based upon the size and breadth of the Plan, it would seem that some extra planning time would have been absolutely essential.

43. It is clear Addison and Stocking did not particularly like each other.<sup>4</sup> Their differences could have been based on differences in teaching methods, age, years of experience, or any other factor. Whatever the reason, it is clear from the record that the two individuals viewed the same facts with very different interpretations. It is no wonder the Strand III process was deemed unsuccessful.



44. On December 15, 2009, Stocking sent a recommendation to the superintendent of Collier County Schools that Addison be terminated for failing to make significant improvement in the four original areas of concern. By letter dated January 15, 2010, the superintendent notified Addison that a recommendation would be going to the School Board that Addison's teaching contract be terminated.

45. The decision to terminate Addison's teaching contract was made based on the assessment performed during the Strand III process. Lost in the focus on Addison's abilities or lack thereof was the issue of her students' performance. At the conclusion of the 2008-2009 school year, 17 of Addison's 19 students were credited with having achieved a year's worth of growth. The other two students were deemed unable to achieve a year's worth of growth for reasons outside of Addison's teaching abilities. There were more students in the team leader, Arcand's, class deemed deficient at the end of that year than in Addison's class. Addison did not complete the 2009-2010 school year, so that particular measurement cannot be used to assess her abilities.

#### CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to a contract with the Collier County School

Board. The proceedings are governed by Chapter 120.57 and 120.569, Florida Statutes (2009).<sup>5</sup>

47. The burden of proof in this proceeding is on Petitioner to prove, by a preponderance of evidence, that dismissal of Addison is warranted under the facts set forth during the final hearing. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995).

48. The School Board's letter dated January 15, 2010, sets forth the basis for its decision to recommend termination of Addison's professional services contract. The basis is that Addison failed to correct the deficiencies set forth in the Strand III Notice. The School Board is limited to that basis in the present action, i.e., it cannot extend the reasons for recommending termination beyond what it stated in the letter. Persons against whom such actions are taken have the right to prior notice and the opportunity to address all bases relied upon by the School Board. See Pilla v. School Board of Dade County, Florida, 655 So. 2d 1312 (Fla. 3rd DCA 1995); Florida State University v. Tucker, 440 So. 2d 37 (Fla. 1st DCA 1983). Therefore, in the present case, the only issue is the determination of Addison's completion or fulfillment of the Strand III process.

49. The superintendent of the Collier County School Board has the authority to supervise instruction and recommend termination of a teacher's employment to the School Board pursuant to Section 1001.32, Florida Statutes. In assessing a teacher's performance prior to recommending termination of employment, a certain process must be followed. Subsection 1012.34(3), Florida Statutes, provides:

(3) The assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools, as appropriate. Pursuant to this section, a school district's performance assessment is not limited to basing unsatisfactory performance of instructional personnel and school administrators upon student performance, but may include other criteria approved to assess instructional personnel and school administrators' performance, or any combination of student performance and other approved criteria. The procedures must comply with, but are not limited to, the following requirements:

(a) An assessment must be conducted for each employee at least once a year. The assessment must be based upon sound educational principles and contemporary research in effective educational practices. The assessment must primarily use data and indicators of improvement in student performance assessed annually as specified in s. 1008.22 and may consider results of peer reviews in evaluating the employee's performance. Student performance must be measured by state assessments required under s. 1008.22 and by local assessments for subjects and grade levels not measured by the state assessment program. The

assessment criteria must include, but are not limited to, indicators that relate to the following:

1. Performance of students.
2. Ability to maintain appropriate discipline.
3. Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.
4. Ability to plan and deliver instruction and the use of technology in the classroom.
5. Ability to evaluate instructional needs.
6. Ability to establish and maintain a positive collaborative relationship with students' families to increase student achievement.
7. Other professional competencies, responsibilities, and requirements as established by rules of the State Board of Education and policies of the district school board.

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

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

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

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

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

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

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

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

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

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

50. Petitioner proved by a preponderance of the evidence that there were sufficient reasons for placing Addison on Strand III. Petitioner provided Addison a notice pursuant to Subsection 1012.34(3)(d), Florida Statutes, advising Addison that she had been deemed deficient in four separate EAP areas: Assessment, Knowledge of Subject Matter, Learning Environment, and Role of Teacher. The Notice commenced the process, and all actions taken during the 90-day process were done timely.

51. However, the Notice was not sufficient to advise Addison that she was deemed deficient in the six EAPs, which were later added by Stocking. Subsection 1012.33(3)(e), Florida Statutes, states in pertinent part:

A professional service contract shall be renewed each year unless the district school superintendent, after receiving the recommendations required by s. 1010.34, charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 1012.34. . . .

The Notice provided to Addison on August 24, 2009, was improper in that it went beyond the "noted deficiencies" set forth in Addison's annual evaluation.

52. The Collective Bargaining Agreement between the Collier County Education Association and the School Board sets forth the process for placing a teacher on Strand III. Paragraph 5.03, entitled CTAS Strands, includes guidelines for professional service and continuing contract employees. Under those guidelines, the teacher has 90 days to correct noted deficiencies. Specifically, "During the probationary period [Strand III], the EMPLOYEE will implement the strategies outlined in the professional assistance plan and will document his/her performance. The Team will provide support to assist the EMPLOYEE with the professional assistance plan and gather data to assist in the final assessment." The manner of support is partially spelled out in the Bargaining Agreement at Paragraph 5.f.4.v.1-7. The enumerated data-gathering areas include: Observations, Instructional lesson plans, Sample and examples of pertinent materials, Professional development and others. The areas of possible support for the teacher are not limited.

53. The School Board implemented some of the areas of support. There was an effort to observe measure and critique Addison while she was teaching. There were indications of in-class support being provided, but the evidence is clear that such support was minimal. There is nothing in the CTAS guidelines allowing for on-going disciplinary actions against a



teacher who is trying to complete the requirements of his or her Plan. There is no prohibition against such actions, but it intuitively seems counterproductive to do so.

54. The Collective Bargaining Agreement also states that, "After ninety (90) calendar days, the Lead Administrator will assess the EMPLOYEE. Ten or more EAP areas must be rated at the professional level and no EAP may be at the inadequate level. EMPLOYEES not meeting this criteria [sic] will be recommended for termination." In the instant action, the assessment did not find Addison to be at the professional level in ten or more EAP areas.

55. However, the manner in which Addison's Strand III process was conducted cannot be said to have given her a fair opportunity to obtain a professional level on the EAP areas. By burdening Addison with seven un-noticed EAP areas and failing to provide adequate assistance and extra planning time, Petitioner violated the process. Further, the change from first-grade teaching, where Addison was comfortable, to fifth-grade teaching, an entirely new experience, during a Strand III process was counterproductive. The process as administered had the probable outcome of failure.

56. When measuring Addison's abilities based on the success of her students, it appears she did as well as, or better than, her fifth-grade teacher peers. Such success

militates against a finding that Addison failed to satisfy the EAP levels, especially when the Strand III process appears to have been flawed.

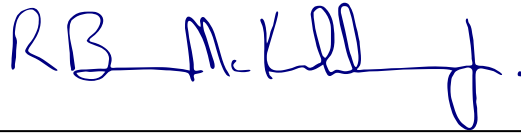
57. It may very well be that Addison was in need of the kind of assistance proposed by the Strand III process. However, as administered, the process was not fair or consistent with the stated guidelines for Strand III. Therefore, any measure of Addison's abilities based on the Strand III would necessarily be flawed and, thus, lack an adequate basis for recommending dismissal or termination of employment.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered by Respondent, Collier County School Board, finding that although there was ample evidence to support placing Respondent, Peggy Addison, on Strand III, the process was flawed and cannot be used to justify termination of Addison's employment contract.

DONE AND ENTERED this 17th day of September, 2010, in  
Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of September, 2010.

ENDNOTES

<sup>1/</sup> At the end of the 2008-2009 school year, the School moved from a C to a B-level school.

<sup>2/</sup> The concept of running records is not new, but there was a concerted focus on it by Stocking for the 2008-2009 school year. Teachers with experience were expected to know how to do running records.

<sup>3/</sup> The School Board presented extensive evidence concerning Addison's perceived or actual shortcomings during the 2008-2009 school year. However, the issue in this proceeding actually addresses whether Addison adequately completed the Strand III process by showing improvement in the enumerated areas of concern during the 2009-2010 school year.

<sup>4/</sup> Addison had joined the ten-teacher grievance filed against Stocking in 2008-2009. Further, she had individually filed two grievances against Stocking.

<sup>5/</sup> Unless specifically stated to the contrary herein, all references to Florida Statutes shall be to the 2009 version.

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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.