

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TAYLOR COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 10-1351  
  )  
GERALDINE ROBERSON,                    )  
  )  
          Respondent.                        )  
\_\_\_\_\_                                    )

RECOMMENDED ORDER

A formal hearing was conducted in this case on November 17, 2010, and December 6, 2010, in Perry, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Angela M. Ball, Esquire  
Post Office Box 734  
Perry, Florida 32348

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner properly determined that Respondent's employment should be terminated.

PRELIMINARY STATEMENT

By letter dated February 5, 2010, Paul Dyal, Superintendent of Taylor County School District, advised Respondent Geraldine Roberson (Respondent) that she was suspended with pay from her position as a teacher. The letter stated that Petitioner Taylor County School Board (Petitioner) would determine at a February 16, 2010, meeting whether to terminate her employment effective February 17, 2010. According to the letter, the proposed termination was based on Respondent's insubordination as outlined in a letter dated February 3, 2010, from George Clayton, Principal at Perry Primary School.

On February 16, 2010, Petitioner voted to terminate Respondent's employment. In a letter dated February 26, 2010, Respondent requested a formal administrative hearing.

Petitioner referred Respondent's hearing request to the Division of Administrative Hearings on March 17, 2010. A Notice of Hearing dated March 29, 2010, scheduled the hearing on May 17, 2010. After several continuances, the undersigned issued a Notice of Hearing, scheduling the hearing for November 17, 2010.

The hearing was held in part on November 17, 2010. On November 18, 2010, the undersigned issued an Order Continuing and Rescheduling Hearing. The Order scheduled the final day of the hearing for December 6, 2010.

During the hearing, Petitioner presented the testimony of eight witnesses, including Respondent. Petitioner offered 65 exhibits that were accepted as evidence.

Respondent testified on her own behalf. Respondent offered ten exhibits, R1-R6 and R8-R11, that were accepted as evidence.

The Transcript was filed on January 5, 2011. The parties filed their Proposed Recommended Orders on February 7, 2011.

Hereafter, all references shall be to Florida Statutes (2009) unless 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 Taylor County, Florida. A Master Teacher Contract between Petitioner and the Taylor Education Association governs relations between Petitioner and its teachers.

2. Respondent is an educator, with 35 years of teaching experience. She is certified by the Florida Department of Education to teach students enrolled in the Exceptional Student Education (ESE) program. Respondent has at least 20 years of experience in teaching ESE students.

3. During the 2009-2010 school year, Petitioner employed Respondent as an annual contract teacher at Perry Primary

School. Pursuant to the contract, Petitioner hired Respondent to work from August 17, 2009, to June 9, 2010.

4. Respondent's class during the 2009-2010 school year was made up of students with varying exceptionalities. The exceptionalities included handicaps such as specific learning disabilities, attention deficit disorder, autism, or emotional or physical handicaps. The class consisted of students in kindergarten, first, and second grades.

5. At the outset of the 2009-2010 school year, Respondent was assigned eight students, two of which had a full-time personal assistant. Just prior to the Christmas break, Respondent was assigned another ESE student with a full-time personal assistant.

6. The primary responsibility of the personal assistants was to help their designated students function successfully and safely in the classroom. Additionally, the personal assistants were supposed to support the classroom teacher as needed.

7. In addition to the personal assistants, Respondent's class utilized the services of Behavioral Management Center (BMC). The BMC consultants visited Respondent's classroom frequently to develop and monitor the implementation of behavior modification plans for certain students. The school psychologist also visited the classroom frequently to assist the teacher and students.

8. Petitioner uses many computer software programs for the testing and monitoring of student progress. The computer programs are necessary in order to comply with Florida Department of Education requirements. The computer programs are used throughout the state and require data entry and transmission at several points in the academic year.

9. Gradequick is a program that enables teachers to electronically enter student grades. Among other tasks, the program calculates grade point averages. The grades and averages are then entered in the Edline program that is accessible by both parents and students. Administrators can access these programs to ascertain the level of progress by a particular class or student.

10. For the 2009-2010 school year, the initial Gradequick and Edline training was conducted the first week of September 2009. Respondent attended the training session.

11. Tienet is a computer program used to assist with the drafting of individual education plans (IEPs) for ESE students. It is a web-based program that also is used to monitor a student's progress in accomplishing the goals and objectives on the student's IEP. Tienet generates a parent report that goes out with report cards. All students in Respondent's 2009-2010 class were learning in accordance with an IEP.

12. Aimsweb is a computer program that monitors compliance

with state and federal guidelines regarding student achievement and progress in reading and math. Aimsweb requires that all students be tested at the beginning, middle and end of the school year. The teacher uses the initial test or "probe" to determine the child's baseline. Other probes are performed on a weekly basis throughout the school year. Petitioner can use the data to determine if a child is academically at risk and, if so, to implement interventions to address any deficiency.

13. FAIR is a state-mandated assessment test in reading that also is given three times a year. FAIR provides for an exemption for students who are severely limited academically. However, Petitioner always completes the initial FAIR test for all students, regardless of academic ability. After assessing the results of the first probe, Petitioner can then determine whether students will be exempted from further testing.

14. In the 2009-2010 school term, Jack Palaio was an ESE resource teacher and the Perry Primary School technology coordinator. As technology coordinator, Mr. Palaio had to make sure the teachers' and students' computers were up and running. He also trained staff and teachers on the use of the computer software programs referenced above. Mr. Palaio's responsibilities included monitoring data collection and data transmission from the classrooms.

15. On or about September 2, 2009, Mr. Palaio requested

that Respondent provide him with a list of her students. Mr. Palaio needed the names to make sure the students were placed in the proper Gradequick files. As of September 14, 2009, Respondent still had not provided Mr. Palaio with the list of names.

16. In addition to the training sessions taught when school began, Mr. Palaio offered to assist Respondent on several occasions starting at the beginning of the year. At times, Respondent sought help from Mr. Palaio in person or by email.

17. By mid-year, it should not have taken Respondent but a few minutes per student to enter weekly data on Gradequick. Aimsweb should have required no more than five minutes per student on a weekly basis. The FAIR data requires very little time because the teacher enters it while testing the students. Tienet data entry takes even less time because it requires formulation of IEPs only once a year and review and maintenance quarterly.

18. Pam Padgett was the assistant principal at Perry Primary School. On September 15, 2009, Ms. Padgett advised Respondent to provide Ms. Padgett with a copy of Respondent's class schedule. The schedule was necessary to show the times that Respondent intended to teach specific subject areas.

19. On September 15, 2009, Ms. Padgett also informed Respondent that her students would need to take the initial FAIR

and Aimsweb probes in order to establish baselines. Ms. Padgett advised Respondent that other staff members would do this testing for Respondent.

20. In September 2009, two of Respondent's students were exempt from taking the initial FAIR reading probe because of their disabilities. The two students were supposed to be tested using an alternative assessment known as the Brigance. Petitioner's staff decided to test the two students on the FAIR material, using a paper test, in addition to the Brigance test.

21. The Brigance test, in booklet form, was supposed to be given three times a year. Teachers used a different color to score students' tests each time it was administered.

22. On September 17, 2009, Mr. Palαιο requested Respondent to see him about testing her students using the Brigance. Mr. Palio also offered to help Respondent set up Edline for her class.

23. Alise Thompson is the Intervention Resource Compliance Specialist at Perry Primary School. In the 2009-2010 school year, she was responsible for ensuring that teachers properly drafted IEPs using Tienet and for scheduling IEP meetings.

24. On September 21, 2009, Ms. Thompson instructed Respondent to prepare the IEP (goals and objectives) for a student. She reminded Respondent that the IEP meeting for the student was scheduled for September 25, 2009.

25. On September 22, 2009, Mr. Palaio advised Respondent that her class was set up in Gradequick so that she could start adding weekly grades. Mr. Palaio asked Respondent to see him for information about entering the grades in Gradequick. On September 29, 2009, Mr. Palaio again reminded Respondent that she needed to enter her grades in Gradequick so that she could send home midterm progress reports the next day.

26. On September 30, 2009, Mr. Palaio advised Respondent that her kindergarten student needed to have grades entered in the computer on a weekly basis for reading now and for reading, spelling, and math beginning in January. He also reminded Respondent that her first and second grade students needed grades for reading, math, and spelling.

27. As of September 30, 2009, Mr. Palaio had prepared the midterm reports for Respondent's first and second grade students. He also offered to do the same for the kindergarten student if Respondent would send him the necessary information. Mr. Palaio reminded Respondent that she had been provided with additional computer training in Edline and needed to post her grades in Gradequick on a weekly basis.

28. The September 30, 2009, email to Respondent told her to put her Brigance booklets back in the students' cumulative folders in the school office. This was necessary in order to ensure their safekeeping.

29. On October 26, 2009, Perry Primary School was preparing to send report cards home for the first nine weeks. Mr. Palaio offered to help Respondent in this regard if she encountered any difficulty.

30. On October 28, 2009, Mr. Palaio offered to help Respondent with entering grades in Gradequick because she was late in doing so. Mr. Palaio advised Respondent that he had corrected some of her inconsistencies, but that he was more concerned with her failure to enter all required grades for her students. Specifically, Mr. Palaio noted that Respondent had not entered grades for some children for over two weeks.

31. George Clayton was the principal of Perry Primary School for the 2009-2010 school year. Around the end of October or the beginning of November 2009, Mr. Clayton sent Respondent a reminder that she was two weeks behind in posting her grades to Edline and entering grades to Gradequick. Mr. Clayton told Respondent to "take care of this matter."

32. Anne Sesock, as the Response to Invention (RTI) Specialist for the 2009-2010 school term, was responsible for monitoring teachers' data for FAIR and Aimsweb testing at Perry Primary School. Over time, Ms. Sesock became aware that Respondent was behind on her FAIR and Aimsweb testing and/or data entry.

33. On October 29, 2009, Ms. Sesock reminded all teachers

that Thursday was the day they should monitor progress of their students in math using Aimsweb. Ms. Sesock had already entered the students' names into the computer. Ms. Sesock then gave a brief description of how to perform the task.

34. On October 30, 2009, Ms. Sesock reminded certain teachers, including Respondent, that they needed to enter their reading/literacy scores into Aimsweb. This was necessary for the school to prepare for a data meeting.

35. On October 30, 2009, Mr. Palaio reminded Respondent that she needed to see about her Tienet progress reports that had to go home with student report cards.

36. Mr. Palaio sent Respondent another message on October 30, 2009. In that message, Mr. Palaio stated that one of Respondent's students still needed early literacy scores entered in Aimsweb.

37. On November 2, 2009, Perry Primary School sent report cards home. Ms. Padgett asked Respondent to a meeting regarding Respondent's failure to send Tienet parent reports out with report cards.

38. On November 2009, Mr. Palaio responded to Respondent's request for help in checking her students' grades and parent reports. Mr. Palaio advised Respondent that he had corrected the grades in Gradequick so that she would now be entering grades for the second nine weeks. He stated that she had some

grades missing and needed to be consistent in entering the grades. He also reminded Respondent that she needed to make corrections in the Tienet parent reports relating to student objectives, which should have been sent home with the last report cards.

39. On November 17, 2009, Ms. Sesock directed Respondent to bring certain Aimsweb reading benchmark assessment sheets to a training session that afternoon. Ms. Sesock offered to enter them in the computer.

40. In November 2009, Mr. Clayton became concerned with the lack of structure and student behavior problems in Respondent's classroom. He subsequently initiated a plan to provide Respondent with help in this regard.

41. On November 23, 2009, Ms. Padgett advised Respondent that a substitute would be available the next day so that Respondent could meet with school staff and the BMC consultant. The purpose of meeting was to develop a schedule and activities for Respondent's class.

42. On or about November 24, 2009, Respondent, the BMC consultant, and other school staff members met to develop a Tuesday/Thursday schedule for Respondent's class. After the meeting, Respondent was supposed to develop a similar schedule for Monday, Wednesday, and Friday. There is no persuasive evidence that Respondent ever completed this task.

43. The Tuesday/Thursday schedule provides for whole group time beginning at 8:00 a.m. As the day progresses, the personal assistants were assigned to work one-on-one with a student, in small groups, or large groups, while Respondent worked one-on-one or two-on-one with specific students.

44. To supplement the Tuesday/Thursday schedule, Respondent and the BMC consultant developed a Tuesday/Thursday Lesson Plan of 1:1 or 2:1 Instructions. The lesson plan names specific students and the skills/materials to be used with that student.

45. On December 1, 2009, BMC staff visited Respondent's classroom to observe implementation of the new schedule. They advised Ms. Padgett that Respondent stayed on the schedule for part of the day, but failed to follow it for the rest of the day.

46. On December 1, 2009, Ms. Padgett provided Respondent with a copy of a walk-through monitoring form to be used when she and other administrative staff visited Respondent's class. Ms. Padgett reminded Respondent to post her class schedule for all support staff during the times that Respondent and the personal assistants were working one-on-one with students and in group time.

47. On December 2, 2009, Ms. Padgett shared BMC's concerns with Mr. Clayton.

48. On December 3, 2009, Ms. Padgett visited Respondent's classroom to observe a reading lesson under the new Tuesday/Thursday schedule. Ms. Padgett noted that Respondent was behind schedule but appeared to be implementing the new plan. Ms. Padgett subsequently provided Respondent with written observations, setting forth strengths, missed opportunities, and something to work on.

49. In December 2009, Ms. Padgett became aware that Respondent had not done the required mid-year FAIR testing or had done the testing but failed to enter the data in the computer. On December 3, 2009, Mr. Palaio advised Ms. Padgett that Respondent had not started a single FAIR test. The next day, Ms. Padgett directed Respondent to begin FAIR-testing her students and to get help from Mr. Palaio and/or Ms. Sesock, if needed.

50. On December 4, 2009, Mr. Palaio advised Respondent and another teacher that they needed to complete the regress/recoupment forms for their students before Christmas break. The forms are used three times a year to record test data on the same specific skill. The data is used to determine whether a student requires an extended school year (summer school) as an accommodation.

51. On December 7, 2009, Mr. Clayton responded to Ms. Padgett that he was disappointed in Respondent's failure to

adhere to the new schedule. Mr. Clayton stated that he would be visiting Respondent's class that day.

52. From December 8, 2009, through December 11, 2009, Respondent was absent from school because she had pneumonia. During that week, Respondent came to school one time for a meeting at Mr. Clayton's request. The meeting related to a student that would soon be entering Respondent's class.

53. There is no record of Respondent receiving emails from school while she was home sick. Accordingly, the following emails dated December 8 through 11 may not have been read by Respondent until she returned to school on December 14, 2009.

54. On December 8, 2009, Mr. Palaio sent Respondent an email. He advised her that certain students were missing a spelling score in the FAIR testing.

55. On December 9, 2009, Ms. Thompson reminded Respondent that an IEP meeting was scheduled on December 11, 2009, for "O." Ms. Thompson had started the IEP but reminded Respondent to add the goals. The December 11, 2009, IEP meeting obviously had to be cancelled because Respondent was home sick and had not completed drafting the IEP.

56. On December 10, 2009, Mr. Palaio sent Respondent an email. Once again, he reminded her that she needed to enter FAIR scores for spelling.

57. On December 11, 2009, Mr. Palaio sent Respondent an

email. Once again, he reminded Respondent to complete the regress/recoup form with all students that week.

58. On December 16, 2009, Mr. Palaio advised Respondent that the initial regress/recoup testing had been done by another staff member the week before and that he had entered the scores. Mr. Palaio provided Respondent with a spreadsheet showing the results of the first probe that needed to be repeated the first day after Christmas break and then again two weeks later.

59. On December 17, 2009, Mr. Palaio reviewed the policy at Perry Primary School regarding the need to check email three or four times a day. Teachers were supposed to read email before school, after reading, during lunch, and after school. Respondent was advised that teachers are held responsible for knowing the information contained in school emails, including requests for specific data.

60. On December 17, 2009, Ms. Sesock reminded all teachers to complete their Aimsweb math and reading probes. Ms. Sesock wanted all teachers to enter the data that day or the next day so that the data would be available in January for intervention assistance team meetings.

61. In an email dated January 3, 2010, Ms. Sesock wanted to know about missing scores in Respondent's Aimsweb progress monitoring. Ms. Sesock could not run charts on the students until all scores were entered in the computer.

62. January 4, 2010, was a teacher-planning day. During the day, Mr. Palaio sent Ms. Sesock a list of teachers, including Respondent, who had missing Aimsweb data as of December 18, 2009. Ms. Sesock responded with an email inquiring whether they could give Respondent an explicit instruction booklet on how to input scores so Respondent would learn to do it herself and quit bothering them.

63. On January 4, 2010, Mr. Palaio reminded Respondent and other teachers that they needed to complete the second set of regress/recoup progress monitoring. He advised them to use the spreadsheet started before Christmas and to repeat the process on January 19, 2010.

64. On January 5, 2010, Mr. Palaio requested that Respondent see him about Aimsweb and Brigance. He wanted to assist her with the Brigance books and Aimsweb probes.

65. On January 5, 2010, Respondent injured her shoulder and knee when she fell after tripping over a student at school. She was prescribed pain medication (Vicodin and Celebrex) and required to wear a leg brace. Respondent claims that the medications made her sleepy and made it difficult for her to focus. However, she did not complain to anyone at Perry Primary School that the medications were interfering with her performance.

66. On January 8, 2010, Ms. Thompson advised Respondent

and other teachers about completing IEPs. Specifically, she reminded them that they needed to enter the accommodations for each child on an individual basis.

67. On January 11, 2010, Mr. Palaio requested that Respondent see him that day. Mr. Palaio wanted to discuss Respondent's scores for Brigance, Aimsweb, and Tienet.

68. By January 2010, Mr. Clayton was aware that Respondent and the three personal assistants in her classroom were not working as a team. The personal assistants resented having to work with small or large groups of students while Respondent worked with students on a one-on-one or two-on-one basis.

69. Mr. Clayton had a meeting with Respondent and her personal assistants on January 13, 2010. He gave the personal assistants a copy of their job descriptions. He reminded them that Respondent was the class leader and that they were her support staff.

70. On January 13, 2010, Mr. Clayton told the personal assistants that they had to stay with their assigned students when BMC staff came to model implementation or observe implementation of a behavior plan. He did not want the assistants to think they could take a break every time BMC staff visited the classroom.

71. During the January 13, 2010, meeting, Mr. Clayton discussed the Tuesday/Thursday schedule developed by BMC staff.

He requested that Respondent develop a Monday/Wednesday/Friday schedule, using the same format, and give it to him.

Mr. Clayton was concerned that there was not a consistent daily routine in Respondent's classroom.

72. Mr. Clayton also discussed Respondent's lesson plans during the January 13, 2010, meeting. Mr. Clayton wanted Respondent to give him a copy of her lesson plans for the upcoming week every Friday before she left school. The first Friday that Respondent should have given Mr. Clayton her lesson plans was on Friday, January 15, 2010.

73. As a general rule, teachers kept their lesson plans, two weeks in advance, in spiral notebooks provided by the school at the beginning of the school year. Teachers were supposed to keep the lesson plan books on their desks at all times. Mr. Clayton reviewed the lesson plans on a regular basis.

74. Mr. Clayton made the special request on January 13, 2010, about Respondent's lesson plans because he never saw her plan book on her desk. When he asked about the plan book, Respondent always said it was in her car or at home.

75. During the January 13, 2010, meeting, Mr. Clayton instructed Respondent to provide each personal assistant with a copy of the IEPs and behavior plans for each student in the class. Mr. Clayton wanted the personal assistants to be familiar with all of the students' IEPs and behavior plans so

that they would know what to do in the absence of Respondent or a colleague. The greater weight of the evidence indicates that Respondent never complied with Mr. Clayton's directive in this regard.

76. Finally, Mr. Clayton told Respondent on January 13, 2010, that her class would be moved that weekend from a portable classroom to a classroom in the main building. The purpose of the move was to place the class closer to the school clinic to accommodate a student with medical issues.

77. Mr. Clayton created written minutes of the January 13, 2010, meeting to share with Respondent and the personal assistants. Following the meeting on January 13, 2010, the assistants became more cooperative.

78. On January 13, 2010, Ms. Sesock told Respondent how important it was for her to have up-to-date progress monitoring data for Aimsweb reading and math. At that time, Respondent had not entered the required weekly progress monitoring data, seven scores in math and five scores in reading.

79. The second benchmark assessment for Aimsweb was due to be entered between January 11, 2010, and January 15, 2010. Ms. Sesock wanted to make sure that Respondent had all the materials she needed to perform the assessment.

80. On January 13, 2010, Ms. Thompson reminded Respondent that "O's" IEP meeting was scheduled for Friday, January 15,

2010. Ms. Thompson requested that Respondent update his academic and behavior goals before the meeting. The next day, Ms. Thompson directed Respondent to update "O's" curriculum and behavior goals.

81. On January 15, 2010, the IEP meeting had to be rescheduled because Respondent did not have "O's" IEP properly drafted. Ms. Thompson sent an email to Respondent, stating that Respondent needed to separate goals and objectives on the IEP by subject area. For example, Respondent needed one goal and two objectives for reading, math, and behavior.

82. After receiving a copy of Ms. Thompson's January 15, 2010, email to Respondent, Mr. Clayton directed Respondent to complete "O's" IEP goals by January 19, 2010. Mr. Clayton told Respondent to put the IEP in his mailbox before she left school on the 19th.

83. On January 15, 2010, Respondent did not provide Mr. Clayton with the lesson plans for the upcoming week. Instead, she left school early for a doctor's appointment and took the rest of the day off.

84. On January 19, 2010, Mr. Clayton advised Respondent that he had reviewed her Aimsweb data and that it was not updated. He told her to update the reading and math data before she left school on January 21, 2010.

85. During the 2009-2010 school year, Respondent had

completed two IEPs before attempting the IEP for "O." However, Respondent failed to complete "O's" IEP and place it in Mr. Clayton's mailbox on January 19, 2010, as requested.

86. On January 19, 2010, Mr. Palaio sent Respondent an internet link for Tienet. Apparently, Respondent had lost the website address.

87. On January 21, 2010, Mr. Clayton issued Respondent a letter of reprimand for "insubordination" for failing to complete "O's" IEP on time. Respondent received the January 21, 2010, letter of reprimand, concerning the IEP, in her mailbox at school.

88. Respondent's failure to timely complete the IEP was gross insubordination. Respondent had been given more than enough time and assistance to properly draft the IEP. There is no persuasive evidence that Respondent's pain medication was responsible for her inability to complete the IEP.

89. On January 21, 2010, Ms. Thompson advised Respondent that corrections still needed to be made to "O's" IEP. Respondent was told that each area of the IEP needed a present-level statement followed by at least one goal and two objectives. Later that day, Mr. Palaio gave Respondent additional suggestions to make the IEP meet Petitioner's ESE standards.

90. On January 21, 2010, Mr. Palaio sent Respondent an

email. The message reminded Respondent that most of her Aimsweb scores had not been entered.

91. On the morning of January 22, 2010, Mr. Clayton shared some of his concerns with Respondent in an email. First, he discussed Respondent's need to conduct Aimsweb progress monitoring probes in reading and math. Second, Mr. Clayton was worried about Respondent's failure to enter grades in Gradequick, advising her to see Mr. Palaio by the end of the day to resolve this matter. Third, Mr. Clayton reminded Respondent that she needed to be using the school-wide behavior modification program. Fourth, Mr. Clayton noted some errors in "O's" IEP. Fifth, Mr. Clayton told Respondent not to forget to do the ESE regress/recoup form. Finally, Mr. Clayton reminded Respondent that she was supposed to provide him with a copy of her lesson plans before leaving school that afternoon.

92. Mr. Clayton wanted to make sure that Respondent received his January 22, 2010, email. He asked his assistant to call Respondent that afternoon. Realizing that Respondent was not in her classroom, Mr. Clayton requested the assistant to call Respondent's cell phone and her husband's cell phone. Because Mr. Clayton could not reach Respondent, he sent her another email at 3:55 p.m., telling her to contact Mr. Palaio if she and he were still on campus.

93. Respondent left school on Friday, January 22, 2010, without giving Mr. Clayton her lesson plans.

94. At 5:51 p.m. on January 22, 2010, Mr. Palaio sent Respondent an email. He reminded her to do her quarterly Tienet progress reports that were due to go home with report cards on January 27, 2010.

95. On Monday morning, January 25, 2010, Mr. Clayton sent Respondent an email. The message stated that administration wanted to meet with her at 2:30 in Mr. Clayton's office. Respondent was advised that she could bring union representation to the meeting.

96. During the meeting on January 25, 2010, Mr. Clayton discussed Respondent's failure to provide him with her lesson plans as directed. Mr. Clayton also told Respondent that her failure to complete a task by a given date constituted insubordination and served as grounds for termination.

97. During the January 25, 2010, meeting, Mr. Clayton told Respondent that she had a chance to resign. Mr. Clayton stated that if she did not resign, he would contact the Superintendent and recommend her termination.

98. Respondent could not make a decision to resign without talking to someone. Mr. Clayton told Respondent to let him know her decision by Wednesday, January 27, 2010. Respondent did not do so.

99. At some point in time, Mr. Clayton placed a letter of reprimand, dated January 25, 2010, in Respondent's mailbox for failing to provide him a copy of her lesson plans on January 15, 2010, and on January 22, 2010. Mr. Clayton noted in the letter that he still had not received Respondent's lesson plans.

100. Following the meeting, on January 25, 2010, Respondent got materials ready for her students for the remainder of the week. Respondent did not return to work until Monday, February 1, 2010.

101. On January 26, 2010, Ms. Thompson advised Respondent by email that "O's" goals and objectives were looking better. However, Ms. Thompson noted certain corrections needed to be made. Ms. Thompson placed a draft copy of the IEP, with notations, in Respondent's mailbox.

102. When Respondent returned to school on February 1, 2010, she gave Mr. Clayton a very detailed copy of her lesson plans for February 1, 2010, through February 12, 2010. The lesson plans were in a narrative form and not in a lesson plan book form that contains plans for a week at a glance. Even though the plans were not drafted according to Perry Primary School policy and were not the plans expected, Mr. Clayton provided Respondent with a lengthy critique of the lesson plans.

103. On February 1, 2010, Mr. Clayton advised Respondent that she needed to complete the regress/recoup spreadsheet. He

also told her that she still needed to fix "O's" IEP by February 3, 2010, and before the IEP meeting on February 10, 2010. Mr. Clayton directed Respondent to complete the January Brigance testing before she left work on February 5, 2010.

104. On February 1, 2010, Ms. Padgett sent Respondent an email regarding the reading programs in Respondent's classroom. Ms. Padgett told Respondent that Ms. Padgett and the BMC staff had made certain decisions about the reading program while Respondent was absent from school.

105. On February 2, 2010, Ms. Thompson advised Respondent that "O's" IEP was better. However, Ms. Thompson noted that Respondent needed to work on the reading goal and two objectives.

106. On February 3, 2010, Ms. Thompson stated that she had met with Mr. Palaio and that he had offered some suggestions for "O's" IEP. Ms. Thompson's message included a copy of a draft IEP prepared by Mr. Palaio.

107. In a letter dated February 3, 2010, Mr. Clayton recommended that the Superintendent terminate Respondent's employment. The letter references Respondent's failure to provide him with lesson plans and the associated reprimand. The letter does not refer to Respondent's reprimand for not completing the IEP goals.

108. Mr. Clayton's February 3, 2010, letter also included the following deficiencies: (a) Respondent never provided the personal assistants with the student behavior plans as instructed on January 13, 2010; (b) Respondent did not have her Brigance testing up to date; and (c) Respondent's Aimsweb data was not up to date.

109. In a letter dated February 5, 2010, Paul Dyal, Superintendent of Taylor County School District, advised Respondent that her employment was suspended with pay as of February 8, 2010. Mr. Dyal stated that the action was based on Respondent's insubordination as outlined in Mr. Clayton's February 3, 2010, letter. Mr. Dyal's letter was hand-delivered to Respondent on February 5, 2010.

#### CONCLUSIONS OF LAW

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

111. Petitioner has the burden of proving, by a preponderance of the evidence that Respondent's employment should be terminated. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2nd DCA 1996); Ferris v. Austin, 487 So. 2d 1163 (Fla. 5th DCA 1986).

112. District school boards have the authority to "operate, control, and supervise all free public schools in their respective districts . . . 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 or dismiss employees. See §§ 1001.42(5), 1012.22(1)(f), and 1010.23(1), Fla. Stat.

113. Section 1012.33, Florida Statutes, states as follows in relevant part:

1012.33 Contracts with instructional staff, supervisors, and school principals.--

(1)(a) Each person employed as a member of the instructional staff in any district school system . . . shall be entitled to and shall receive a written contracts as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provision 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 the 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.

114. The Master Teacher Contract provides at Article III, Association and Employee Rights, Section S, that "[a] teacher . . . may be suspended or dismissed during the term of the

contract for just cause." The contract does not define "just cause."

115. Article XI, General Employment Practices, Section M, of the Master Teacher Contract provides a list of possible disciplinary actions. These actions include: written warning, written reprimand, suspension, non-renewal, dismissal, or return to probationary status contract.

116. Florida Administrative Code Rule 6B-4.009(4) defines gross insubordination "as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority."

117. In this case, Petitioner has shown just cause to terminate Respondent's employment in several respects. First, Respondent's failure to provide lesson plans as directed on January 15, 2010, and January 22, 2010, was gross insubordination. A teacher, such as Respondent, with over 35 years of teaching experience, should not have had any doubt about her principal's expectation in this regard.

118. Second, it was gross insubordination for Respondent not to provide her personal assistants with copies of the students' IEPs and behavior plans. It was a reasonable and necessary requirement for all adults in the classroom to be familiar with the IEPs and behavior plans of all students.

119. Third, Respondent demonstrated gross insubordination because she continually failed to keep up with the students' Brigance testing as instructed. Respondent's refusal to do the Brigance testing in a timely manner is especially hard to understand because it is an old-style paper and pencil test.

120. Finally, Respondent was grossly insubordinate because she refused to learn to use Aimsweb to perform tests and record data. Despite all the help she received, Respondent still did not have her Aimsweb math scores updated in February 2010. Absent being grossly incompetent, there is no excuse for Respondent's failure in this regard.

121. Petitioner has met its burden in this case. Petitioner has just cause to terminate Respondent's employment based on gross insubordination.

#### RECOMMENDATION

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

RECOMMENDED:

That The Taylor County School Board enter a final order terminating Respondent's employment.

DONE AND ENTERED this 22nd day of February, 2011, in  
Tallahassee, Leon County, Florida.

*Suzanne F. Hood*

---

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 February, 2011.

COPIES FURNISHED:

Angela M. Ball, Esquire  
Post Office Box 734  
Perry, Florida 32348

Ronald G. Stowers, Esquire  
Levine & Stivers, LLC  
245 East Virginia Street  
Tallahassee, Florida 32301

Paul Dyal, Superintendent  
Taylor County School District  
Alton J. Wentworth Administrative Office Complex  
318 North Clark Street  
Perry, Florida 32347

Dr. Eric J. Smith, Commissioner  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Lois Tepper, Acting 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.