

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BREVARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 11-4310TTS
)
MARK OSTERMEIER,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on April 19 and 20, 2012, in Viera, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph R. Lowicky, Esquire
Glickman, Witters and Marrell, P.A.
The Centurion, Suite 1101
1601 Forum Place
West Palm Beach, Florida 33401-8104

For Respondent: Robert Charles McClain, Esquire
4910 Flora Drive
Melbourne, Florida 32934-7845

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists to terminate Respondent's employment with Petitioner based on alleged incompetence under section 1012.33, Florida Statutes (2011),^{1/} as defined by Florida Administrative Code Rule 6A-5.056;

and/or whether termination of employment is warranted because Respondent failed to correct performance deficiencies under section 1012.34(3).

PRELIMINARY STATEMENT

On July 27, 2011, Brian T. Binggeli, Ed.D., superintendent, notified Respondent, Mark Ostermeier, that termination of his employment was being recommended to the Brevard County School Board (the "Board"). At its meeting on August 9, 2011, the Board terminated Respondent's employment and canceled his professional service contract. Respondent timely requested a formal administrative hearing to contest the decision.

The Board forwarded the Petition to the Division of Administrative Hearings ("DOAH") on August 11, 2011, citing Respondent's request for a formal administrative hearing. At the final hearing, the Board called the following witnesses: Mark Ostermeier; Robin Novelli, principal at Bayside High School ("Bayside"); Susan Santell, art teacher; Joseph Capalbo, guidance counselor; Leah Butler, teacher; Jasmine DeLaughter, dean at Bayside; Jennifer Sullivan, career academy coordinator; John Small, assistant principal; Janice Frye, teacher; Margaret O'Connor, teacher; Norma Hostetler, principal at Lockmar Elementary School ("Lockmar"); and Joy Salamone, director of human resources at Bayside.^{2/} The Board's Exhibits 1 through 45, 48 through 64, and 66 through 68 were admitted into evidence.

Respondent testified on his own behalf and called the following additional witnesses: J.M., parent of a student; G.K., parent; John Hays, peer mentor teacher; and John Tuttle, principal at Heritage High School. Respondent offered Exhibits 1, 2 and 164 into evidence, each of which was accepted. (All hearsay evidence was admitted subject to corroboration by competent, non-hearsay evidence. To the extent such hearsay was not corroborated or not used to substantiate other competent evidence, it will not be used as a basis for any finding herein.)

The parties advised the undersigned that a transcript of the final hearing would be ordered. The parties requested and were given 30 days from the date the transcript was filed at DOAH to submit proposed recommended orders (PROs). The Transcript was filed at DOAH on May 15, 2012. The Board timely submitted its PRO on June 14, 2012; Respondent's PRO had not been filed as of the date of this Recommended Order. The Board's PRO was given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon the evidence and testimony presented at final hearing, the following Findings of Fact are made:

1. The Board is responsible for hiring, firing, and overseeing all employees at Bayside, Lockmar, and other schools in Brevard County.

2. At all times relevant hereto, Respondent was an art teacher in the Brevard County school system. Respondent worked at several different schools in Brevard County, including Bayside, Lockmar, Sea Park Elementary, Endeavor Elementary, and Indialantic Elementary. He taught at Bayside from 2003 until 2010, and then was transferred to Lockmar for the 2010-2011 school year. Respondent was given an annual evaluation each year at the school where he was teaching. Annual evaluations are used for the purpose of reviewing and critiquing a teacher's performance in the classroom. An annual review determines whether the teacher is "effective," "needs improvement," or "unsatisfactory" for the school year at issue.

3. While at Bayside, Respondent's annual evaluations were generally "effective," meaning he was teaching in a fashion deemed satisfactory by the administrators. Mr. Tuttle, the principal, considered him an effective teacher, but he did not personally perform Respondent's evaluations. The evaluation for school year 2007-2008 was somewhat restrained in nature, describing Respondent as "an effective art teacher who satisfies all teacher competencies" and that he "demonstrates an acceptable level of knowledge of the subject matter."

4. In the 2008-2009 school year at Bayside, the new principal, Mr. Novelli, began to have doubts about Respondent's teaching abilities and also about his mental health. Several

incidents were reported to Novelli concerning Respondent that made Novelli very concerned. As a result, Novelli began to keep an eye on Respondent and did more frequent "walk-throughs" of Respondent's classroom. Walk-throughs by administrators are an accepted means of gathering information about the teacher and his or her teaching practices.

5. At the end of the 2008-2009 school year, Respondent was given an evaluation that deemed him "effective" as to his overall performance as a teacher. The evaluation describes Respondent in exactly the same words used in the prior year's evaluation form. The effective evaluation was issued despite an incident that occurred at the end of the school year, to wit: The parent of a student contacted Novelli and reported that Respondent had kept the student's art project, refusing to return it to the student. Respondent told Novelli that he kept the project because the student had failed to pay for a canvas; Novelli found that excuse to be inaccurate. The parent said Respondent had asked the female student to pose for him after school and had given the student his cell phone number. Novelli ordered Respondent to return the art project, which he did. Respondent then allegedly began asking other students if the art student was pregnant. When Novelli asked Respondent about the student, Respondent became "very hostile, very loud, very emotional, and [he] started yelling, 'I'm not a pedophile; I don't sleep with my students; I

don't do drugs, you can call the American Fence Company and ask them. I've had a drug test with them.'" These unsolicited, random comments by Respondent caused Novelli even greater concern about Respondent's mental well-being.

6. The next school year, 2009-2010, Novelli did an interim evaluation of Respondent. Interim evaluations are done when administration believes a teacher is struggling or having serious issues which impede his or her performance. The interim evaluation was done at the end of October 2009 and indicated several areas of unsatisfactory performance by Respondent, including: Planning; Instructional Organization and Development; Presentation of Subject Matter; Responsibilities; and Student Evaluation. Respondent refused to sign the evaluation form, even though a signature does not equate to acceptance of the evaluation, it simply acknowledges that the evaluation has been discussed with the teacher (which it had been).

7. Principal Novelli observed Respondent's classroom on several occasions and found the activities going on to be inconsistent with the lesson plans for that day. Respondent explained that the words he had written on the white board (in one case, the words "Van Gogh") were his lesson plan for the day. That was not acceptable, because lesson plans should be sufficient for another teacher to utilize to teach the class in the regular teacher's absence.

8. Some of the problems in the area of responsibilities noted in the interim evaluation were: failing to timely provide administration with a list of students who could be identified as advanced placement candidates; failing to provide acceptable contributions of his students' art work for a poster design contest; and failing to submit art work for a proposed field trip timely and appropriately.

9. Respondent was found to have a difficult time communicating with school administrators, guidance personnel, and fellow teachers. It became abundantly clear at final hearing that Respondent would be as uncooperative and recalcitrant as possible when talking to people he did not like. His demeanor demonstrated a strong resentment of his principal and others from Bayside.

10. In the area of student evaluations, Respondent was found to have failed to provide daily participation grades to his students, despite saying he would do so in his course outline. All of his students received an "A" grade for one nine-week period. Novelli found those grades to be inconsistent with the observations he had made in the classroom.

11. As for instructional organization, Novelli observed no substantive instruction going on during his classroom visits. Respondent explained that students were free to stay busy working on projects discussed in prior classes, so it might appear to an

outside observer that they were not being instructed. However, there was insufficient evidence produced to substantiate Respondent's position in that regard.

12. A Professional Development Assistance Plan (PDAP) was created for each of the areas of concern set forth in the interim evaluation. PDAPs are tools used to assist struggling teachers to find a way to overcome their shortcomings and improve in the areas of concern. On January 7, 2010, Novelli met with Respondent to go over the PDAPs and discuss Respondent's progress. Respondent refused to sign the PDAP forms. Thereafter, although he was given additional time to comply with the PDAPs' requirements, Respondent failed to follow all of the recommendations set out in the plans.

13. For example, one of the recommendations for assistance involved Respondent going to observe another art teacher in their classroom. Novelli wanted Respondent to observe an art teacher selected by the district resource teacher, but Respondent preferred to observe a teacher (Leah Andritz) with whom he already had a friendship. Novelli felt that Respondent's observing his friend teach would not be as helpful as watching someone Respondent did not know. Novelli offered Respondent paid time off to observe the school-chosen art teacher. Ultimately, Respondent went to observe Andritz on his own time, rather than accept Novelli's offer.

14. Respondent's annual evaluation was completed on February 12, 2010. Three areas (also called "strands") were graded as unsatisfactory: Instructional Organization and Development; Presentation of Subject Matter; and Student Response. The evaluation also graded Respondent as Needs Improvement in the areas of Planning and Responsibilities. The overall evaluation was unsatisfactory.

15. A meeting was set for February 18, 2010, to discuss the evaluation. Assistant Principal Capalbo, whom Respondent trusted, was sent to escort Respondent to Novelli's office for the meeting. On the way from Respondent's classroom to the principal's office--which took three or four times longer than usual, because Respondent was making phone calls along the way--Respondent called and spoke to his union representative. The representative then came to the meeting as well. Respondent made numerous derogatory remarks and complaints about Novelli on the way to the meeting. He said Novelli had tried to have him arrested, had vandalized his car, and had attempted to engage in sexual relations with a married teacher.^{3/} There is no credible evidence that any of the allegations were true, but they made Capalbo wonder if Respondent was having mental issues.

16. At the meeting, Respondent accused Novelli of recording a prior meeting by way of a USB pen. Respondent angrily threatened to file a lawsuit against Novelli and report him to

the superintendent of schools. Each of the attendees at the meeting who testified at final hearing said Respondent became very agitated and angry. The union representative (who did not testify at final hearing) was ultimately able to get Respondent under control and persuaded him to leave the meeting. No credible evidence was provided to prove the existence of a USB pen or that meetings had been recorded. Respondent again refused to sign the evaluation form.

17. As a result of Respondent's conduct at the meeting, Novelli placed him on paid administrative leave pending a review of his mental health and fitness for duty. He was on leave for about one week and returned after undergoing a psychological evaluation.

18. A significant dispute arose between Respondent and Novelli concerning an event known as National Portfolio Day. The event was a special opportunity for art students that allowed them to have their art reviewed and to speak with representatives from several colleges and art schools. Respondent had taken students to the event in prior years. In the 2009-2010 school year, Respondent requested permission to take a number of his students and students from other schools to the event. His request was preliminarily approved by administration, pending several details being worked out. However, the permission was

ultimately withdrawn, and no students from Bayside were allowed to attend.

19. Respondent claims that the event was a valuable tool for students and had allowed many students to obtain significant scholarships to colleges in prior years. Novelli found out that the students from other schools who were going to the event were Advanced Placement (AP) students. Bayside did not have an AP program or any AP students.^{4/} Novelli asked Respondent to put together portfolios for the students he wanted to attend, and Novelli would get the artwork examined by an expert to see if the students were viable candidates for the event, even if they were not technically AP students. Respondent was given a deadline to get the student art portfolios to Novelli so they could be taken to the district office by a date certain. Respondent missed the deadline. Instead, Respondent personally hand-delivered the portfolios to the district office on the day they were due. The artwork was reviewed by an art expert who deemed the work to be inadequate for inclusion in the National Portfolio Day event. She rated the art at the lowest level of a five-tiered rating system.

20. As a result of the art expert's review, Respondent was advised that no students from Bayside would be going to the event. Notwithstanding that decision being communicated to Respondent, he continued to act as if Bayside students would

still be attending. He continued making transportation arrangements and notifying students' parents of the impending event. There were several unexplained emails admitted in evidence that show some continuing dialogue about the portfolio trip. The emails addressing this issue create some confusion as to whether Bayside students would be able to attend, but ultimately none attended.

21. At the end of the 2009-2010 school year, Respondent was transferred to Lockmar. Although he had requested a transfer from Bayside, Respondent was extremely upset about the transfer. According to Respondent, he wanted to go to another high school where his former principal, Tuttle, was now the principal. The director of Human Relations Services, however, was told by Respondent's union representative that Respondent wanted to go to an elementary school. Tuttle said that his school's position had already been filled anyway.

22. The principal at Lockmar (Hostetler) did not know at the time of the transfer that Respondent had received an unsatisfactory performance evaluation for his last year at Bayside. When she found out, she issued a memorandum (dated August 5, 2010) informing Respondent that he was on probation for a period of 90 days. The probation status, also called performance review, is essentially the same thing as a procedure called NEAT, except that a performance review is supposed to be

completed within 90 days. That is, the teacher has 90 days to show improvement in the delineated areas of concern. It is not uncommon for a teacher to be placed on performance review following an unsatisfactory annual evaluation.

23. As part of the performance review process, Hostetler frequently went into Respondent's classroom to observe his teaching style. Her visits would last the majority of the class period. She would visit classes of different grade levels and students in order to see how Respondent handled various age groups. After approximately eight weeks of reviewing Respondent, Hostetler issued an interim evaluation. That evaluation rated Respondent unsatisfactory in four areas and needs improvement in another area.

24. Once again, Respondent was deemed to have unsatisfactory lesson plans. His instructional organization and development was again deemed deficient, as well as his presentation of subject matter. Further, he was found to be unsatisfactory in the area of responsibilities under the professionalism strand. The overall evaluation for Respondent was unsatisfactory.

25. The evaluation was reviewed with Respondent on October 1, 2010, but he refused to sign it. On that same date, a number of PDAPs were created to help Respondent address his deficiencies. Respondent was given until December 10, 2010, to

take steps to improve in the various areas. Later, when it became clear that he would not be able to meet that deadline, the PDAPs were extended to February 18, 2011, then to March 18, 2011, and then extended again to March 23, 2011. At least one of the extensions was done because Respondent was preparing his classes for an upcoming art show.

26. On March 23, 2011, Hostetler completed Respondent's annual evaluation. It included three unsatisfactory scores and two scores of needs improvement. The overall evaluation was unsatisfactory, his second unsatisfactory evaluation in two years. Once again, Respondent refused to sign the evaluation form.

27. There was considerable testimony and evidence presented at the final hearing concerning Respondent's tenure at Indialantic Elementary School from 1998-2002, some ten years prior to the final hearing. In his last performance evaluation at Indialantic, Principal Strong had given Respondent an overall unsatisfactory ranking. Although Respondent's performance at a different school so many years prior to the instant allegations may not be dispositive of anything in this case, it is noted that Respondent's administrators at that time had many of the same concerns as those raised by Novelli and Hostetler years later.

28. Besides the on-going issues with less than satisfactory performance ratings, Hostetler had other concerns about

Respondent as well. One issue had to do with Respondent sending children outside the classroom and instructing them to "look for dinosaurs." His intention was to keep the children from disrupting the class by their bad behavior. The instruction to look for dinosaurs was just a way of making the student sit and contemplate their behavior. Respondent claims to have learned the technique during training he took through a program called Sun Coast Area Teacher Training. Respondent maintains that he kept visual surveillance of the children when they were outside; the teacher in the adjoining classroom said he could not really do that and maintain contact with his other students. Nonetheless, it does appear that the children were belittled by their peers when they were sent outside to look for dinosaurs.

29. Lockmar had been asked to take part in a contest sponsored by the local police department. Students were to draw pictures within certain parameters that would allow the pictures, if chosen, to be converted to magnets or other items. Respondent was supposed to have the children draw pictures related to a theme of policemen as peace keepers, then select appropriate pictures to submit for consideration by the judges of the contest. Respondent did have his children make drawings, but almost all of them failed to meet the stated size and content parameters. He then asked personnel in the front office to voice their opinion as to which drawings he should submit. Feeling

uncomfortable making a decision such as that, the staff handed the drawings over to Hostetler. She ultimately found only three or four worthy of submission for the contest.

30. Hostetler received complaints from other teachers that their students were not ready to leave the art classroom in a timely fashion. They complained that Respondent did not have them ready to go when the art period ended. Hostetler issued a memorandum to Respondent about addressing that issue appropriately.

31. During the period of time Respondent was under performance review and addressing the PDAPs, he was assigned a peer mentor teacher, John Hays, to assist him deal with deficiencies. Hays worked with Respondent from September 2010 through May 2011, including approximately 15 on-site visits to the classroom and one visit with Respondent to another school's art classroom. Respondent made a few improvements during the time Hays worked with him, including upgrading the kiln, putting student drawings in the front office, and becoming more cooperative with others.

32. However, Hays found that the classroom, as managed by Respondent, was not conducive to learning. The lesson plans did not comport with what was going on in the classroom, even though Respondent usually had an explanation for that, e.g., a special project was coming up and students needed to pay more attention

to it than to what the lesson plan described. Hays seemed to doubt whether Respondent's reasons or explanations were entirely truthful. All in all, Hays did not see significant improvement by Respondent in most of the problem areas that were being addressed.^{5/}

33. When Respondent left Lockmar, he was given the opportunity to retrieve all his personal property. At the beginning of the next school year, the new teacher in the art room discovered several pictures belonging to Respondent in the pod (office area) adjacent to the classroom. Some of the pictures were somewhat disturbing to the new teacher, so she turned them over to her principal, who turned them over to the School Board security office. The pictures depicted a person who looked much like Respondent and contained words and images that were not appropriate for elementary school-aged children (and possibly not even high school-aged children). Respondent testified that some of his high school students had made the drawings, but he would not say that the pictures were supposed to depict him (despite one being labeled "The Mighty O." Respondent was often referred to by students and teachers as "O.") Respondent admitted that the drawings were not appropriate for viewing by young children. There is, however, no evidence that any elementary school children ever saw or had access to the pictures.

34. Respondent made some extremely unusual allegations about his prior principals, Strong and Novelli. He said Strong was responsible for Respondent's girlfriend having a miscarriage, that Strong had intentionally caused that to happen, and that he was afraid Strong may do the same thing to someone else. He said Strong had tried to poison him by placing contaminated mulch around his portable classroom building. He said Novelli had caused him to be arrested by sabotaging Respondent's car so that he would be pulled over by police and illegally searched. He made the allegation about Novelli secretly recording meetings. He alleged that Novelli was involved in either killing or damaging the careers of teachers he did not like. Respondent requested leave to pursue a doctorate degree, but the leave was denied. Immediately thereafter, Respondent re-filed his leave request, citing medical issues. He said he used the leave to, in part, pursue his doctorate, but did not adequately explain the suspicious request for medical leave. The leave request was supported by a note from a chiropractor indicating Respondent had back problems. The note did not verify Respondent's allegation that Strong was poisoning him at Indialantic (a claim raised in Respondent's deposition and final hearing testimony).

35. There was no credible evidence to support the various claims Respondent made against his administrators, leaving the impression that the allegations are baseless. However, there was

no direct showing by the School Board as to how these incredible stories directly affected Respondent's capabilities as a teacher.

36. Respondent showed that he could be evasive and obstinate concerning the admission of even the least significant facts. He seemed reluctant to engage in conversation that was not full of innuendo, suggestion, or intrigue. For example, when asked whether he really believed his principal would vandalize his car (as Respondent had alleged), Respondent answered, "Because other teachers in the district, you know the Greek mythology Cassandra, how Cassandra would foretell the future? Other teachers in the district, as the Greek mythologist Cassandra, would forewarn me of Mr. Novelli's prior actions." When asked repeatedly if he believed another principal was interfering with his purchase of a building, Respondent replied, "I was very cautious with the information." When asked what that meant, he said, "It was worth investigating and finding out more." When asked if Principal Strong was responsible for Respondent's girlfriend losing her baby, he responded, "My answer to that is it's an unfortunate situation" and "I have a child that I wish was born and because of the politics, it is not here."

37. Other than Tuttle's restrained endorsement of Respondent, no fellow teachers or administrators were presented to prove or suggest that Respondent could work well with others.

Hays said Respondent was cordial to him, but he was not a co-worker or administrator.

38. Respondent seems to be very eager to assist his students as they prepare for life after grade school. He seems to enjoy teaching and wants to return to the classroom. At least two parents of his former high school students endorsed Respondent as an important reason for their child's success. Respondent said he had helped some students obtain scholarships to assist with their college education, although there was no substantive proof of that fact. In his written response to the 2009-2010 evaluation, Respondent stated he would "produce over \$300,000 . . . in independent scholarships for [his] students." Although he testified several times about the scholarships he could generate for his students, there was no credible evidence to support his assertion. (The response to his evaluation was well written and rational. It was not comparable to Respondent's way of orally expressing himself, at least as evidenced by his testimony at the final hearing.)

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to a contract with the Brevard County School Board. The proceedings are governed by sections 120.57 and 120.569, Florida Statutes.

40. The superintendent of schools for Brevard County has the authority to recommend to the School Board that an employee be suspended or dismissed from employment for just cause. §§ 1012.22(1)(f) & 1012.33(6).

41. The burden of proof in this proceeding is on the School Board to prove, by a preponderance of the evidence, that just cause exists to suspend or terminate the employment of Respondent. 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).

42. The School Board has discretion to set standards which subject an employee to discipline. See Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217 (Fla. 2nd DCA 1994). Nonetheless, just cause for discipline must rationally and logically relate to an employee's conduct in the performance of the employee's job duties and be concerned with inefficiency, delinquency, poor leadership, lack of role modeling, or misconduct. State ex rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948); In re Grievance of Towle, 665 A. 2d 55 (Vt. 1995).

43. Section 1012.33(1)(a) states in part:

[J]ust 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, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of

unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, 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.

44. Rule 6A-5.056 sets out the criteria for suspension or dismissal of a teacher. The rule describes incompetency as "inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity." The rule goes on to define inefficiency, in part, as "repeated failure to perform duties prescribed by law"

45. Specifically, the School Board is alleging that Respondent is not a competent teacher and that his students were not receiving the minimal education required by Florida law. It proved that fact by showing that Respondent was found to have unsatisfactory annual performance evaluations for two consecutive years. Further, despite various assistance provided to him, Respondent did not improve significantly in the areas cited as deficient teaching practices.

46. Florida Administrative Code Rule 6B-1.001 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.

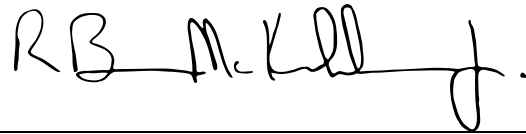
47. The fantastic and bizarre allegations made by Respondent against fellow teachers and administrators indicate unwillingness on his part to work well with others. That sort of behavior by Respondent constitutes just cause for termination of his employment. Further, his refusal to follow direct orders and meet deadlines is evidence of his insubordinate behavior.

48. Courts have also found just cause to support discharge of an employee where the employee violates a universal standard of behavior that an employer has the right to expect from its employees. See Autoliv ASP, Inc. v. Dep't of Workforce Servs., 29 P.3d 7 (Utah Ct. App. 2001). The description of Respondent by his former principals and co-workers indicate a deviation from the standard of behavior that schools in Brevard County have a right to expect.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Petitioner, Brevard County School Board, terminating the employment of Respondent, Mark Ostermeier, for just cause.

DONE AND ENTERED this 25th day of June, 2012, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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 25th day of June, 2012.

ENDNOTES

^{1/} Unless stated otherwise herein, all references to Florida Statutes will be to the 2011 version.

^{2/} The deposition transcript of Marion Strong, former principal, was introduced in lieu of live testimony.

^{3/} The latter allegation was supposedly corroborated by the teacher's husband, who was a pilot. The husband supposedly flew an airplane over his house and saw Novelli preparing to have sex with the husband's wife.

^{4/} One of the reasons Bayside did not have an AP program was that Respondent had been dilatory in providing names of students who might be potential candidates for an art AP program.

^{5/} It should be noted that Hays was called as a witness by Respondent; his somewhat damaging testimony was thus given more weight than had he been called as a School Board witness.

COPIES FURNISHED:

Dr. Brian Binggeli, Superintendent
Brevard County School Board
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

Gerard Robinson, Commissioner
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Charles M. Deal, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Joseph R. Lowicky, Esquire
Glickman, Witters and Marrell, P.A.
The Centurion, Suite 1101
1601 Forum Place
West Palm Beach, Florida 33401-8104

Robert Charles McClain, Esquire
4910 Flora Drive
Melbourne, Florida 32934-7845

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.