

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MADISON COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                            )  
  )  
vs.    )    Case No. 10-0998  
  )  
DR. JAMES BROWN,                            )  
  )  
          Respondent.                         )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

This cause came on for formal hearing on April 13, 2010, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

For Petitioner: George T. Reeves, Esquire  
Davis, Schnitker, Reeves &  
Browning, P.A.  
Post Office Box 652  
Madison, Florida 32341-0652

For Respondent: Ronald G. Stowers, Esquire  
Levine and Stivers, LLC  
245 Virginia Street  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner has "just cause" to terminate Respondent's employment.

PRELIMINARY STATEMENT

By letter dated February 2, 2010, Lou S. Miller, Superintendent of Madison County School District, advised

Respondent James Brown, Ph.D. (Respondent), that he was suspended from his position as a teacher with pay. The letter also advised Respondent that Petitioner Madison County School Board (Petitioner) would determine at a February 2, 2010, meeting, whether Respondent's suspension would continue with or without pay, pending a termination hearing.

The February 2, 2010, letter stated that Ms. Miller was requesting termination of Respondent's employment based on the following allegations: (a) misconduct in office and willful neglect of duty when he falsified his grade book with intent to award credit for students who had no grades recorded for classes; (b) failure to correct performance deficiencies related to the proper recording of grades; (c) intentionally suppressing or distorting subject matter relevant to a student's academic program; (d) failing to keep students' personally identifiable information confidential; and (e) submitting fraudulent information.

Later, on February 2, 2010, Petitioner voted to suspend Respondent's employment with pay pending a termination hearing. In a letter dated February 11, 2010, Respondent requested a formal administrative hearing.

On March 1, 2010, Petitioner referred Respondent's hearing request to the Division of Administrative Hearings. An Initial Order was issued on March 2, 2010.

On March 3, 2010, Petitioner filed a Motion to Determine that the Petitioner Continues to Have Jurisdiction to Rule Upon the Suspension of the Respondent or in the Alternative Relinquish Jurisdiction to the Petitioner for Such Purposes. An Order dated March 31, 2010, denied the motion.

On March 9, 2010, the undersigned issued a Notice of Hearing. The notice scheduled the hearing for April 13, 2010.

During the hearing, Petitioner presented the testimony of four witnesses. Petitioner offered seven exhibits, P1-P7, which were accepted as evidence.

Respondent testified on his own behalf and presented the testimony of two witnesses. Respondent offered one exhibit, R1, which was accepted as evidence.

The parties subsequently advised that the court reporter would be late in filing the Transcript due to a family emergency. On June 14, 2010, the undersigned conducted a telephone conference with the parties. During the conference, the parties confirmed that they intended to file the Transcript.

The Transcript was filed on June 16, 2010. Respondent timely filed his Proposed Recommended Order on June 28, 2010. Later that day, Petitioner filed an Unopposed Motion for Extension of Time to file its proposed findings of fact and conclusions of law. An Order dated July 1, 2010, granted the

motion. Petitioner filed its Proposed Recommended Order on July 7, 2010.

Hereinafter, all references shall be to Florida Statutes (2009), except as otherwise noted.

#### FINDINGS OF FACT

1. At all times material here, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Madison County, Florida.

2. Respondent is an educator, certified by the Florida Department of Education. During the 2008-2009 and 2009-2010 school years, Petitioner employed Respondent as a teacher at the Madison Excel Alternative School (Excel).

3. Excel is a non-traditional school. Students who attend Excel are behind academically or have other problems, requiring removal from the regular school setting.

4. Instruction at Excel is self-paced and computer-based. Teachers at Excel may be responsible for assisting students in more than one subject during any one class period.

5. Typically, computer coursework makes up 75 percent of a student's grade. The other 25 percent of a grade depends on the student's participation and/or other student work.

6. Once a student completes a computer course, a report is generated to verify completion with a satisfactory grade of at least 70 percent. The student then must take an exam and pass

it. If the computer program does not have an internal comprehensive exam, the teacher must generate an exam.

7. There were at least three different computer programs used at Excel during the 2008-2009 school year. The A+LS system was the program used for computer-based instruction. Pinnacle has been used as the official, computer-based grade book and attendance record since the 2007-2008 school year. Additionally, the MIS system was used to maintain the cumulative permanent educational record for each student, including the classes taken and the grades in each subject.

8. During the 2008-2009 school year, administrators (principal and/or secretary) were responsible for enrolling students in classes at Excel. This responsibility included enrolling students at the beginning of a term, consistent with students' academic programs and the Department of Education's student progress requirements. The school administrators also enrolled students in other courses when they completed course work prior to the end of a term.

9. When an administrator enrolled a student in a particular course, the administrator would also permit the student access to the course material on the A+LS system and add the class to the computer-based grade book, Pinnacle.

10. The Pinnacle system only allows so many classes per student per semester. When a student exceeds that number,

school administrators have to notify Petitioner's district office to ensure that the student's grades are properly recorded.

11. During most of the 2008-2009 school year, and prior thereto, Respondent kept a hand-written grade book. He used the grade book to record attendance as well as grades.

12. Petitioner's policy required teachers to put weekly grades in Pinnacle for each student in each course. In the fall of 2008, Respondent did not follow the policy; he refused to enter a string of zeros when students, who were already behind, continuously failed to make progress.

13. On or about February 17, 2009, the principal of Excel, Elizabeth Hodge, gave Respondent a written reprimand. The reprimand related to Respondent's failure to properly post grades in Pinnacle, the computerized grading system. Respondent ceased using his hand-written grade book at or about this time.

14. During the 2008-2009 school year, Q. F. and S. B. were students at Excel in classes taught by Respondent. During the first semester of that year, Respondent taught each student at least three subjects. S. B. was in Respondent's first, third, and sixth-period classes. Q. F. was in Respondent's second, fourth, and fifth-period classes.

15. Respondent was S. B.'s teacher for Integrated Math 1 during the third period of the first semester of the 2008-2009

school year. S. B. earned a semester grade of 93 in Integrated Math 1. With Respondent as her teacher, S. B. began, but did not complete, Economics at Excel during the second semester of the 2008-2009 school year.

16. Respondent was Q. F.'s teacher for Algebra 1-A during the fourth period of the first semester of the 2008-2009 school year. Q. F. earned a semester grade of 73 in Algebra 1-A. With Respondent as her teacher, Q. F. began, but did not complete, Biology at Excel during the second semester of the 2008-2009 school year.

17. During the 2009-2010 school year, Q. F. and S. B. enrolled in Petitioner's high school. At that time, they were no longer Respondent's students.

18. Upon commencement of the 2009-2010 school term, the high school guidance staff placed S. B. into classes that Pinnacle showed were appropriate. S. B. objected to her placement, stating that she had taken some of the classes from Respondent while enrolled in Excel.

19. In order to show that she had taken some of the classes, S. B. went to Respondent and requested that he provide the high school with a letter concerning the classes she took at Excel. The letter he wrote, dated November 17, 2009, stated as follows:

This is to acknowledge that I was the instructor of record for [S. B.] in the school year 2007-08 [sic]. She completed the second semester of Biology and Economics.

Our input system at Excel failed to grant these credits due to employee turnover and untimely submission of grades. At the time, we were in the process of changing principals and losing our data entry personnel.

I can assure you that [S. B.] earned an 87 in Biology and 83 in Economics. We at Excel regret any unnecessary inconvenience that [S. B.] might have suffered.

20. The guidance staff at the high school could not substantiate that S. B. had completed the classes referenced in the November 17, 2009, letter. S. B. then approached Respondent and requested documentation to confirm the matters set out in the November 17, 2009 letter.

21. In response to the request, Respondent prepared a letter dated January 11, 2010, which states as follows:

Conformation Record

The 3rd & 4th periods consisted of six or seven different subjects. [S. B.] took Economics.

(Economics, Pre-Algebra, Integrated Math 1 & 2, Algebra A and B, Consumer Math & Geometry).

22. Respondent attached a copy of a page from his grade book to the January 11, 2010, letter. Respondent then gave the letter and the grade book page in a sealed envelope to S. B. to hand-deliver to the high school.



23. The grade book page attached to the January 11, 2010, letter was for the fall semester of the 2008-2009 school term. It shows a list of third-period student names, including S. B., with grades next to them under a list of courses entitled "Econ, Pre-Algebra, Integrated Math." The term "Econ" is written in a different pen than the other subjects. There is no way from looking at the grade book page to know which student was taking which class. According to Respondent, S. B.'s grades on the page were for Economics.

24. The greater weight of the evidence indicates that no grades for Economics were posted in Respondent's grade book or any computerized system for any students listed on the grade book page for the fall term of 2008. Instead, S. B. received credit that semester for Integrated Math.

25. In the spring of 2009, the term during which Respondent was reprimanded and forced to cease using his grade book, S. B. attempted but did not complete course work for Economics. Respondent failed to record any grades in Pinnacle to show S. B.'s work in Economics.

26. Upon commencement of the 2009-2010 school year, the guidance staff at the high school placed Q. F. in appropriate classes according to Pinnacle. Q. F. objected to her placement, stating that she had taken some of the classes from Respondent at Excel.

27. Q. F. went to see Respondent. Q. F. requested Respondent to provide the high school with a letter concerning the classes she took while enrolled at Excel.

28. In response to Q. F.'s request, Respondent prepared a letter dated January 13, 2010, and delivered it to the high school. The letter advised the high school as follows in relevant part:

This 2nd semester class shows (4th period) as an example that . . . [Q. F.] was taking Biology.

[Q. F.] had an 85 average in Biology.

The January 13, 2010, letter had a copy of the same page from the grade book attached to it that was attached to the January 11, 2010, letter concerning S. B.

29. The grade book page shows a list of fourth-period student names, including Q. F., with grades next to them under a list of courses entitled "Alg 1A-B/Consumer Math/Biology/Geometry." There is no way from looking at the grade book page to know which student took which class. According to Respondent, Q. F.'s grades on the page were for Biology.

30. Upon investigation, Respondent's staff determined that no grades for Biology were posted for any fourth-period students listed in the grade book page for the fall term of 2008.

Instead, Q. F. received credit for "Alg 1A-B." Respondent confirmed Q. F.'s grade in Algebra 1 for the fall term of 2008.

31. For the spring term of 2009, Q. F. completed a half credit in Biology. Respondent failed to have this attempt properly entered into the computerized grading system.

32. Comparing a copy of the page from the grade book that was attached to the January 13, 2010, letter, with a copy of the page from the grade book that was attached to the January 11, 2010, letter, it is apparent that Respondent altered the former. The alteration concerns the group of subjects listed over the fourth-period students' names.

33. The grade book page attached to the January 11, 2010, letter listed the following fourth-period subjects: Alg 1A-B/Consumer Math/Geometry. The grade book page attached to the January 13, 2010, letter listed the following subjects: Alg 1A-B/Consumer Math/ Biology/Geometry.

34. Because the subject "Biology" appears in the copy of the grade book page attached to the January 13, 2010, letter, but not in the copy of the grade book page attached to the January 11, 2010, letter, it is clear that it was added after January 11, 2010. Additionally, the term "Biology" was not simply added by writing it above the student names in pen. Instead, Respondent admitted that he cut a strip from a back page in the grade book, re-wrote the group of courses, and then

photocopied the grade book page so that it would appear as though the subject "Biology" was always listed. Respondent testified that he remembered that Q. F. had taken Biology, so he was simply trying to "correct" the grade book.

35. Respondent attempted to intentionally deceive Petitioner into awarding credit for classes that had not been earned. He did this in the following ways: (a) stating in the November 17, 2009, letter that S. B. had completed Economics and Biology when this was not true; (b) attempting to substantiate the falsehood by sending the January 11, 2010, letter and attaching to it a copy of a page from his grade book that had been altered by adding the term "Econ" to the subject line, then falsely asserting that the page showed S. B.'s completion of Economics; and (c) sending the January 13, 2010, letter and attaching to it a copy of a page from his grade book that had been intentionally altered by adding the term "Biology" to the group of subjects above Q. F.'s name, then falsely asserting that the page showed Q. F.'s completion of Biology.

#### CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2010).

37. Petitioner has the burden of proving that it has cause to discipline Respondent and that Respondent's employment should be terminated. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2nd DCA 1996); Sublett v. Sumter county School Board, 644 So. 2d 1178, 1179 (Fla. 5th DCA 1995).

38. While the standard of proof applied to license revocation cases is clear and convincing evidence, the standard of proof applied to employment termination cases is a preponderance of the evidence. See Ferris v. Austin, 487 So. 2d 1163 (Fla. 5th DCA 1986).

39. District school boards have authority to "operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law." See § 1001.32(2), Fla. Stat. Such authority extends to personnel matters and includes the power to suspend and dismiss employees. See §§ 1001.42(5), 1012.22(1)(f), and 1012.23(1), Fla. Stat.

40. Petitioner's Rule 6.38, entitled Suspension and Dismissal, states as follows in relevant part:

7. Dismissal during the term of a contract of a staff member shall be for cause. Such dismissal shall include:

\* \* \*

b. For an instructional employee holding a professional services contract or permanent status;

1. Misconduct in office;

\* \* \*

4. Willful neglect of duty;

\* \* \*

e. Other actions which substantially impair the effectiveness of any employee include but are not limited to the following:

\* \* \*

20. Failure to correct performance deficiencies;

41. Respondent, as a certified teacher and member of the instructional staff, cannot be dismissed during the school year except for "just cause."

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to regardless of adjudication of guilt, any crime involving moral turpitude.

See § 1012.33(1)(a), Fla. Stat.

42. Florida Administrative Code Rule 6B-1.006, Principles of Professional Conduct for the Education Profession in Florida, states as follows in pertinent part:

(3) Obligation to the student requires that the individual:

\* \* \*

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

\* \* \*

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

\* \* \*

(5) Obligation to the profession of education requires that the individual:  
(a) Shall maintain honesty in all professional dealings.

\* \* \*

(h) Shall not submit fraudulent information on any document in connection with professional activities.

43. Florida Administrative Code Rule 6B-4.009, Criteria for Suspension and Dismissal, states as follows in relevant part:

The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in [Section 1012.33] Florida Statutes. The basis for each of such charges is hereby defined:

\* \* \*

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1001, F.A.C., and the Principles of Professional Conduct for the Education

Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's service in the community.

(4) Gross insubordination of willful neglect of duty is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

44. Respondent's behavior in this case rises to the level of misconduct in office for the following reasons: (a) he intentionally misrepresented subject matter relevant to students' academic programs; and (b) he submitted false information in letters in connection with professional activities.

45. Petitioner's testimony that he personally observed S. B.'s work in Economics and Q. F.'s work in Biology in the fall of 2008 is not credible. Under the facts of this case, Respondent cannot argue that he merely was mistaken about which semester the students attempted the respective courses. The more persuasive evidence indicates that Respondent intentionally altered his grade book and attempted to mislead Petitioner about the students' academic progress.

46. Respondent not only failed to keep adequate records in his grade book, but he altered that record then relied upon it to substantiate a falsehood that he otherwise could not prove. Respondent's actions here were so serious as to impair his effectiveness in the school system.



47. Finally, Respondent has willfully neglected his duty as a teacher by failing to properly record students' grades after receiving a written reprimand, directing him to routinely enter grades in Pinnacle, the computerized grading system. Respondent's failure to correct his performance deficiencies substantially impaired his effectiveness as a teacher.

48. Petitioner has met its burden of proof in this case. There is "just cause" to terminate Respondent's employment.

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.

DONE AND ENTERED this 16th day of July, 2010, in Tallahassee, Leon County, Florida.



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SUZANNE F. HOOD  
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Filed with the Clerk of the  
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this 16th day of July, 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.