

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 11-3193TTS
)
 LAVONDA HANKERSON,) *AMENDED TO CORRECT
) FORMATTING ERROR
 Respondent.)
)
 _____)

*AMENDED RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 19, 2011, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Arianne B. Suarez, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire
Herdman and Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent should be suspended, without pay, and terminated from all employment with

Petitioner for the offenses set forth in the Notice of Specific Charges.

PRELIMINARY STATEMENT

On June 15, 2011, the Miami-Dade County School Board (School Board) took action at its regularly scheduled meeting to suspend and initiate dismissal proceedings against Lavonda Hankerson, an instructional employee, for just cause, including but not limited to, misconduct in office; gross insubordination; attendance-to-date; and violation of School Board rules 6Gx13-4A-1.21, Responsibilities and Duties, 6Gx13-4A-1.213, Code of Ethics, and 6Gx13-4E-1.01, Absences and Leaves. Ms. Hankerson challenged the School Board's action and requested a hearing. On June 24, 2011, this matter was referred to the Division of Administrative Hearings.

The parties waived the 60-day hearing requirement set forth in section 1012.33, Florida Statutes. On August 24, 2011, the School Board filed a Notice of Specific Charges against Ms. Hankerson. Prior to hearing, a Joint Pre-Hearing Stipulation was filed. At hearing, the School Board presented the testimony of one witness and entered 15 exhibits (Petitioner's Exhibits numbered 1 through 15) into evidence.¹ Ms. Hankerson testified in her own behalf and entered no exhibits into evidence.

A transcript of the hearing was ordered. At the request of

the parties, the time for filing post-hearing submissions was set for ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on October 6, 2011. The parties timely filed their post-hearing submissions, which were considered in the preparation of this Recommended Order.

FINDING OF FACTS

1. No dispute exists that, at all times material hereto, Ms. Hankerson was an instructional employee with the School Board.

2. Ms. Hankerson has been a teacher with the School Board for 11 years, beginning as a teacher with the School Board in 2000. She was first assigned to Renick Education Center. Subsequently, Ms. Hankerson was transferred to Barbara Goleman High School (Goleman) in Miami Lakes, Florida.

3. During the 2009-2010 school year, she taught science to exceptional student education (ESE) students at Goleman.

4. At the beginning of the 2010-2011 school year, Ms. Hankerson was advised that her department was being eliminated and that she needed to find another school at which to work if she desired to continue her employment with the School Board. She sought other schools and received an email from Howard McMillan Middle School (McMillan) to come for an

interview. She accepted a teaching position at McMillan, effective September 20, 2010.

5. While working at Goleman in Miami Lakes, Florida, Ms. Hankerson resided in Miami Shores, Florida. Her residence was in close proximity to Goleman. She had three children and was able to get her children to school and report to Goleman in a timely manner throughout her tenure at Goleman.

6. Ms. Hankerson's travel time to McMillan was significantly greater than to Goleman due to McMillan being located further south than Goleman.²

7. During the 2010-2011 school year, all teachers at McMillan were required to report to work at 8:30 a.m. Professional meetings, which consisted of team meetings and department meetings, were held from 8:30 a.m. until 9:00 a.m. Team meetings were held three days a week. Department meetings were held two days a week, where teachers meet by department to discuss curricular activities and requirements. Faculty meetings were held every other Tuesdays, and, when faculty meetings occurred, no professional meetings were held because the faculty meetings replaced the professional meetings.

8. At 9:00 a.m., teachers went to their respective classroom to meet their students, who began arriving at 9:00 a.m. Instruction began at 9:10 a.m., with homeroom followed by advisement, where the Comprehensive Research Reading

Plan was implemented, and ended at 9:46 a.m. First period began at 9:56 a.m. School ended at 3:50 p.m.

9. Ms. Hankerson was assigned a homeroom class. The students in her classroom consisted of eighth grade students, who were not performing at grade level in reading and were FCAT Level 1 students in reading.

10. Ms. Hankerson's first period (Period 1) was a seventh grade civics class. Her students consisted of ESE students, with varying exceptionalities. She was the sole teacher.

11. Ms. Hankerson was a co-teacher for four periods of the remaining school day, teaching science. The students for the four periods consisted of general education students and ESE students. Ms. Hankerson was the ESE teacher, and the other teacher was the general education teacher, who generally took the lead in the classroom. The second period (Period 2) was a seventh grade science class; the third period (Period 3) was an eighth grade science class; the fourth period (Period 4) was a sixth grade science class; and the sixth period (Period 6) was a seventh grade science class. Her fifth period (Period 5) was a planning period.

12. No dispute exists that Ms. Hankerson's employment with the School Board is subject to, among other things, a professional service contract, a collective bargaining agreement

(Agreement) between the School Board and the United Teachers of Dade (UTD), and policies and procedures of the School Board.

13. School Board Policy and the Agreement provide teachers with one sick day of leave every month. At the beginning of each school year, each teacher is given, up front, four days of sick leave that the teacher can use. However, the accrual of sick leave is one sick leave day per month for the ten-month period that a teacher is employed with the School Board, totaling ten sick days of leave. During the ten-month period, if a teacher takes leave exceeding the ten days and does not have leave that is "banked," which is leave that is carried over from one school year to the next, it results in leave without pay, unauthorized.

14. In a medical situation, if a teacher knows that he or she will be absent for an extended period of time, the teacher would apply for leave. If the absence will be over 30 days, the teacher would apply for medical leave and can use leave that is banked. However, if no leave is banked, it results in leave without pay, unauthorized.

15. If a teacher is going to be absent from work, the teacher is required to call into a dedicated-absence telephone line at least one hour before the start of the workday. On the day that the teacher is absent, the teacher is also required to call his or her school 30 minutes prior to the scheduled student

dismissal time, indicating whether he or she will report to work on the next workday in order for the school to make arrangements for a substitute teacher.

16. A teacher, who is absent without prior approval, is deemed to have been willfully absent without leave, except in a situation of sudden illness or an emergency situation.

17. Immediately upon beginning at McMillan, Ms. Hankerson began arriving late and using her sick days. Eight days after beginning at McMillan, on September 28, 2010, she took a sick leave day; on October 1, 2010, she took one day of leave without pay, unauthorized; and on October 13 and 19, 2010, she took one sick leave day and one-half sick leave day, respectively.

18. On October 21, 2010, while she was at McMillan, allegations, unrelated to the instant case, involving inappropriate conduct and remarks were made against Ms. Hankerson. Effective October 22, 2010, she was removed from McMillan and placed at the School Board's Region office, pending an investigation. A substitute teacher was hired to take over Ms. Hankerson's classes. The allegations were referred for investigation to the School Board's Civilian Investigative Unit.

19. Ms. Hankerson was assigned to the Region office from October 22, 2010, through February 22, 2011. While at the Region office, Ms. Hankerson continued her pattern of absences. Between October 22, 2010, and February 22, 2011, she accumulated

an additional 18 days of absences: five and one-half days of leave without pay, unauthorized; seven days of leave without pay, authorized; and five and one-half days of sick leave.

20. The investigation into the allegations was concluded. At a Conference-For-The-Record (CFR) held by the School Board's Office of Professional Standards (OPS) on November 29, 2010, memorialized in a Summary of CFR dated December 3, 2010, Ms. Handerson was advised that probable cause existed for violations of School Board rules 6Gx13-4A-1.21, Responsibilities and Duties, and 6Gx13-4A-1.213, Code of Ethics. At the CFR, the OPS provided her with a copy of the School Board rules; The Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida; and a document titled "How to Use Common Sense and Professional Judgment to Avoid Legal Complications in Teaching." Additionally, the OPS issued her directives, including adhere to all the School Board's rules and regulations; and comport, both at the workplace and in the community, in a manner that reflects credit upon herself and the School Board.

21. By letter dated February 10, 2011, Ms. Hankerson was notified that the School Board had taken action, at its meeting on February 9, 2011, to suspend her without pay for five workdays from February 10, 2011, through February 16, 2011.

Further, the letter notified her to report to work at McMillan on February 17, 2011.

22. However, Ms. Hankerson did not serve the suspension from February 10, 2011, through February 16, 2011. The suspension was rescheduled to February 22 through 28, 2011, with her return to McMillan on March 1, 2011.

23. Having served her suspension on February 22 through 28, 2011, Ms. Hankerson failed to return to McMillan on March 1, 2011. Moreover, she failed to call the dedicated absence telephone line at McMillan, the Absence Reporting System (ARS), one hour prior to the workday on March 1, 2011, to state that she would not report to work that day; and failed to call 30 minutes before the scheduled student dismissal on March 1, 2011, to state whether she would report to work on March 2, 2011.

24. On March 2, 2011, Ms. Hankerson reported to McMillan for work and, also, reported ten minutes late, at 8:40 a.m. That same morning, McMillan's principal, Hilca Thomas, met with Ms. Hankerson and advised her that she (Ms. Hankerson) was required to report to work on March 1, 2011, not March 2, 2011; and that March 1, 2011, would be reported as leave without pay, unauthorized. Ms. Hankerson blamed the arrival on March 2, 2011, instead of March 1, 2011, on a miscommunication between her and the UTD representative.

25. Further, Ms. Thomas reminded Ms. Hankerson of the hours of work and the attendance procedures, including communicating absences using the ARS. Ms. Hankerson stated that she would "not make it in at 8:30"; that she would "be late almost every morning because of [her] children and [she] live[s] far [away]"; and that being late was "unavoidable."

26. Additionally, Ms. Thomas advised Ms. Hankerson that her (Ms. Hankerson's) undergarment was exposed and that she was not wearing appropriate attire. Ms. Hankerson abruptly left Ms. Thomas' office stating that she was going to UTD's office downtown. Shortly thereafter, around 9:15 a.m., Ms. Henderson returned to Ms. Thomas' office, but a substitute teacher was already deployed to Ms. Hankerson's classroom. As a result, Ms. Thomas advised Ms. Hankerson that she (Ms. Hankerson) could leave for the day and directed Ms. Hankerson to report back to McMillan for work on March 3, 2011.

27. The events on March 2, 2011, were memorialized in a memorandum from Ms. Thomas to Ms. Hankerson on that same date. Ms. Hankerson acknowledged receiving a copy of the memorandum.

28. The evidence demonstrates that the directives to Ms. Hankerson from Ms. Thomas to report to work at 8:30 a.m. and to follow the procedures for absences were reasonable. Further, the evidence demonstrates that Ms. Thomas had the authority to give the directives.

29. Ms. Hankerson failed to report to work at McMillan on March 3, 2011. Also, she failed to report to work on March 4, 2011. Both days were reported as leave without pay, unauthorized.

30. Ms. Hankerson reported to work at McMillan on March 7, 2011, the next school day, at which time she was issued an Absence from Worksite Directive by Ms. Thomas.

31. The Absence from Worksite Directive advised Ms. Hankerson, among other things, that attendance and punctuality were essential functions of her job and that, since September 20, 2010, she had accumulated 25.5 absences.³ The absences were reflected as four absences within her first month at McMillan (September 20 through October 22, 2010); 17.5 absences when she was assigned to the Region office during the investigation; and four absences when she was to report back to McMillan between March 1 and 4, 2011.

32. Additionally, the Absence from Worksite Directive instructed Ms. Hankerson on the proper procedures to obtain authorized leave of absence. She had failed to avail herself of the proper procedures to obtain authorized leave of absence.

33. Further, the Absence from Worksite Directive advised Ms. Hankerson that her noncompliance with the directives would be considered a violation of professional responsibilities and insubordination.

34. On March 7, 2011, Ms. Hankerson acknowledged receiving the Absence from Worksite Directive by signing the document.

35. The evidence demonstrates that the directives issued to Ms. Hankerson by Ms. Thomas in the Absence from Worksite Directive were reasonable. Further, the evidence demonstrates that Ms. Thomas had the authority to issue the directives.

36. Ms. Hankerson failed to abide by and comply with the directives.

37. On March 10, 2011, three days after receiving the Absence from Worksite Directive, Ms. Hankerson arrived at McMillan late, 9:50 a.m. Ms. Thomas met with Ms. Hankerson on the same day of the tardiness and reminded her (Ms. Hankerson) of the directives. Additionally, Ms. Thomas advised Ms. Hankerson that she (Ms. Hankerson) was inappropriately dressed. Ms. Thompson reported the absence as a half-day leave without pay, unauthorized.

38. On March 11, 2011, Ms. Hankerson arrived at McMillan late, 8:50 a.m. Ms. Thomas met with Ms. Hankerson on the same day of the tardiness and advised her (Ms. Hankerson) that, because she (Ms. Hankerson) had failed to call-in to the ARS, a substitute had been hired for the day. Ms. Thompson reported the absence as one day leave without pay, unauthorized.

39. On March 21, 2011, Ms. Hankerson failed to report to McMillan. Additionally, she failed to call-in to the ARS to

state whether she would be reporting to work on March 22, 2011, and, as a result, Ms. Thomas hired a substitute for March 22, 2011. Ms. Thomas met with Ms. Hankerson on March 22, 2011, and reviewed the absence with her (Ms. Hankerson); reported Ms. Hankerson's absence as unauthorized; and advised Ms. Hankerson that a substitute was hired for the day. Ms. Thompson reported each absence as one-day leave without pay, unauthorized.

40. On March 29, 2011, Ms. Hankerson left McMillan approximately an hour early, at 2:45 p.m., without prior approval and without signing-out. Also, she failed to attend her class at Period 6. Ms. Thompson reported the absence as a half-day leave without pay, unauthorized.

41. The next day, March 30, 2011, Ms. Hankerson did not report to McMillan. Ms. Thompson reported the absence as one day leave without pay, unauthorized.

42. The following day, March 31, 2011, Ms. Hankerson left McMillan approximately 30 minutes early, at 3:20 p.m., without prior approval and without signing-out. Additionally, she failed to attend her class at Period 6. Ms. Thompson reported the absence as a half-day leave without pay, unauthorized.

43. The next day, April 1, 2011, Ms. Hankerson left McMillan at 12:30 p.m., without prior approval and without signing-out. Also, she failed to attend her classes at Periods

4 and 6. Ms. Thompson reported the absence as a half-day leave without pay, unauthorized.

44. On April 4, 2011, Ms. Hankerson left McMillan at 10:47 a.m., without prior approval and without signing-out. Ms. Thompson reported the absence as one day leave without pay, unauthorized.

45. The following day, April 5, 2011, Ms. Hankerson arrived at McMillan a little over one-half hour late, at 9:03 a.m. Ms. Thomas met with Ms. Hankerson, regarding the attendance, and informed her (Ms. Hankerson's) that the early departures from McMillan would be reported as leave without pay, unauthorized. Further, Ms. Thomas provided Ms. Hankerson with notification of a CFR to be held on April 8, 2011.

46. The next day, April 6, 2011, Ms. Hankerson did not report to McMillan. Additionally, she failed to call-in to the ARS to state whether she would be reporting to work on April 7, 2011, and, as a result, Ms. Thomas hired a substitute for April 7, 2011.

47. The CFR on April 8, 2011, was scheduled for 3:00 p.m. Even though Ms. Hankerson had reported to McMillan for the workday, she did not appear at the CFR at the scheduled time. When an "all call" was made over the public address system for her at 3:20 p.m., Ms. Hankerson responded and was informed that should report to the CFR. However, she did not arrive at the

CFR until 3:49 p.m. and informed Ms. Thomas, among other things, that the CFR should proceed without her (Ms. Hankerson) because her (Ms. Hankerson's) children were home alone and she (Ms. Hankerson) was leaving at 3:50 p.m., the end of the workday.

48. Ms. Hankerson left, and the CFR proceeded without her. The attendees at the CFR included Ms. Thomas; the assistant principal; and the UTD Representative. The purpose of the CFR was to address Ms. Hankerson's insubordination regarding previously issued attendance directives, and her noncompliance to School Board rules 6Gx13-4E-1.01, Absences and Leaves, 6Gx13-4A-1.213, Code of Ethics, 6Gx13-4A-1.21, Responsibilities and Duties; and to review her record and future employment status with the School Board.

49. A Summary of the CFR was prepared by Ms. Thomas on April 18, 2011. The Summary for the CFR included a delineation of Ms. Hankerson's absences, reflecting that, since the issuance of the Absence of Worksite Directive on March 7, 2011, through April 15, 2011, Ms. Hankerson had accumulated one-half day absence of leave without pay, authorized; 10.5 days absence of leave without pay, unauthorized; one temporary duty day; and one personal day.⁴ Furthermore, the Summary for the CFR reflected that, as of April 15, 2011, for the 2010-2011 school year, Ms. Hankerson had accumulated a total of 46 absences.⁵

50. The Summary for the CFR contained directives to Ms. Hankerson. The directives included: adherence to School Board rules 6Gx13-4E-1.01, Absences and Leaves, 6Gx13-4A-1.213, Code of Ethics, 6Gx13-4A-1.21, Responsibilities and Duties; to report to work and depart from work daily at the scheduled hours; be in regular attendance at the worksite and on time; adhere to attendance directives previously issued; communicate any intent to be absent directly to the principal and by calling the ARS; the reporting of future absences will be leave without pay, unauthorized, unless documentation showing qualification under the Family Medical Leave Act (FMLA) or other leave of absence is provided; and for imminent absences, leave must be requested and procedures for School Board approved leave implemented, and the FMLA or Americans with Disabilities Act (ADA) requirements, if applicable, must be complied with. Ms. Hankerson was advised that failure to comply with the directives would lead to further review for disciplinary action and would be considered gross insubordination.

51. Further, the Summary for the CFR advised Ms. Hankerson that she would be issued a letter of reprimand.

52. Ms. Hankerson acknowledged receipt of the Summary for the CFR on April 18, 2011, by signing the Summary for the CFR.

53. The evidence demonstrates that the directives to Ms. Hankerson from Ms. Thomas at the CFR and the Summary for the

CFR were reasonable. Further, the evidence demonstrates that Ms. Thomas had the authority to give the directives.

54. On April 18, 2011, Ms. Thomas issued Ms. Hankerson a Reprimand. The Reprimand was based on Ms. Hankerson's failure to comply with the previous directive issued to Ms. Hankerson regarding attendance and professional responsibilities.

Additionally, the Reprimand advised Ms. Hankerson that any recurrence of the noncompliance might lead to disciplinary action and would be considered gross insubordination.

55. Ms. Hankerson acknowledged receipt of the Reprimand on April 18, 2011, by signing the Reprimand.

56. Ms. Hankerson failed to comply with the directives issued in the Summary for the CFR.

57. On the same day of the Reprimand, April 18, 2011, Ms. Hankerson was absent one-half day, reported as leave without pay, unauthorized. Two days thereafter, she was absent for three consecutive days, April 20 through 22, 2011, each day being reported as leave without pay, unauthorized. Having worked the next school day, April 25, 2011, Ms. Hankerson was absent one-half day on April 26, 2011, reported as leave without pay, unauthorized; absent one-half day on April 27, 2011, reported as leave without pay, unauthorized; and absent one day on April 28, 2011, reported as leave without pay, unauthorized. Additionally, she was tardy for work on April 27, 2011. From

April 18 through 28, 2011, she had a total of five and one-half absences.

58. Due to these recent absences and tardiness, on April 28, 2011, Ms. Thomas issued Ms. Hankerson a Continued Failure to Comply with Re-Issued Directives memorandum. The absences and tardiness were listed in the memorandum, and Ms. Hankerson was advised that the absences were reported as leave without pay, unauthorized. Further, Ms. Hankerson was advised that she had continued to be absent, tardy, and insubordinate; that her continued failure to comply with the reissued directives resulted in gross insubordination; and that, therefore, the memorandum would be forwarded to OPS for gross insubordination and further disciplinary action. She acknowledged receipt of the Continued Failure to Comply with Re-Issued Directives memorandum on April 18, 2011, by signing it.

59. The evidence demonstrates that the re-issued directives to Ms. Hankerson from Ms. Thomas were reasonable. Further, the evidence demonstrates that Ms. Thomas had the authority to give the directives.

60. Ms. Hankerson's absences, tardiness, and early departures continued. On May 2 through 4, 2011, she was absent one day each date; May 5, 6, and 13, 2011, she was absent one-half day each date; and May 16, 2011, she was absent one day; totaling five and one-half days of absences, which were reported

as leave without pay, unauthorized. Also, Ms. Hankerson was tardy seven times, on May 5, 6, 10 through 13, and 17, 2011, which were unauthorized. Additionally, she departed McMillan early two times, on May 6 and 13, 2011, which were unauthorized.

61. Due to these recent absences, tardiness, and early departures, on May 17, 2011, Ms. Thomas issued Ms. Hankerson a Continued Failure to Comply with Re-Issued Directives memorandum. The absences, tardiness, and early departures were listed in the memorandum, and Ms. Hankerson was advised that the absences were reported as leave without pay, unauthorized. Further, Ms. Hankerson was advised that she had continued to be insubordinate; that her continued failure to comply with the reissued directives resulted in gross insubordination; and that, therefore, the memorandum would be forwarded to OPS for gross insubordination and further disciplinary action. She acknowledged receipt of the Continued Failure to Comply with Re-Issued Directives memorandum on May 17, 2011, by signing it.

62. The evidence demonstrates that the second re-issued directives to Ms. Hankerson from Ms. Thomas were reasonable. Further, the evidence demonstrates that Ms. Thomas had the authority to give the directives.

63. At the time of the Continued Failure to Comply with Re-Issued Directives memorandum on May 17, 2011, Ms. Hankerson

had accumulated 57 absences. Additionally, she had multiple instances of tardiness and early departures.

64. A CFR was held by OPS. Persons in attendance included the Director of OPS; Ms. Thomas; and Ms. Hankerson and her UTD Representative. At the CFR, Ms. Hankerson was provided an opportunity to respond. OPS recommended termination of Ms. Hankerson's employment for gross insubordination and violation of School Board's rules concerning Responsibilities and Duties, Code of Ethics, and Absences and Leaves.

65. After the CFR at OPS, Ms. Hankerson reported for work at McMillan only on June 7, 2011, and June 9, 2011, which was the last day of the 2010-2011 school year. On June 9, 2011, she arrived late, signed-in, and left McMillan shortly thereafter, not remaining at work the entire time set-aside for the last day.

66. From the time that she began at McMillan until the time of the recommendation by OPS, Ms. Hankerson had accumulated 57 absences during the 2010-2011 school year. Of the 57 absences, 18.5 absences occurred during the time that she was assigned to the Region office, not in the classroom.

67. Ms. Hankerson's absences and tardiness negatively impacted the role of Ms. Thomas as the principal and leader of McMillan. Often times, due to Ms. Hankerson's tardiness, Ms. Thomas had no choice but to take over Ms. Hankerson's

homeroom class; and when she (Ms. Thomas) was unable to do so, she (Ms. Thomas) had to find another teacher to cover the homeroom class until Ms. Hankerson arrived. Additionally, when Ms. Thomas had no notice that Ms. Hankerson would be absent, Ms. Thomas had no choice but to take over Ms. Hankerson's homeroom class until a substitute, who had to be contacted at the last minute because of no prior notice, arrived; and when she (Ms. Thomas) was unable to do so, she (Ms. Thomas) had to find another teacher to cover the homeroom class until the substitute arrived.

68. As a result of the recommendation of OPS, the Superintendent recommended to the School Board the suspension, without pay, and termination of the employment of Ms. Hankerson. At its regularly scheduled meeting held on June 15, 2011, the School Board took action to suspend, without pay, Ms. Hankerson and initiate dismissal proceedings against her from all employment for just cause, including, but not limited to: misconduct in office; gross insubordination; attendance-to-date; and violation of School Board rules 6Gx13-4A-1.21, Responsibilities and Duties, 6Gx13-4A-1.213, Code of Ethics, and 6Gx13-4E-1.01, Absences and Leaves.

69. Ms. Hankerson does not refute the absences, the tardiness, or the early departures.

70. For the instances of tardiness, Ms. Hankerson testified at hearing that she would call-in before 8:30 a.m. and state that she was en-route and would be late. The School Board did not refute her assertion. Despite her calling-in, Ms. Hankerson admitted that Ms. Thomas did not tolerate her (Ms. Hankerson's) tardiness and took the action previously mentioned. Ms. Hankerson's testimony is found to be credible.

71. On March 2, 2011, Ms. Hankerson informed Ms. Thomas that arriving late for work at McMillan was unavoidable because she (Ms. Hankerson) took her (Ms. Hankerson's) children to school and she (Ms. Hankerson) lived so far away from McMillan.

72. Additionally, around April 2011, Ms. Hankerson informed Ms. Thomas that she (Ms. Hankerson) was going through a divorce.

73. At hearing, Ms. Hankerson testified that, during March, April, May, and June 2011, she was having marital problems and living sometimes at home and sometimes with her mother in Fort Lauderdale, Florida, which was approximately 28 miles from McMillan. Ms. Hankerson took her children to school, but, when she lived with her mother, she would not leave them at their school in the mornings alone if it was dark. She testified further that she was being investigated by the Department of Children and Families regarding allegations of neglect and being an unfit mother. Additionally, she testified

that she was having financial problems. Ms. Hankerson's testimony is found to be credible. However, she did not provide these details to Ms. Thomas.

74. Further, Ms. Hankerson testified that, for April, May, and June 2011, she considered taking leave using the FMLA and contacted her UTD Representative. Ms. Hankerson decided not to take leave using the FMLA. The UTD Representative did not testify at the hearing. Ms. Hankerson's testimony is found to be credible. Again, Ms. Hankerson did not provide this detail to Ms. Thomas.

75. Ms. Hankerson testified that the circumstances that she indicated caused her absences, tardiness, and early departures have been resolved. Her testimony is found to be credible.

76. Before working at McMillan on September 20, 2010, Ms. Hankerson had no prior disciplinary action taken against her by the School Board.

CONCLUSIONS OF LAW

77. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

78. No dispute exists that the School Board has the burden of proof to show by a preponderance of the evidence that

Ms. Hankerson should be terminated. McNeil v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

79. Section 1012.01, Florida Statutes (2010), provides in pertinent part:

(2) INSTRUCTIONAL PERSONNEL.--
"Instructional personnel" means any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:

(a) Classroom teachers.--Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.

80. No dispute exists that Ms. Hankerson is an instructional employee.

81. Florida Administrative Code Rule 6B-1.001, titled "Code of Ethics of the Education Profession in Florida," provides:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

82. Florida Administrative Code Rule 6B-1.006, titled "Principles of Professional Conduct for the Education Profession in Florida," provides in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

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

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

83. Florida Administrative Code Rule 6B-4.009, titled "Criteria for Suspension and Dismissal," provides in pertinent part:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, 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 effectiveness in the school system.

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

84. The School Board established that Ms. Hankerson committed misconduct in office, so serious as to impair her effectiveness in the school system. Her absences were excessive and, because of her excessive absences, she was unable to provide her ESE students with a minimal educational experience, whether she was the sole teacher or the co-teacher. Additionally, many of the absences were without prior notice. Further, any absence without prior approval was deemed willful. Ms. Hankerson's absences impaired the learning environment of the ESE students. Furthermore, due to her excessive absences, her impaired effectiveness for the ESE students could also be and is also inferred. See Summers v. Sch. Bd. of Marion Cnty., 666 So. 2d 175 (Fla. 5th DCA 1996). The evidence demonstrated that she violated Florida Administrative Code Rules 6B-1.001 and 6B-1.006, regarding the students, to the extent that her conduct impaired her effectiveness in the school system. Fla. Admin.

Code R. 6B-1.001 and 6B-1.006(3)(a). Hence, the School Board demonstrated by a preponderance of the evidence that Ms. Hankerson committed misconduct in office, so serious as to impair her effectiveness in the school system, violating Florida Administrative Code Rules 6B-1.001, 6B-1.006, and 6B-4.009(3).

85. The School Board established that Ms. Hankerson committed gross insubordination. Insubordination has been characterized as "generally . . . persistent, willful or overt defiance of authority Inherent in a finding of insubordination, however, is a finding that the orders given were within the authority of the person giving them."

McAllister v. Fla. Career Serv. Comm'n, 383 So. 2d 940, 941 (Fla. 1st DCA 1980), citing Muldrow v. Bd. of Pub. Instruction of Duval Cnty., 189 So. 2d 414, 415 (Fla. 1st DCA 1966).

86. The evidence demonstrates that Ms. Thomas had the proper authority to give Ms. Hankerson a direct order. After returning to McMillan from her suspension, on March 7, 2011, Ms. Hankerson was given a directive regarding her attendance and punctuality. On April 8, 2011, during a CFR, Ms. Hankerson was given directives again regarding her absences, tardiness, and early departures. On April 18, 2011, Ms. Hankerson was given a reprimand for failure to comply with the directive of March 7, 2011. The evidence demonstrates that the directives were reasonable. Further, the evidence demonstrates that

Ms. Hankerson nevertheless continued to fail to comply with the directives and was issued notices of her continued failure to comply. Additionally, the absences without prior approval were deemed willful. Hence, the School Board demonstrated by a preponderance of the evidence that Ms. Hankerson committed gross insubordination, violating Florida Administrative Code Rule 6B-4.009(4).

87. The School Board's interpretation of its own rules is given great deference unless it amounts to an unreasonable interpretation or is clearly erroneous. Woodley v. Dep't of HRS, 505 So. 2d 676, 678 (Fla. 1st DCA 1987).

88. School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties, provides in pertinent part:

I. Employee Conduct

All persons employed by The School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

* * *

Instructional Personnel

Members of the instruction staff, subject to the rules of the State and District Rules,

shall teach efficiently and faithfully, using the books and materials required, following the prescribed courses of study, and employing approved methods of instruction as provided by law and by the rules of the State Department of Education.

Members of the instructional staff shall keep abreast of development in their subject area through attendance at professional meetings, acquaintance with professional publications, and participation in inservices [sic] activities.

89. Ms. Hankerson continually and repeated failed to comply with the directives given her regarding absences, tardiness, and early departures. Due to her excessive absences, she failed to perform her responsibilities and duties as a school teacher. As a result, she failed in her employment to conduct herself in a manner that reflected credit upon herself and the school system. Further, by failing to attend her morning professional meetings at McMillan because of her absences and tardiness, Ms. Hankerson failed to keep abreast of development in her subject area through attendance at the morning professional meetings. The evidence demonstrates that Ms. Hankerson violated School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties.

90. School Board Rule 6Gx13-4A-1.213, Code of Ethics, provides in pertinent part:

I. INTRODUCTION

All members of The School Board of Miami-

Dade County, Florida, administrators, teachers and all other employees of Miami-Dade County Public Schools, regardless of their position, because of their dual roles as public servants and educators are to be bound by the following Code of Ethics. . . .

As stated in the Code of Ethics of the Education Profession in Florida (State Board of Education Rule 6B-1.001):

* * *

2. The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

3. Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

* * *

II. APPLICATION

This Code of Ethics applies to all members of The School Board of Miami-Dade County, Florida, administrators, teachers, and all other employees. The term "employee," as used herein, applies to all these groups regardless of full or part time status. . . .

* * *

III. FUNDAMENTAL PRINCIPLES

The fundamental principles upon which this Code of Ethics is predicated are as follows:

* * *

Pursuit of Excellence - Doing your best with the talents you have, striving toward a goal, and not giving up.

Respect - Showing regard for the worth and dignity of someone or something, being courteous and polite, and judging all people on their merits. It takes three major forms: respect oneself, respect for other people, and respect for all forms of life and the environment.

Responsibility - Thinking before you act and being accountable for your actions, paying attention to others and responding to their needs. Responsibility emphasizes our positive obligations to care for each other.

Each employee agrees and pledges:

1. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.
2. To obey local, state and national laws, codes and regulations.
3. To support the principles of due process to protect the civil and human rights of all individuals.
4. To treat all persons with respect and to strive to be fair in all matters.
5. To take responsibility and be accountable for his or her actions.
6. To avoid conflicts of interest or any appearance of impropriety.
7. To cooperate with others to protect and advance the District and its students.

8. To be efficient and effective in the delivery of job duties.

* * *

V. CONDUCT REGARDING STUDENTS

As set forth in the Principles of Professional Conduct for the Education Profession in Florida, each employee:

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

91. The evidence demonstrates that Ms. Hankerson violated School Board Rule 6Gx13-4A-1.213, Code of Ethics.

92. Hence, the School Board demonstrated that just cause exists for the suspension, without pay, of Ms. Hankerson.

93. However, in terms of termination of Ms. Hankerson, mitigating factors should be considered. She has been a teacher with the School Board for 11 years and, prior to beginning with McMillan for the 2010-2011 school year, she has had no disciplinary action. Furthermore, during the 2010-2011 school year, she was going through a difficult divorce. Additionally, she was not in the classroom from October 22, 2010, through February 22, 2011, but in the Region's office, pending an investigation by the School Board's Civilian Investigative Unit. Under such circumstances, suspension, without pay, would be more appropriate than termination.

RECOMMENDATION

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

RECOMMENDED that the Miami-Dade County School Board enter a final order suspending Lavonda Hankerson, without pay, for the 2011-2012 school term and under other terms and conditions deemed appropriate by the Miami-Dade County School Board.

DONE AND ENTERED this 8th day of November, 2011, in Tallahassee, Leon County, Florida.



ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of November, 2011.

ENDNOTES

^{1/} One exhibit by the School Board (Petitioner's Exhibit numbered 16) was rejected.

^{2/} Ms. Hankerson was unable to quantify the amount of time for traveling from her residence, taking her children to school, and arriving at McMillan.

^{3/} The Absence from Worksite Directive contained an error in the total number of absences reported as LWOA.

^{4/} Three absences were included on the Summary for the CFR that were not included on the Absence From Worksite Directive: on September 9, 2010, a one-day absence of sick leave; on September 17, 2010, a one-day absence of leave without pay, authorized; and on February 21, 2011, a one-day absence of leave without pay, authorized. Additionally, the one-day absence of leave without pay, authorized, for November 19, 2010, was a one-half day absence of leave without pay, authorized, on the Summary for the CFR, instead of one-day absence of leave without pay, authorized, on the Absence From Worksite Directive.

^{5/} The Summary for the CFR included the five days of suspension on February 22, 23, 24, 25, and 28, 2011.

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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.