

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH,)
AS COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 11-4422PL
)
EDNA BOWMAN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 31 and November 18, 2011, a duly-noticed hearing was held by video teleconference in Jacksonville and Tallahassee, Florida, before Lisa Shearer Nelson, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. David Holder, Esquire
J. David Holder, P.A.
40 Grand Flora Way
Santa Rosa Beach, Florida 32459

For Respondent: Edna Bowman, pro se
1043 Talbot Avenue
Jacksonville, Florida 32205

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent has violated section 1012.795(1)(c) and (j), Florida Statutes (2007), and Florida Administrative Code Rule 6B-1.006(3)(a) and (5)(e), as alleged in the Administrative Complaint, and if so, what penalties should be imposed?

PRELIMINARY STATEMENT

On April 19, 2011, Petitioner, Dr. Eric Smith as Commissioner of Education (Petitioner), filed a four-count Administrative Complaint against Respondent, Edna Bowman (Respondent or Ms. Bowman), alleging that she violated section 1012.795(1)(c) and (j), and rule 6B-1.006(3)(a) and (5)(e). On May 23, 2011, Respondent filed an Election of Rights form disputing the allegations in the Administrative Complaint and requesting a hearing pursuant to section 120.57(1), Florida Statutes. On August 31, 2011, the matter was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

On September 13, 2011, a Notice of Hearing was issued scheduling the case for hearing on October 31, 2011, by video teleconference. The case proceeded as scheduled, but could not be completed in one day. The remainder of the case was scheduled for and completed on November 18, 2011.

At hearing, Petitioner presented the testimony of Addison Davis, John Williams, and Leslie Sarjeant. Petitioner's Exhibits 1-10 and 12-72 were admitted into evidence. Respondent chose not to testify, but Respondent's Exhibits 2-6, 8-13, 15, 24-27, 29-31, 35, and 43 were admitted into evidence. Ruling on the admissibility of Respondent's Exhibit 1 (excerpts from Duval County School District's Collective Bargaining Agreement) was deferred for ten days after the final day of hearing in order to

enable Respondent to submit a complete exhibit. On November 23, 2011, Respondent filed a portion of the Collective Bargaining Agreement, marked as P-22, with a partial list of Exhibits from the Prehearing Statement in Duval County School Board v. Bowman, Case No. 09-3004 (Fla. DOAH Jan. 12, 2010; DCSB Mar. 15, 2010). She explained in her filing that she was not able to obtain a certified copy of the relevant Collective Bargaining Agreement, but was submitting a copy of the School Board's exhibit from her hearing related to her termination of employment from the Duval County School District (DCSD). Respondent's Exhibit 1 is admitted.

On December 9, 2011, the two-volume transcript of the proceedings was filed with the Division. Both parties timely filed Proposed Recommended Orders, which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent is a teacher licensed by the State of Florida, and has been issued Florida Educator's Certificate 400054. Her certification covers the areas of history, physical education, social science, and middle grades, and is valid through June 30, 2014.

2. Respondent was employed by the DCSD since 1981, and taught at several different schools during her employment. During the 2007-2008 school year, she was employed as a geography teacher at Jefferson Davis Middle School (Jefferson Davis).

During the 2008-2009 school year, she taught geography at Southside Middle School (Southside).

3. The allegations in this proceeding concern Respondent's behavior during and professional evaluations with respect to the 2007-2008 and 2008-2009 school years.

4. During this period, the DCSD used the Teacher Assessment System (TAS) as the authorized method of evaluating teacher performance. The TAS measures teaching performance based on nine identified "competencies," which are as follows:

- A. Promotes student growth and performance;
- B. Evaluates instructional needs of students;
- C. Plans and delivers effective instruction;
- D. Shows knowledge of subject matter;
- E. Utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline;
- F. Shows sensitivity to student needs by maintaining a positive school environment;
- G. Communicates with parents;
- H. Pursues professional growth; and
- I. Demonstrates professional behaviors.

5. A teacher's evaluation was based upon two formal classroom observations performed by a school administrator, which was usually the principal or an assistant principal. The teacher was afforded a pre-observation conference at which time the date for the observation was selected and the lesson plan to be taught during the observation was discussed. After the observation, there was a post-observation conference where the administrator's observations, which were recorded on a Teacher Assessment Instrument (TAI) were discussed. In addition to the formal

evaluations, administrators also could use informal, unannounced observations of teachers in forming their opinions regarding performance.

6. In the final evaluation conference with a teacher, a form entitled Evaluation of Professional Growth of a Teacher was used to document the instructor's final rating in each competency area and to record the teacher's overall performance rating for the school year.

7. If a teacher demonstrated deficient performance in one or more competency areas, a "success plan" was developed for the teacher in an effort to assist the teacher in improving performance. The elements of the success plan were developed by a success team, typically composed of the teacher, school administrators, teachers with expertise in the relevant subject matter area, and resource teachers or "coaches." These elements, which were developed with input by the teacher being assisted, identified weaknesses by competency category, set out objectives to address these weaknesses, and provided timelines to meet the identified objectives.

8. Addison Davis was the principal at Jefferson Davis from December 2005 through August 2009. He was the principal responsible for evaluating Respondent's performance during the 2007-2008 school year.

9. On August 28, 2007, Mr. Davis conducted an informal "walk through" of Ms. Bowman's classroom. He observed that although the students had been instructed to read, 16 out of 23 of them did not have a book and were doing nothing. Ms. Bowman did nothing to provide these students with a book, and after 21, 31, and 37 minutes of class time respectively, Mr. Davis noted that no instruction had yet taken place. During the "mini-lesson," Ms. Bowman was asking questions and the students were yelling out unison responses, a practice which is not considered an effective teaching method. Mr. Davis's notes regarding the walk-through observation included the following observations:

Instructor informed that "the quieter the class, the more hall passes were given out."
Instructor asked questions and students were talking about unrelated topics . . . No evidence of learning taking place.
No daily objectives were extended.
Essential questions and vocabulary were not extended.
Standards were not introduced.
I asked the instructor for a lesson plan and one was not provide. [sic] Instructor said, "I don't have one."
Student called Mrs. Bowman Ms. Bowwow.
I had to address the class about gross respect.

10. Mr. Davis observed no implementation of best practices and saw significant classroom management problems.

11. Mr. Davis conducted a formal observation of Ms. Bowman on September 20, 2007, for which appropriate prior notice had been provided. The TAI completed for this observation indicated

that all competencies were satisfactory with the exception of one area: plans and delivers effective instruction.

12. Mr. Davis met with Ms. Bowman on September 26, 2007, to go over her TAI. He also spoke to her about calling him a dictator in the teacher's lounge at some point before the meeting. During this conversation, Mr. Davis spoke to Ms. Bowman about developing a success plan for her. Although Ms. Bowman signed her TAI, she informed Mr. Davis that she felt she was being targeted.

13. A success plan meeting was scheduled for Wednesday, October 24, 2007. On October 22, 2007, Mr. Davis went to the cafeteria to remind Ms. Bowman, out of the hearing of students, of the meeting scheduled for later that week. Ms. Bowman stated that she did not have adequate time to arrange for a union representative, and while the two left the cafeteria, continued to express her feeling that she was being targeted. By the time Ms. Bowman and Mr. Davis reached the front office, she was yelling at Mr. Davis in the presence of students and staff, and accusing him of harassing her. When Mr. Davis advised her that she was acting unprofessionally, Ms. Bowman called him a liar.

14. Approximately 30 minutes later, Mr. Davis called Ms. Bowman to his office to counsel her regarding her professional responsibilities. Ms. Bowman continued to claim she was being harassed, and Mr. Davis told her they needed to move forward. In response, Ms. Bowman told Mr. Davis she was not

going to "kiss his ass" and walked out, still yelling at him. As a result of these incidents, Ms. Bowman received a written reprimand on October 23, 2007, considered step two discipline for the DCSD. Step one discipline had been imposed for a prior incident during the 2007-2008 school year.

15. Ms. Bowman did not attend the success plan meeting scheduled for October 24, 2007.

16. Despite her refusal to participate, Respondent was placed on a success plan which was implemented on or about November 3, 2007. Ms. Bowman made it clear that she would not participate in completing the success plan, despite repeated encouragement to do so. She refused to attend meetings and completed none of the identified objectives. A revised success plan dated January 18, 2011, was prepared, which reflected that none of the strategies were completed. Ms. Bowman refused to sign the revised success plan and continued to claim that she was being targeted.

17. On December 10, 2007, Mr. Davis conducted an observation of Ms. Bowman, for which she had received notice November 27, 2007. As a result of this observation, Mr. Davis found that Ms. Bowman did not meet the competencies for promotes student growth and performance; plans and delivers effective instruction; and shows knowledge of subject matter. Mr. Davis was especially concerned that during his observation, two students were sleeping, and a third was wearing a hood on her

head, which is prohibited. In addition, a significant portion of class time was focused on Sojourner Truth and the role she played in America's history. Teaching about Sojourner Truth, while relevant to geography in terms of cultural change, did not align with the pacing guide for teaching middle school geography at that point in the semester.

18. On January 18, 2008, Ms. Bowman met with Mr. Davis regarding her December 10, 2007, observation, which they had discussed previously on January 2, 2008. A success team meeting was scheduled to occur after Ms. Bowman's meeting with Mr. Davis. During this initial meeting, Mr. Davis provided to Ms. Bowman a Notice of Potential Unsatisfactory Evaluation. Ms. Bowman became very upset during the meeting with Mr. Davis. She started yelling and could be heard by those staff members in the office area, calling Mr. Davis a liar and insisting that he was targeting her.

19. Ms. Bowman refused to participate in the success plan meeting, continuing to insist that she was being targeted and harassed. Shortly after the meeting, Ms. Bowman returned to the office to say that she was leaving because she did not feel well. She called Mr. Davis a "son of a bitch" and said that "If I go down, then I am taking him with me."

20. As a result of her behavior on January 18, 2008, on February 4, 2008, Ms. Bowman received another written reprimand as step three of the progressive discipline plan employed by the

DCSD, and the Office of Professional Standards was notified.

Ms. Bowman refused to sign the letter of reprimand.^{1/}

21. An additional formal observation was conducted on January 30, 2008, by Tiffany Torrence, an assistant principal at Jefferson Davis. The TAI prepared for the observation indicated that competencies were not demonstrated for the following areas: promotes student growth and performance; evaluates instructional needs of students; plans and delivers effective instruction; and demonstrates professional behaviors.

22. On March 3, 2008, Ms. Bowman received an unsatisfactory evaluation for the 2007-2008 school year. The evaluation reflected unsatisfactory ratings for the competencies of promoting student growth and performance; planning and delivering effective instruction; and demonstrating professional behaviors. She received a "needs improvement" for the competency of evaluating instructional needs of students.

23. On May 7, 2008, John Williams, Director of Professional Standards for the DCSD, notified Ms. Bowman that, consistent with DCSD policy, in light of her unsatisfactory evaluation she had the right to elect to stay at Jefferson Davis or be reassigned to another school for the following school year. Failure to make an election by May 16, 2008, on the form provided would result in the automatic transfer to another school.

24. Ms. Bowman did not submit the form and was transferred, consistent with DCSD policy, to Southside Middle School for the 2008-2009 school year.

25. The principal for Southside during the 2008-2009 school year was LaTanya McNeal. In light of Ms. Bowman's unsatisfactory evaluation the previous year, and her own preliminary observations of Ms. Bowman, she initiated a professional development plan for Ms. Bowman on August 28, 2008.

26. The plan identified four areas of focus: 1) to effectively create and maintain a standards-based bulletin board; 2) to effectively create and maintain a standards-based classroom environment; 3) to consistently develop plans based on student data; and 4) to effectively maintain student portfolios with work that meets the outlined standards according to the department checklist. The plan also provided certain goals and timelines for completing these goals, including the continued maintenance of daily lesson plans that reflect the workshop model.

27. Ms. Bowman refused to sign the professional development plan.

28. Ms. Bowman was informally observed on September 5, 2008, and September 24, 2008, with notice provided prior to the observations. Neither observation could be characterized as successful. The Teacher Observation Follow-up Form completed on September 25, 2008, included the following:

- Teacher must have daily lesson plans and workshop model for social studies on her board.
- Must have daily writing prompts
- Portfolios (student) must be maintained consistently.
- Per teacher has a problem with the support (amount) that is provided [Instructional coach, Department chair, Professional Development Facilitator and administrator].

29. On October 22, 2008, Ms. McNeal conducted a formal observation of Ms. Bowman, for which notice was provided. The TAI prepared as a result of the observation indicated in part that there was no evidence of student portfolios and that the students' folders were empty. There was no evidence of differentiated instruction or use of data to guide instruction; portfolios showed no evidence of work artifacts. The form also indicated that one student was sleeping, and Ms. Bowman yelled at him to wake up once someone came to retrieve him from class. In addition, the class was in disarray with Ms. Bowman engaging in shouting matches with the students. It was noted that Ms. Bowman had not initiated any parent/teacher conferences for academic or behavioral reasons.

30. The TAI indicated deficiencies in the following competencies: promotes student growth and performance; evaluates instructional needs of students; plans and delivers effective instruction; utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline; shows sensitivity to student needs by maintaining positive school environment; communicates with parents; and

demonstrates professional behaviors. Ms. Bowman did not accept the TAI, and wrote on it that "principal did not tell the truth and was unfair and misleading."

31. On October 28, 2008, Ms. Bowman was provided a Notice of Potential Unsatisfactory Evaluation, with competencies A, B, C, E, F, G and I listed as needing improvement. The Notice notified her that a success plan would be developed with her input and collaboration, with a conference to be held on November 3, 2008. Ms. Bowman refused to sign the Notice.

32. On November 3, 2008, the success team met with Ms. Bowman in attendance, and a success plan was developed. The success plan included the concerns outlined in the professional development plan and focused on data-driven instruction, use of student portfolios, assessment of student needs, measurement and explanation of student progress, and use of the CHAMPS program, which is a classroom management program used throughout DCSD.

33. Consistent with DCSD policy, a success team was created that included Principal McNeal, other administrators, Ms. Bowman, a reading coach, and an instructional coach.

34. In contrast to the experience at Jefferson Davis, Ms. Bowman at least attended the success plan meetings. Consistent with the objectives outlined in the success plan, Ms. Bowman was provided training and technical support for Compass Odyssey and FCAT Explorer, which are computer programs used to assess student needs and to track student progress.

However, Ms. Bowman did not use the programs in her teaching and rejected the concept of individualized instruction based on student needs. She did not implement a portfolio system and declined to observe another teacher conducting a parent-teacher conference. As of January 30, 2009, Ms. Bowman had not submitted a five-day lesson plan, which is required of all teachers, despite that fact that the school year was over half-way completed. While Ms. Bowman claimed that she knew how to conduct parent-teacher conferences, Ms. McNeal had received numerous calls from parents upset about the grades received in Ms. Bowman's classes, and the lack of contact with Ms. Bowman.

35. Ms. Bowman continued to complain that she was being singled out and that the success plan was merely a pretext to justify her termination. Although the success plan was deemed "completed" on February 25, 2009, Ms. Bowman did not incorporate the concepts identified in the success plan into her classroom instruction. To the contrary, it appears that Ms. Bowman's instructional methods did not change at all.

36. Ms. McNeal conducted another formal observation of Ms. Bowman on March 11, 2009, in the afternoon. FCAT testing had taken place earlier in the day and Ms. Bowman thought it unfair to be observed on that day. However, she designated the date for observation during her pre-observation conference on March 6, 2011. The TAI indicates that competencies were not satisfactory for the following competencies: promotes student growth and

performance; evaluates instructional needs of students; utilizes appropriate classroom management techniques; shows sensitivity to student needs by maintaining positive school environment; and communicates with parents.

37. Ms. McNeal noted on the TAI that a recent grade printout showed high levels of D's and F's for Ms. Bowman's students. For example, the printout dated March 5, 2009, indicated that out of 16 students in her first period class, five students had F's and two had D's. Of the 24 students in her second period class, 13 were failing and two had D's.

38. Ms. Bowman was offered significant assistance to improve her performance. Ms. Bowman attended training opportunities on 14 school days where substitutes were arranged to handle her teaching duties. She was also offered the assistance of instructional and reading coaches, which she consistently rejected.

39. On March 13, 2009, Ms. McNeal issued an Evaluation of Professional Growth of Teacher for Ms. Bowman. The overall evaluation resulted in an unsatisfactory rating, with unsatisfactory ratings in the following competencies: promotes student growth and performance; evaluates instructional needs of students; utilizes appropriate classroom management; shows sensitivity to students by maintaining positive school environment; and communicates with parents. Ms. Bowman was rated

as needing improvement in the areas of planning and delivering effective instruction and demonstrating professional behaviors.

40. Ms. Bowman signed the evaluation but indicated that she did not accept it, noting that her observation was conducted on a day of FCAT testing. Ms. Bowman attacked the credibility of the principals at both Jefferson Davis and Southside, stating that they were targeting her and retaliating against her. However, no credible evidence was presented to show any basis for Mr. Davis or Ms. McNeal to retaliate against her. Moreover, as noted in the Recommended Order in Duval County School Board v. Bowman, Case No. 09-3004 (Fla. DOAH Jan. 12, 2010; DCSD Mar. 15, 2010), Respondent's work history indicates a pattern of blaming others for poor evaluations.

41. On May 5, 2009, Respondent was notified by the Superintendent of Schools for DCSD, that based upon her two successive unsatisfactory evaluations, he was recommending that her employment be terminated. Ms. Bowman requested a hearing pursuant to chapter 120, and the case was referred to the Division of Administrative Hearings for assignment of an administrative law judge. After completion of a hearing, on January 12, 2010, a Recommended Order was issued recommending termination of Ms. Bowman's employment in Duval County School Board v. Bowman, Case No. 09-3004. A Final Order adopting the Recommended Order and terminating Ms. Bowman's employment was entered by the Duval County School Board on March 12, 2010.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2011).

43. This is a proceeding to discipline Respondent's educator certificate. Because disciplinary proceedings are considered penal in nature, Petitioner is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

44. As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005), (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

45. The Administrative Complaint alleges the following facts as a basis for imposing discipline:

3. During the 2007-2008 school year, the Respondent engaged in inappropriate and unprofessional behavior. Specifically:

(a) in October of 2007 the Respondent yelled, used profanity and called the school principal a liar in the presence of students, parents and school employees. The Respondent received a letter of reprimand for her conduct;

(b) on or about January 18, 2008, the Respondent shouted at the principal, referred to the principal as a "son of a bitch" and a liar, and used profanity while at a staff meeting. The Respondent received a letter of reprimand for her conduct; and

(c) throughout the school year the Respondent refused to participate in several meetings and activities related to her performance, including refusing to take part in the Success Plan implemented in November of 2007.

4. During the 2007-2008 school year, Respondent's performance was evaluated and found to be deficient in several areas. Specifically:

(a) on a Teacher Assessment Instrument issued September 20, 2007, the Respondent was rated "less than satisfactory" in the area of "Plans and Delivers Effective Instruction;"

(b) on a Teacher Assessment Instrument issued December 10, 2007, the Respondent was rated less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;
- (ii) Plans and delivers effective instruction; and
- (iii) Shows Knowledge of subject matter.

(c) on a Teacher Assessment Instrument issued January 30, 2008, the Respondent was rated "less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;

- (ii) Evaluates instructional needs of students;
- (iii) Plans and delivers effective instruction; and
- (iv) Demonstrates professional behaviors.

(d) for the Respondent's annual evaluation for the 2007-2008 school year, the Respondent failed to meet performance expectations and was rated "less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;
- (ii) Evaluates instructional needs of students;
- (iii) Plans and delivers effective instruction; and
- (iv) Demonstrates professional behaviors.

5. At the beginning of the 2008-2009 school year, the Respondent was transferred to Southside Middle School.

6. During the 2008-2009 school year, the Respondent's performance was evaluated and found to be deficient in several areas. Specifically:

(a) On a teacher Assessment Instrument issued October 22, 2008, the Respondent was rated "less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;
- (ii) Evaluates instructional needs of students;
- (iii) Plans and delivers effective instruction; and
- (iv) Demonstrates professional behaviors.

b. On a Teacher Assessment Instrument issued March 11, 2009, the Respondent was rated "less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;
- (ii) Evaluates instructional needs of students;
- (iii) Utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline;
- (iv) Shows sensitivity to student needs by maintaining a positive school environment; and
- (v) Communicates with Parents.

(c) for the Respondent's annual evaluation for the 2008-2009 school year, the Respondent failed to meet performance expectations and was rate "less than satisfactory" in the areas of:

- (i) Promotes student growth and performance;
- (ii) Evaluates instructional needs of students;
- (iii) Plans and delivers effective instruction;
- (iv) Utilizes appropriate classroom management techniques, including the ability to maintain appropriate discipline;
- (v) Shows sensitivity to student needs by maintaining a positive school environment;
- (vi) Communicates with Parents; and
- (vii) Demonstrates professional behaviors.

7. On or about May 5, 2009, Duval County Superintendent of Schools recommended that the Respondent be terminated from her employment. After a formal hearing, on or about March 2, 2010, the Duval County School Board issued a Final Order adopting the recommendation that she be terminated from her position.

8. The Respondent is in violation of Section 1012.53(1), Florida Statutes, in that the Respondent has failed to work diligently and faithfully to help students meet or exceed annual learning goals.

9. The Respondent is in violation of Section 1012.53(2), Florida Statutes, in that Respondent failed to perform duties prescribed by the rules of the district school board.

46. Petitioner has proven the factual allegations in paragraphs three through eight by clear and convincing evidence.

47. Petitioner did not prove, however, the allegation in paragraph nine. While substantial evidence was presented regarding Respondent's behavior, no rule of the district school board was submitted into evidence. Without evidence of a rule, there can be no determination that Respondent violated one.

48. Counts 1 and 2 of the Administrative Complaint charge Respondent with violating subsections 1012.795(1)(c) and (j), respectively, which provide:

Education Practices Commission; authority to discipline.-

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any

capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

* * *

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

* * *

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

49. Incompetency has been defined by rule 6B-4.009 as follows:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. . . . Such judgment shall be based on . . . evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical

ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

50. Petitioner has proven Count I by clear and convincing evidence.

51. Finding a violation of Count 2 is dependent on finding a violation of Count 3 or 4. As discussed more fully below, Petitioner has also proven a violation of Count 2 by clear and convincing evidence.

52. Counts 3 alleges that Respondent violated rule 6B-1.006(3) (a) and Count 4 alleges a violation of rule 6B-1.006 (5) (e). Rule 6B-1.006 provides in pertinent part:

6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.

(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.

* * *

(5) Obligation to the profession of education requires that the individual:

* * *

(e) Shall not make malicious or intentionally false statements about a colleague.

53. Respondent not only rejected attempts to assist her with improving her skills, but failed to communicate with parents whose children were failing her classes. The evidence shows that Respondent's students were not engaged in the learning process, were not receiving consistent instruction, and were not receiving instruction aligned to clearly delineated standards. Petitioner has proven Count 3 by clear and convincing evidence.

54. Finally, by calling Mr. Davis a liar and a "son of a bitch," and telling Mr. Davis she was not going to "kiss his ass," in front of staff and students, Respondent has violated the provisions of rule 6B-1.006(5)(e), and thus Count 4 of the Administrative Complaint.

55. The range of penalties identified in rule 6B-11.007 for the violations found include suspension to revocation. The undersigned has carefully considered whether the conduct alleged and proven in this case warrants the ultimate penalty, as opposed to a lesser penalty with a recommendation of rehabilitative efforts. However, the evidence indicates that Respondent has consistently rejected offers to assist her or to update her skills. Given her consistent rejection of attempts to assist her and insistence on blaming others, it seems futile to continue offering what Respondent adamantly refuses to accept. Under these circumstances, Petitioner's request for revocation of Respondent's teaching certificate seems appropriate. Whether

that revocation should be permanent should be left to the discretion of the Commission.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That the Education Practices Commission enter a Final Order finding that Respondent has violated the section 1012.795(1)(c) and (j), Florida Statutes, and Florida Administrative Code Rule 6B-1.006(3)(a) and (5)(e), and revoking her educator's certificate.

DONE AND ENTERED this 19th day of January, 2012, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
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 19th day of January, 2012.

ENDNOTE

^{1/} Evidence was presented to show that there were possible procedural deficiencies affecting Respondent's due process rights with respect to a 3-day suspension imposed by DCSD as part of step three discipline under the DCSD Collective Bargaining Agreement. While these procedural irregularities may be relevant to proceedings taken by DCSD related to Respondent's employment rights, this case is focused on whether Ms. Bowman's conduct should result in discipline against her professional teaching certificate. What notice and opportunity for hearing afforded to her with respect to the DCSD's step three discipline is not relevant to whether her conduct should result in discipline against her teaching certificate.

COPIES FURNISHED:

J. David Holder, Esquire
J. David Holder, P.A.
40 Grand Flora Way
Santa Rosa Beach, Florida 32459

Edna Jane Bowman
1043 Talbot Avenue
Jacksonville, Florida 32205

Kathleen M. Richards, Executive Director
Education Practices Commission
Department of Education
Turlington Building, Suite 224
325 West Gaines Street
Tallahassee, Florida 32399-0400

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

Marian Lambeth, Bureau Chief
Bureau of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
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.