

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 11-4933TTS
)
 WALITA MCBRIDE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011), before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on February 9, 2012, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire
Assistant School Board Attorney
The School Board of Miami-Dade
County, Florida
Suite 430
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Miami, Florida 33132

For Respondent: Randy Alan Fleischer, Esquire
8258 West State Road 84
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STATEMENT OF THE ISSUE

Whether Respondent committed misconduct in office and violated Miami-Dade School Board Rules, and, if so, whether such conduct constitutes just cause to dismiss her from employment as a teacher with Miami-Dade County Public Schools.

PRELIMINARY STATEMENT

On September 7, 2011, Petitioner, Miami-Dade County School Board, took proposed action to suspend Respondent, Walita McBride, without pay and to dismiss her from employment. Respondent timely requested a hearing pursuant to sections 120.569 and 120.57(1) and the matter was referred to the Division of Administrative Hearings for conduct of a hearing.

The final hearing initially was set for November 28, 2011, but pursuant to motion, was continued and rescheduled for February 9, 2012. Petitioner filed a Notice of Specific Charges against Respondent on November 21, 2011. The parties filed a Joint Prehearing Stipulation on January 31, 2012.

The final hearing was held on February 9, 2012. Petitioner presented the testimony of Leticia Fernandez, S.R., Adrian Montes, A.M., Charrise Mosley, Gabriella Degadillo, Adriana Sanabria, Adazeh Trinidad-Oroujalipour, Ana Pinto, and Respondent. Petitioner's Exhibits 1, 3, and 9 through 14 were admitted into evidence pursuant to the parties' stipulation, and Petitioner's Exhibits 2, 4, 5, 6, 7, and 8 were admitted into evidence over

objection. Respondent testified on her own behalf and also presented the testimony of Vickie Dunnom, Glennecka Durand, Margie Gaitor, Griesel Beltran, Ramon Pacho, Sherri Daniels, Tom Gammon, Freida Griffith, Joanne Rosen, Rachael Vaughn, and Adrian Montes. Respondent's Exhibits 1 through 15 were admitted into evidence pursuant to the parties' stipulation.

The two-volume Transcript was filed with the Division of Administrative Hearings on June 18, 2012. Pursuant to Notice of Filing Transcript issued on June 19, 2012, the parties were given until June 28, 2012, to file proposed recommended orders. Petitioner's Proposed Recommended Order was filed on June 29, 2012, and was considered in preparing this Recommended Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

The Parties

1. Petitioner is a duly-constituted School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Miami-Dade County, Florida, pursuant to article IX, section 4(b) of the Florida Constitution and section 1001.32, Florida Statutes.

2. At all times pertinent to this proceeding, Respondent was employed as an exceptional student education ("ESE") teacher at Olinda Elementary School ("Olinda"), a public school located

in Miami-Dade County, Florida, and part of the Miami-Dade Public Schools.

3. At all times pertinent to this proceeding, Respondent's employment was governed by the collective bargaining agreement ("UTD Contract") between Petitioner and the United Teachers of Dade, Petitioner's rules, and Florida law.

Applicable Requirements of IDEA and Florida Law

4. The Individuals with Disabilities Education Act ("IDEA") requires, as a condition of receiving federal funding assistance for educating disabled students, that local education agencies (in this case, Petitioner and Olinda) establish and maintain procedures in accordance with the IDEA and state policies and procedures implementing the IDEA, to ensure that students with disabilities are guaranteed certain safeguards regarding the provision of a free appropriate public education ("FAPE"). See 20 U.S.C. § 1415(a); see also 34 C.F.R.

§ 300.201. Therefore, it is imperative that Petitioner comply with the procedural and substantive requirements of the IDEA and implementing federal regulations, and with Florida Statutes and administrative rules implementing the IDEA in Florida.

5. To this end, Petitioner requires personnel employed by Miami-Dade County Public Schools (the "District") to strictly follow the standards and processes it and the individual schools

within the District have established to provide ESE services to disabled students consistent with the IDEA and Florida law.

6. The IEP is a critical component in providing FAPE to disabled students under the IDEA. See 20 U.S.C. § 1402. The IEP is a written statement for a disabled student that, among other things, describes the student's present level of academic achievement and functional performance; sets forth measurable annual goals designed to enable the student to be involved and make progress in the general curriculum; identifies special education, related services, and supplementary aids and services that will be provided to assist the student in obtaining the annual goals; and establishes the means by which the student's progress will be measured. See Fla. Admin. Code R. 6A-6.03028(3)(h); 34 C.F.R. § 300.320.

7. The IEP for each student must be developed, reviewed, and revised in accordance with Florida Administrative Code rules^{1/} that establish the composition of the IEP team, the respective roles of its members, the procedures for conducting IEP team meetings, and the substantive requirements for the IEP.

Creation and Maintenance of IEPs at Olinda

8. Respondent began teaching at Olinda in September 2010. Respondent was assigned the responsibility for creating and maintaining IEPs for the third, fourth, and fifth grade ESE students^{2/} at Olinda for the 2010-2011 school year.

9. IEPs are created at Olinda pursuant to a process established by the school's administration and the local education agency ("LEA") representative,^{3/} consistent with the IDEA, state law, and District policy. Specifically, ESE teachers are responsible for creating, developing, and maintaining the IEPs for the school's disabled students.

10. As part of this process, the teacher responsible for a particular disabled student notifies the parents and IEP team members^{4/} regarding the IEP team meeting and schedules the meeting. The meeting is held with as many team members as possible in attendance.

11. The teacher then creates the IEP using the District's Special Education-Electronic Management System ("EMS"). To create the IEP, the teacher logs onto EMS using his or her unique employee identification ("ID") number and unique password. The employee ID number and password are confidential and may only be used to log into EMS by the teacher to which they belong.

12. The teacher creates a draft IEP, which is circulated to each IEP team member who attended the meeting for comment and input. The teacher then revises the draft as appropriate, finalizes the IEP, and obtains the signatures of the team members who attended the meeting. The finalized IEP is to be

signed only by the persons who actually participated in the IEP team meeting.^{5/}

13. Once the IEP is signed by all team members, the teacher faxes it into EMS and it becomes designated as "Final."^{6/} The teacher responsible for creating the IEP is the only person authorized to fax it into EMS.

14. Once the IEP is Final, a hard copy is to be printed and included in the student's cumulative folder.

15. Once the IEP is "Final," it cannot be changed without going through the established procedures to modify the IEP, including notifying all IEP team members and conducting an IEP meeting.

Audit of IEPs at Olinda

16. On or about February 25, 2011, Adrian Montes, the Principal at Olinda, was informed that the parent of an Olinda ESE student had complained to the Florida Department of Education regarding the placement of her child. Montes contacted the parent regarding her concerns. The parent denied having made such a complaint.

17. The student's IEP was soon scheduled for annual review, so Montes decided to attend the IEP meeting. The meeting was conducted on February 28, 2011. At the meeting, Montes noticed Respondent making numerous mistakes regarding creation of the IEP. Concerned about the integrity of the IEP

creation process at Olinda, he requested Leticia Fernandez, the school's LEA representative and head of its ESE program, to conduct an audit of Olinda's IEPs.

18. On or about March 1, 2011, Fernandez reported to Montes that three IEPs for students for which Respondent was responsible were missing from the students' cumulative folders, where pursuant to school protocol, they are required to be kept.^{7/}

19. Montes asked Respondent about the missing IEPs. Respondent provided him with hard copies of the documents the following day. According to Respondent, these copies had been stored in her classroom.

20. Montes compared the hard copies with the electronic versions of the same students' Final IEPs stored in EMS, and noted several discrepancies between the hard copies and the electronic version of the Final IEPs in EMS.

21. Fernandez' audit revealed that school-wide, five IEPs contained discrepancies between the hard copies and the Final electronic versions stored in EMS, and that in some cases the IEPs were missing signatures or appeared to have falsified signatures. All five IEPs belonged to students for which Respondent was responsible.

IEPs for which Respondent was Responsible

22. Respondent was responsible for creating and maintaining the IEPs for J.A.B., J.D.H., L.L.E., S.M.M., and C.A.M.

23. The Final IEPs for some of these students contained signatures that did not belong to the person purported to have signed the IEP, and some were not prepared or finalized in accordance with the District's established protocol for creating IEPs.

24. Specifically, with respect to J.A.B., the signature for general education teacher Gabriella Delgadillo appearing on the Final IEP was not hers.

25. With respect to J.D.H., the parent's signature appearing on the Final IEP was not hers. She credibly testified that she did not attend any IEP meetings for her child, would have attended had she been notified, and did not sign the Final IEP. Additionally, Respondent obtained the signatures of general education teacher Charrise Mosley and exceptional education teacher Vickie Dunnom on the IEP even though neither attended an IEP meeting for J.D.H.

26. With respect to L.L.E., the signature on the Final IEP for Gabriella Delgadillo was not hers and she did not attend any IEP meetings for L.L.E.

27. With respect to S.M.M., the signature for Charrise Mosley that appears on the Final IEP was not hers.^{8/} Respondent also requested and obtained Mosley's signature on the IEP even though Mosley did not attend the IEP meeting for S.M.M.

28. With respect to C.A.M., Gabriella Delgadillo, Vickie Dunnom, guidance counselor Adriana Sanabria, and school psychologist Azadeh Trinidad-Oroujalipour all credibly testified that they had not attended an IEP meeting for C.A.M., and each credibly testified that the signature appearing on the Final IEP was not hers. C.A.M.'s parent also testified that she had never been notified of, and had not attended, any IEP meetings for C.A.M.

Charges in Notice of Specific Charges Proven

29. Petitioner's Notice of Specific Charges alleges that Respondent corrupted the IEP creation process in violation of the IDEA, Florida law, and Petitioner's rules, by forging the signatures of certain school personnel on IEPs of students for which she was responsible; asking IEP team members to sign IEPs for students without having attended the IEP meetings for those students; and designating IEPs as "Final" in EMS without having conducted IEP meetings for those students.

30. Respondent testified that she did not forge any signatures on the IEPs and she further claimed that on some of

the IEPs, her signature was forged. No witnesses testified that they saw Respondent or anyone else forge signatures on the IEPs.

31. However, Respondent, through her unique confidential employee ID number and password, was the only person who had access to EMS to fax in the finalized IEPs on which the falsified or forged signatures appeared.

32. The circumstantial evidence in this case gives rise to the inference, unless rebutted, that Respondent falsified or forged signatures of IEP team members IEPs in violation of Florida and federal law, as charged in the Notice of Specific Charges.^{9/}

33. Respondent failed to present credible evidence to rebut this inference. Specifically, Respondent claimed that because the student cumulative files were stored in a cabinet that was not always locked and therefore accessible at times to other school personnel, others had opportunity to forge the IEPs and, in fact, did so. However, her testimony on this point was vague and speculative; she did not present any specific, credible evidence regarding who may have forged the IEPs, or when, why, or how they did so, and her testimony was not corroborated by any other witnesses. Furthermore, whether the cumulative folders were accessible to others, or even whether hard copies of the IEPs in the folders were forged, does not explain or otherwise negate that falsified signatures appeared

on the Final IEPs that were faxed into EMS. Accordingly, the undersigned finds that Respondent falsified or forged signatures of IEP team members IEPs in violation of Florida and federal law, as charged in the Notice of Specific Charges.

34. Additionally, the credible evidence establishes that Respondent sought and obtained the signatures of IEP team members who had not attended meetings for the students whose IEPs they were asked to sign. Respondent's actions in doing so were contrary to Olinda's established protocol that only persons attending an IEP meeting for a particular student are to sign that student's IEP. Respondent claimed that she was forced to seek signatures of IEP team members who had not attended the meetings because Montes would not excuse them from class, so they were unable to attend. However, her testimony was not corroborated by any other witnesses, several of whom were IEP team members whose signatures she obtained even though they had not attended IEP team meetings. The undersigned finds Respondent's testimony on this point unpersuasive.

35. The evidence also establishes that Respondent did not conduct IEP meetings for certain students before finalizing those students' IEPs. Specifically, the teachers (other than Respondent) whose names appear on the Final IEPs of L.L.E. and C.A.M. credibly testified that they did not attend any IEP meetings for these students. The parents of these students also

credibly testified that they were not notified of, and did not attend, any IEP meetings for their children. Without the teachers and parents comprising the IEP teams for these students in attendance, the IEP team meetings for these students could not have taken place. Respondent did not present any credible evidence that she did, in fact, conduct the IEP meetings for these students. Accordingly, it is determined that Respondent finalized certain students' IEPs without having conducted IEP team meetings for those students, as charged in the Notice of Specific Charges.

Findings of Ultimate Fact

36. Petitioner seeks to terminate Respondent's employment as a teacher with Miami-Dade County Public Schools. Pursuant to section 1012.33(1)(a),^{10/} Petitioner can terminate Respondent only for "just cause." "Just cause" is defined to include, among other things, "misconduct in office."

37. Florida Administrative Code Rule 6A-5.056(3)^{11/} defines "misconduct in office" as a violation of the Code of Ethics of the Education Profession as adopted in rule 6B-1.001, and the Principles of Professional Conduct for the Education Profession in Florida as adopted in rule 6B-1.006, which is so serious as to impair the individual's effectiveness in the school system. Petitioner's rules 6Gx-4A-1.21 and 6Gx-4A-1.21 incorporate these

standards and make them applicable to District personnel, including instructional personnel.

38. The persuasive evidence establishes that Respondent violated the Code of Ethics of the Education Profession codified in rule 6B-1.001. Her actions in failing to hold or conduct IEP meetings for disabled students in her charge and in falsifying or forging signatures on Final IEPs for these students did not adhere to Florida or federal law regarding the creation and maintenance of IEPs, a key component in the delivery of a free appropriate public education pursuant to disabled students pursuant to the IDEA and Florida law. By her actions, Respondent demonstrated that she did not value the worth and dignity of the students for which she falsified IEPs or failed to hold IEP meetings. She did not pursue the truth and failed to demonstrate devotion to excellence or dedication to the acquisition of knowledge by her students. Further, her actions demonstrate that her primary professional concern was not for her students or the development of their potential. She did not exercise acceptable professional judgment or integrity, and her actions in falsifying the IEPs and failing to hold IEP meetings were unethical.

39. The persuasive evidence also establishes that Respondent violated the Principles of Professional Conduct for the Education Profession, rule 6B-1.006. Specifically,

Respondent did not protect her disabled students from conditions harmful to learning, and, in fact, affirmatively engaged in conduct harmful to their learning. She also intentionally suppressed subject matter relevant to her students' academic progress. By failing to follow the procedures and requirements of the IDEA and Florida law, she denied her disabled students' rights regarding the opportunity to obtain a free appropriate public education. She did not maintain honesty in her professional dealings and submitted fraudulent information on documents in connection with her professional activities.

40. The persuasive evidence demonstrates that Respondent's actions also violated Petitioner's rule 6Gx-13-4A-1.21, "Responsibilities and Duties." Specifically, she engaged in conduct that did not reflect credit on herself or on the school system. She did not prepare, maintain, and submit accurate reports regarding her disabled students pursuant to Florida law, Department of Education Rules, Petitioner's rules, and the established IEP creation process at Olinda. By falsifying IEPs and failing to conduct IEP meetings, she failed to efficiently and faithfully teach her disabled students in accordance with Florida law.

41. The persuasive evidence also establishes that Respondent violated Petitioner's rule 6Gx-4A-1.213, the "Code of Ethics." Petitioner's rule incorporates the standards

established in rules 6B-1.001, the Code of Ethics of the Education Profession in Florida, and 6B-1.006, the Principles of Professional Conduct for the Education Profession in Florida. As previously discussed, the evidence establishes that Respondent violated the standards established in these rules. Further, Respondent violated rule 6Gx-4A-1.213 by failing to make the well-being of her disabled students and the honest performance of her professional duties her core guiding principles, failing to treat her students with respect and fairness, and failing to deliver her job duties in an efficient and effective manner.

42. Based on the foregoing, it is determined that Respondent's conduct constitutes misconduct in office, and that her misconduct is so serious as to impair her effectiveness in the school system.

43. Accordingly, it is determined that just cause exists for Petitioner to terminate Respondent's employment.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.57(1), Fla. Stat.

45. Petitioner seeks to terminate Respondent's employment for "just cause" pursuant to section 1012.33. "Just cause" is

defined to include "misconduct in office." § 1012.33(1)(a), Fla. Stat.

46. Rule 6B-1.001, the Code of Ethics of the Education Profession, 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. Rule 6B-1.006, the 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.

* * *

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

* * *

(f) Shall not intentionally violate or deny a student's legal rights.

* * *

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

(a) Shall maintain honesty in all professional dealings.

* * *

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

48. Petitioner's rule 6Gx13-4A-1.21, entitled

"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.

* * *

II. Records and Reports

All personnel shall maintain, prepare, and submit promptly all reports that may be required by State Law, State Department of Education Rules, School Board Rules, and administrative directives.

* * *

V. Instructional Personnel

Members of the instructional 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 the rules of the State Department of Education.

49. Petitioner's rule 6Gx-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. Adherence to the Code of Ethics will create an environment of honesty and integrity and will aid in achieving the common mission of providing a safe and high quality education to all Miami-Dade County Public Schools students.

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

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, students, parents, and other members of the community, the educator strives to achieve and maintain the highest degree of ethical conduct.

* * *

III. FUNDAMENTAL PRINCIPLES

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

Citizenship - Helping create a society based on democratic values; e.g., rule of law, equality of opportunity, due process, reasoned argument, representative government, checks and balances, rights and responsibilities, and democratic decision-making.

Cooperation - Working together toward goals as basic as human survival in an increasingly interdependent world.

Fairness - Treating people impartially, not playing favorites, being open-minded, and maintaining an objective attitude toward those whose actions and ideas are different from our own.

Kindness - Being sympathetic, helpful, compassionate, benevolent, agreeable, and gentle toward people and other living things.

Pursuant 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 for 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.

* * *

4. To treat all persons with respect and strive to be fair in all matters.

* * *

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 or physical health and/or safety.

* * *

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

* * *

6. Shall not intentionally violate or deny a student's legal rights.

50. These statutes and rules are penal and therefore must be strictly construed, with ambiguities resolved in favor of the person charged with violating them. Lester v. Dep't of Prof'l & Occ. Reg., 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

51. Whether Respondent committed the charged offenses is a question of ultimate fact to be decided by the trier of fact in the context of each alleged violation. McKinney v. Castor, 667

So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

52. Petitioner bears the burden to prove each element of each charged offense by a preponderance of the evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Lake Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

53. As addressed above, the preponderance of the evidence demonstrates that Respondent committed the acts charged in the Notice of Specific Charges, and that such acts constitute misconduct in office that is so serious as to impair her effectiveness in the school system.

54. Accordingly, just cause exists, pursuant to section 1012.33, to terminate Respondent from her position as a teacher with the District.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that Petitioner, Miami-Dade County School Board, enter a Final Order terminating the employment of Respondent, Walita McBride, as a teacher with Miami-Dade County Public Schools.

DONE AND ENTERED this 31st day of July, 2012, in
Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 2012.

ENDNOTES

^{1/} See Fla. Admin Code. R. 6A-6.03028.

^{2/} Ten ESE students were assigned to Respondent.

^{3/} The District is the LEA for purposes of the IDEA. As the primary entity required to develop individualized educational programs for each disabled child in a particular locality, LEAs are at the center of the provision of IDEA. The local education agency representative is the school's representative to the District.

^{4/} Pursuant to Florida Administrative Code Rule 6A-6.03028(3)(c), the IEP team participants must include the parents of the student; not less than one regular education teacher of the student as applicable; not less than one special education teacher of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability

^{5/} This is because the IEP is a collaborative product that reflects input of IEP team members acting in their respective roles. Team members' signatures are required to substantiate the legitimacy of the IEP and to comply with state and federal law.

^{6/} Hard copies of the IEPs for each student also are kept in cumulative folders in the school office at Olinda. The cumulative folders are stored in a file cabinet, and the school secretary has the key. It is protocol for anyone taking a cumulative folder out of the file to sign for the folder.

^{7/} The student cumulative folders are stored in a file cabinet in the school's office. The school's Registrar, Margie Gaitor, was responsible for overseeing the security of the cumulative folders. The credible evidence established that the file cabinet in which the cumulative folders are stored is located in or near the teachers' mailroom, an area accessible to the teachers, school administrators, and school non-instructional personnel. The file cabinet usually, but not always, is locked. Persons checking out a student's cumulative folder from the file cabinet contact Ms. Gaitor, who provides them a sign-out sheet that they are required to sign, listing the name of the student whose folder is being checked out, the name of the person checking out the folder, and the date on which the folder was checked out.

^{8/} In the signature appearing on the Final IEP Mosley's first name was incorrectly spelled, and Mosley credibly testified that the signature was not hers.

^{9/} In this case, the circumstantial evidence establishes that Respondent falsified or forged the signatures on the IEPs. Under Florida law, forgery may be established by circumstantial evidence. See J.N.W. v. State, 361 So. 2d 826 (Fla. 1st DCA 1978). In this case, both parties attempted to introduce lay testimony comparing the signatures of persons, other than the witness himself or herself, to establish whether the signatures were genuine. That testimony was excluded. In Florida, it is well-established that in the absence of testimony by expert witnesses in handwriting, the trier of fact is not qualified to make—and, therefore, as a matter of law, cannot make—comparisons of handwriting. Huff v. State, 437 So. 2d 1087 (Fla. 1983); Clark v. State, 114 So. 2d 197 (Fla. 1st DCA 1959).

^{10/} Respondent's actions alleged to constitute just cause for termination of her employment took place between October 2010 and March 2011. Accordingly, Florida Statutes 2010 apply to this case.

^{11/} Petitioner cites rule 6B-4.009 as defining "misconduct in office." However, the text of rule 6B-4.009 recently was transferred to rule 6A-5.056, which now codifies the criteria or suspension and dismissal of instructional personnel, including "misconduct in office." Of further note is that in July 2012, after the text of rule 6B-4.009 was transferred to rule 6A-5.056, the rule was extensively amended; that amendment does not apply to this case because it became effective after the conduct in this case is alleged to have occurred. See § 120.54(1)(f), Fla. Stat.

COPIES FURNISHED

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.