

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-5052PL  
 )  
LUCILLE STUART FOSTER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, an evidentiary hearing was conducted in this case on May 16 through 17, 2012, in Naples, Florida, before J. D. Parrish, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Todd P. Resavage, Esquire  
A. Dean Johnson, Esquire  
Brooks, LeBoeuf, Bennett,  
Foster & Gwartney, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: Peter James Caldwell, Esquire  
Florida Education Association  
300 East Park Avenue  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Respondent, Lucille Stuart Foster (Respondent), violated provisions of Florida law governing teachers and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On May 11, 2011, an Administrative Complaint was issued against Respondent that alleged violations of sections 1012.53(1), 1012.53(2), 1012.795(1)(c) and/or 1012.795(1)(g), Florida Statutes (2010). More specifically, Petitioner, Eric J. Smith, as Commissioner of Education (Petitioner), alleged that Respondent was incompetent to teach or to perform duties as an employee of the public school system and/or had been guilty of personal conduct that seriously reduced her effectiveness as an employee of a district school board. Petitioner maintained that Respondent had failed to work diligently and faithfully to help students meet or exceed annual learning goals, and had failed to perform duties prescribed by the rules of the district school board. Respondent timely challenged the allegations of the complaint and sought a formal administrative hearing.

The case was forwarded to DOAH for formal proceedings on September 29, 2011. Thereafter, the parties sought continuances of the hearing on several occasions before the hearing was finally conducted. At the hearing, the parties presented

testimony from witnesses, and documentary evidence was received as reflected in the Transcript of the proceedings that was filed with DOAH on June 28, 2012.

Thereafter the parties sought and were granted extensions of time within which to file their proposed recommended orders. The parties timely filed such orders on October 3, 2012. The proposed orders have been fully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, as the Commissioner of Education, is responsible to investigate and prosecute complaints against persons who hold a Florida Educational Certificate, and are alleged to have violated provisions of law related to the education profession in the State of Florida. See §§ 1012.79 and 1012.795, Fla. Stat. (2010).

2. Respondent holds a teaching certificate in Florida, Certificate Number 383630, that covers the areas of reading, mathematics, and music. Respondent's certificate is valid through June 30, 2015.

3. At all times material to the allegations of this case, Respondent was employed by the Collier County School District (District) and worked as a music teacher at the elementary school level.

4. Prior to the allegations encompassed within this case, Respondent had not been disciplined by the District. Respondent was employed by the District from 1976 through the 2009-2010 school year. With the exception of one year, Respondent's performance evaluations have been acceptable until the allegations of this matter arose.

5. Prior to the 2008-2009 school year, Respondent was assigned to one school on a full-time basis. Beginning in 2008, Respondent was assigned to be an "itinerant" teacher. As such, Respondent was directed to teach at three different elementary schools and to move among the schools during the school week, as her schedule dictated.

6. The three schools were Corkscrew Elementary, Golden Terrace Elementary, and Big Cypress Elementary. An administrator at each of the schools was assigned supervision and evaluation duties for Respondent's job performance.

7. All of the administrators required that Respondent prepare and submit lesson plans for review. All of the administrators observed Respondent in the class setting. All of the administrators found deficiencies in Respondent's job performance.

8. At the conclusion of the 2008-2009 school year, the District returned Respondent from her continuing contract status to an annual contract. More critical to this case, however, is

the fact that the District put Respondent on a prescriptive plan for improvement so that she could address the deficiencies in her work performance. The District offered support services to encourage Respondent to make the improvements needed.

9. Respondent did not acknowledge, and does not acknowledge, that her work performance during the 2008-2009 school year was unacceptable. Respondent maintained that one of the administrators harassed her and then wrongly sought to discipline her.

10. When the 2009-2010 school year began, Respondent was directed to complete remediation so that the problem areas of her job performance could improve. Specifically, Respondent was to prepare and timely submit appropriate lesson plans. She was to follow the plans in the teaching of her students. She was to maintain classroom decorum so that students would remain on task and not disrupt or interfere with the learning experience.

11. In recognition of the difficulty of teaching at three different schools, Respondent was allowed to prepare one lesson plan that could be implemented at all three locations. It was expected that music students would prepare for and publicly perform at designated school functions. In the past, Respondent successfully led her students in many performances that demonstrated an appreciation for music and musical achievement.

12. During the 2009-2010 school year, however, Respondent's ability to focus on the improvements sought by her administrators diminished. As her frustration level grew, her civility toward one of the administrators waned. Respondent was convinced that efforts to assist her were not genuine.

13. Principal Lettiere, Respondent's supervisor at Big Cypress Elementary School, identified the following deficiencies in Respondent's job performance:

- A. Failure to have lesson plans;
- B. Failure to timely submit adequate lesson plans;
- C. Insufficient delivery of lesson plans to the class;
- D. Failure to tie the lesson plan to the lesson taught;
- E. Failure to timely report for work; and
- F. Failure to provide an accommodation for a student with disabilities during the music lesson.

14. Principal Lonneman, Respondent's supervisor at Corkscrew Elementary School, identified the following deficiencies in Respondent's job performance:

- A. Failure to keep students engaged during class time;
- B. Failure to include musical instruments into the music curriculum;
- C. Failure to timely prepare lesson plans; and

D. Failure to incorporate the music curriculum within lesson plans.

15. Principal Glennon, Respondent's supervisor at Golden Terrace Elementary School, observed Respondent multiple times during the 2008-2009 school year. Principal Glennon documented the following deficiencies in Respondent's job performance:

- A. Failure to keep students on task;
- B. Lack of classroom management skills;
- C. Failure to have a structured lesson; and
- D. Failure to follow adequate lessons.

16. Principal Glennon tried to meet with Respondent to go over the deficiencies, but Respondent did not timely comply with his requests for a conference. Instead, Respondent has steadfastly and resolutely claimed her teaching skills to be adequate, if not superior.

17. In February 2009, Principal Glennon cited Respondent for failure to report to work; failure to provide a classroom management plan, as he had requested; and failure to redirect students who engaged in off-task behaviors.

18. In March 2009, Respondent was advised that she would be returned to annual contract status at the end of the school year. Respondent received a contract for the 2009-2010 school year, but began the year with a plan for her improvement in the classroom. Respondent was afforded 90 days within which to

improve her performance. Mr. Glennon hoped that by outlining the areas that needed to be improved, Respondent would soldier on and make the necessary corrections.

19. When Respondent failed to address the concerns outlined by her improvement plan, her school administrators, with the consent and authorization of the District superintendent, removed her from the schools. Respondent was placed in the status of "pool" teacher and completed the 2009-2010 school year in that assignment with benefits and salary. At the end of the year, Respondent's contract was not renewed.

20. Respondent is a talented musician who played with a local symphony for many years. Early in her career, Respondent was effective as a music teacher. Respondent was praised by former administrators who worked with her during those times. None of the former administrators observed Respondent during the periods of time critical to this case.

21. It is unknown whether during those earlier years the requirements regarding lesson plans, classroom management, and curriculum were the same or similar to the requirements of the 2008-2009 and 2009-2010 school years.

#### CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, 120.57(1) and 1012.795, Fla. Stat. (2010).



23. Section 1012.795(1), Florida Statutes (2010), provides  
in pertinent part:

(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.

\* \* \*

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

24. Section 1012.53, Florida Statutes (2010), provides:

(1) The primary duty of instructional personnel is to work diligently and faithfully to help students meet or exceed annual learning goals, to meet state and local achievement requirements, and to master the skills required to graduate from high school prepared for postsecondary education and work. This duty applies to instructional personnel whether they teach or function in a support role.

(2) Members of the instructional staff of the public schools shall perform duties prescribed by rules of the district school board. The rules shall include, but are not limited to, rules relating to a teacher's duty to help students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully, using prescribed materials and methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the district school board.

25. Petitioner bears the burden of proof in this cause.

Petitioner must establish by clear and convincing evidence that Respondent committed the violations alleged in the Administrative Complaint. See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

26. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). Evidence that is credible, denoted

by precise facts and information that a witness distinctly remembers, is sufficient to support the burden of clear and convincing evidence. See In re Davey, 645 So. 2d 398 (Fla. 1994), and Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

27. Count I of the Administrative Complaint alleged that Respondent 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. With the exception of Respondent's self-serving account of the incidents of the school years in dispute, Respondent offered no credible explanation for the deficiencies related by her former administrators. In contrast, three credible school administrators detailed the Respondent's inadequate performance: lack of appropriate and timely submitted lesson plans; lack of classroom management; and lack of improvement after notice of the deficiencies. All of these identified concerns contributed to disciplinary action against Respondent by the District. Simply stated, Respondent failed to perform her duties as an employee of the District. That failure led, ultimately, to the non-renewal of her contract to teach.

28. Count II of the Administrative Complaint alleged that Respondent had been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of

the district school board. In this case, Respondent's personal conduct was her failure to address job deficiencies. As previously stated, Respondent's conduct resulted in the District's non-renewal of her contract. Had Respondent's performance been effective during the 2008-2009 school year, she would have remained on continuing contract. Because her performance proved ineffective, Respondent was returned to annual contract status. Had Respondent's performance been corrected during the 2009-2010 school year, she could have remained on annual contract. Instead, Respondent lost her employment with the District. There is no evidence that Respondent has been employed by any school district since the 2009-2010 school year.

29. Respondent's long teaching career was highlighted by many successes. Respondent had the respect and appreciation of former administrators, whose opinion of her work during the times they supervised her was encouraging. Nevertheless, as it relates to the allegations of this case, Respondent's work must be reviewed not by the standard of former successes but by the reality of current performance. Petitioner has established by clear and convincing evidence that Respondent's work performance during the 2008-2009 and 2009-2010 school years proved ineffective, and that Respondent failed or otherwise refused to make the corrections needed to improve her performance.

30. Should Respondent seek to teach in the public schools of Florida, the current standards for lesson plans, classroom management, and implementation of plans must be observed. Teachers in Florida bear the responsibility of keeping current with the educational standards related to their fields of instruction. No teacher can rest on past success. The students of 2012 are not the students of 1976. Just as technologies have evolved, teachers must stay current with the requirements of their profession. Regrettably, Respondent failed to do so. More regrettable was Respondent's failure to recognize the need to make the corrections recommended by her District.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent's teaching certificate be suspended for a period up to one year during which time Respondent be required to successfully complete continuing education courses to address Respondent's deficiencies in classroom management, lesson plans, and professionalism.

DONE AND ENTERED this 30th day of November, 2012, in  
Tallahassee, Leon County, Florida.



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J. D. PARRISH  
Administrative Law Judge  
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Filed with the Clerk of the  
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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.