

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, as )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-6064PL  
 )  
DIANE CECELIA HOTHAN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On April 10-12, 2012, Robert E. Meale, Administrative Law Judge, conducted the final hearing by videoconference in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire  
Charles T. Whitelock, P.A.  
300 Southeast Thirteenth Street  
Fort Lauderdale, Florida 33316

For Respondent: Jeffrey Sirmons, Esquire  
Johnson & Sirmons, LLP  
Suite 309  
510 Vonderburg Drive  
Brandon, Florida 33511

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of incompetence in teaching, in violation of section 1012.795(1)(c), Florida Statutes, or personal conduct that seriously reduces her effectiveness as an employee of the School Board, in violation

of section 1012.795(1)(g), and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated May 11, 2011, Petitioner alleged that Respondent, while teaching second grade at Norcrest Elementary School (Norcrest) during the 2007-08 school year, received an unsatisfactory overall evaluation with "unsatisfactoriness" in lesson preparation, student performance evaluation, and classroom management.

During the fall of 2008, while teaching sixth grade at Lyons Creek Middle School (Lyons Creek), Respondent allegedly failed to attend several meetings for the purpose of preparing a Professional Development Plan (PDP), but was nonetheless placed on a PDP for deficiencies in lesson preparation, student performance evaluation, and classroom management. During the 2008-09 school year, Respondent received a reprimand during a school year in which she allegedly used inappropriate language and disciplinary measures, about which several parents complained, and Respondent received a reprimand in January 2009.

While on a PDP, in spring 2009, Respondent allegedly failed to take student attendance properly, issued 37 student disciplinary referrals, failed to record and report student grades properly, incorrectly told one student that he was failing, and gave only three assignments during a nine-week

period. In May 2009, Respondent allegedly received an unsatisfactory overall evaluation with "unsatisfactoriness" in lesson preparation, student performance evaluation, and classroom management.

On March 20, 2010, the Broward County School District (District) allegedly informed Respondent that it intended to terminate her employment. On October 5, 2010, Respondent allegedly resigned.

The Administrative Complaint alleges that Respondent has failed to work diligently and faithfully to help students meet or exceed annual learning goals, in violation of section 1012.53(1), Florida Statutes; failed to perform duties prescribed by the school board, in violation of section 1012.53(2); proven herself incompetent to teach, to perform the duties of an employee of the school district, or to teach in or operate a private school, in violation of section 1012.795(1)(c); and been guilty of personal conduct that seriously reduces her effectiveness as an employee of the school board, in violation of section 1012.795(1)(g). The organization of the Administrative Complaint suggests that Petitioner intended to predicate liability on the alleged violation of section 1012.795(1)(c) or (g) only. This interpretation is confirmed by the Joint Prehearing Stipulation and Petitioner's proposed recommended order.

The Administrative Complaint seeks a wide range of remedies, ranging from reprimand to permanent revocation.

Respondent timely requested a formal hearing.

At the start of the hearing, Respondent requested a continuance so she could replace her current attorney with another attorney, Edward Jennings, who is her brother.

Mr. Jennings explained that he needed time to retain one or more expert witnesses. The Administrative Law Judge denied the request, but allowed Mr. Jennings to remain to assist Respondent's counsel. Shortly after this ruling, Mr. Jennings left the hearing room.

At the hearing, Petitioner called eight witnesses and offered into evidence 35 exhibits: Petitioner Exhibits 9-24, 26-36, 38-39, and 52-57. Respondent called one witness and offered into evidence 40 exhibits: Respondent Exhibits 1-14, 16-19, 24-26, 28, 45, 48-52, 55, 57, 60-62, 67-68, 70-71, and 73-75.

By agreement of the parties and with leave of the Administrative Law Judge, Petitioner took the post-hearing deposition of Heather Parente and filed the deposition transcript on June 25, 2012, as a late-filed, unnumbered exhibit. By agreement of the parties and Administrative Law Judge, Respondent timely filed Respondent Exhibit 75 following the hearing.

By agreement of the parties and with leave of the Administrative Law Judge, Petitioner had ten days following the filing of the Parente deposition transcript to file Petitioner Exhibits 52-57. (Tr., pp. 534 and 886-87.) Petitioner never filed these exhibits, so they are deemed withdrawn.

Subject to the deemed withdrawal of Petitioner Exhibits 52-57, all remaining exhibits were admitted into evidence, except for Respondent Exhibits 11-12, 19 (which was admitted, but not for the truth of its contents), and 73. Respondent proffered all exhibits excluded in whole or in part.

The court reporter filed the transcript on June 25, 2012. Each party filed a proposed recommended order on August 3, 2012, and Respondent filed an amended proposed recommended order on August 6, 2012.

#### FINDINGS OF FACT

1. Respondent holds Florida educator's certificate number 545766, which is valid through June 30, 2015. She is certified in elementary education and English speakers of other languages (ESOL).

2. After graduating from college, Respondent was hired as a permanent teacher in 1984 by the District. Respondent taught middle school until 2003. From October 2003 through June 2006, Respondent transferred to Silver Shores Elementary School (Silver Shores), where she taught third grade and later reading.

3. For each of the school years from 1997-98 through 2006-07, Respondent earned "satisfactory" annual evaluations, which is the highest available rating. But her performance was not entirely satisfactory during the latter part of this period.

4. By memorandum dated October 3, 2003, the Silver Shores principal documented that Respondent had not taught writing daily as required, had not appeared punctually at all school functions and events, and had not conformed to other school or District policies regarding teaching.

5. By memorandum dated March 7, 2006, the Silver Shores principal warned Respondent about her routine tardiness. Although she was required to work from 7:30 a.m. to 3:00 p.m., Respondent had reported to work from five-to-20 minutes late on 22 days from January 19 through March 7, 2006. Several times, after 7:30 a.m., the principal saw Respondent talking on the cellphone in the parking lot, rather than in her classroom or office. During one discussion about tardiness, Respondent replied to the principal that she was lucky that Respondent was at school at all.

6. Late in the 2005-06 school year, the Silver Shores principal told Respondent that, due to a loss of the reading program, Respondent would be required to teach second grade the following school year. At about the same time, the District informed Respondent's principal that her school was under-

enrolled and would have to release a number of teachers in a process known as "surplusing." In this process, if a school finds itself with too many teachers, the principal asks for volunteers to transfer to other schools, and, if an excess remains after these transfers, "surpluses" the excess number of teachers, releasing first the least-senior teachers. When the principal asked if any teachers would accept a transfer, Respondent volunteered. By this means, Respondent found herself teaching at Norcrest at the start of the 2006-07 school year.

7. Respondent's first year at Norcrest was unremarkable. To help Respondent adjust to her new assignment, the Norcrest principal, who evidently was aware of Respondent's problems at Silver Shores, created a class that was unusual in that it did not contain any students with severe behavioral problems, significant reading difficulties, or exceptionally high academic achievement. The principal also assigned to Respondent a reading coach, who helped Respondent set up her classroom, organize her reading groups, and learn how Norcrest teachers were expected to teach reading. The principal assigned another teacher to show Respondent how Norcrest teachers were expected to teach math.

8. Respondent taught at a satisfactory level during the 2006-07 school year. She had some problems with classroom clutter and following the prescribed curriculum, but, at the end

of the year, Respondent received a "satisfactory" on her annual evaluation.

9. The period covered by the Administrative Complaint starts with the 2007-08 school year, during which Respondent's performance deteriorated. For this year, the Norcrest principal assigned Respondent the same mix of students that the other second grade teachers received.

10. In late September 2007, the principal complained to Respondent that she was not reading her email twice daily as required, failed to inform the office promptly when two nonrostered students appeared in her classroom on the first day of school, and did not maintain order among her students as they proceeded to their dismissal locations. Respondent countered these relatively minor concerns by asking whether the principal had issued similar directives to other teachers.

11. More serious problems began to emerge the next month. After a walk-through and formal observation on separate days in October, the principal met with Respondent on November 1 and 2, 2007, to discuss numerous issues. As witnessed by the principal, Respondent used a calendar math kit that was incomplete, District narrowcasts of materials that were irrelevant to the curriculum, stale writing center materials, vague speech when talking to the class, procedures that were ineffective at maintaining on-task behavior by the students



during instructional time, ineffective techniques to review homework assignments with the class, and obsolete reading data to form tiered reading groups. The principal saw that Respondent had not posted a class schedule, had allowed classroom clutter to impede learning and student access to supportive materials, and was teaching outdated materials instead of District-approved math and reading materials. At this time, the principal learned that Respondent had failed to administer each quarter the required Development Reading Assessment (DRA), failed to maintain effective communications with parents, and reported reading levels with a specificity not supported by available data.

12. Respondent denied many of the principal's findings, but Respondent's denials were implausible. For instance, on October 30, the writing center still featured Christopher Columbus, whose holiday is in early October--even though updated curriculum materials were readily available to Respondent through the lesson plans contained in the Broward Educational Enterprise Portal (BEEP). Claiming that her procedures for reviewing homework were effective, Respondent failed to understand that her general statements--such as "everybody gets that, right?"--may have discouraged students who did not understand the lesson from identifying themselves in front of the entire class. Denying that her class was out of control,

Respondent evidently failed to understand that such practices as encouraging unison responses prevented her from identifying which students were not grasping the material and posed risks of off-task behavior.

13. Respondent also complained of inadequate materials or equipment--particularly, that Respondent's computer did not work and her calendar math kit was incomplete. Ungrounded, these complaints also revealed a lack of effort by Respondent. The principal directed the tech specialist to check Respondent's computer, and she found that its energy-saving switch was on, so, when unused for a set period of time, the computer was merely entered a sleep state and required little to restart it. The principal directed another teacher to check Respondent's calendar math kit, and the teacher found that the only component missing was an expendable counting tape that was routinely replaced each year.

14. Even worse, Respondent admitted that she had not administered the DRA in the first quarter of the 2007-08 school year, as required, but instead had reported the DRA scores from the final quarter of the previous year. The current DRA results were required for the organization of reading groups by achievement level. Lacking this data, Respondent admitted that she had organized her reading groups based on the Stanford Achievement Test results from the preceding school year.

Persuading no one except perhaps herself, Respondent claimed that obsolete test data supported her current reading groupings, ignoring the fact that very young children often undergo vast changes in reading skills over the summer.

15. Suggestive of another problem with the clutter that Respondent had packed into her classroom, Respondent admitted that, at Halloween, she used seasonally appropriate math materials demonstrating three-digit multiplication problems. The problem was that three-digit multiplication is beyond the grade level that Respondent was teaching, so the students gained no educational value from the materials and were possibly confused by them. Rather than tacitly admit her indolence, when confronted about this incident, Respondent unwisely chose to defend this practice, seemingly unaware of her failure to reinforce the current curriculum by using grade-appropriate materials.

16. By memorandum dated November 5, which documented the discussions between the principal and Respondent arising out of the walk-through and observation, the principal mentioned the assistance that Respondent had received the preceding school year in the form of a reading coach and the help that she had received already in the current school year in the form of a "few weeks" of assistance in "instructional organization, student performance, presentation of subject matter, behavior

management, components of the reading block, and physical organization . . . of the learning environment." The November 5 memorandum warns that, if Respondent fails to eliminate these deficiencies, the principal will place her on a PDP.

17. Illustrative of Respondent's lack of response to the November 5 warning is her failure to deal with her cluttered classroom. Photographs of Respondent's classroom on or about November 5 reveal layers of materials, some boxed and some loose, resting upon every horizontal surface formed by carts, bookshelves, filing cabinets and tables. Exacerbating the situation, most of the materials, like the Halloween materials described above, were utterly useless. These materials consisted of folders containing student work back to 1993, books and materials from other schools, middle-school ESOL materials, Spanish materials, materials for kindergarten, newspapers dating back to 1986, and a 1964 book on the use of bulletin boards.

18. The principal ordered Respondent's team leader to help Respondent reorganize her classroom, but Respondent rejected her offers of assistance. After a couple of deadlines for the removal of the clutter had passed, the principal set a final deadline of November 21, after which custodial staff would transfer the materials to Respondent's vehicle for her. On the day that the custodians were to move the materials, Respondent

called in sick, so the principal had them move the materials to a storage room.

19. Respondent's team leader witnessed other problems besides a cluttered classroom. Respondent continuously needed help accessing her computer and other everyday teaching aids and did not even keep the classroom calendar on the current month.

20. After observations on November 16 and 20, the principal met with Respondent on November 27 and 29 to discuss a half dozen issues. First and foremost, the principal noted that Respondent had failed to complete a Child Study Team packet, despite several requests to do so by the principal and the guidance counselor. This is a critical requirement that must be completed by the classroom teacher to permit the evaluation of student for exceptional student education (ESE) services to proceed. Displaying the same lack of candor that she had displayed when she reported the previous year's DRA scores in place of the current DRA scores, as discussed above, Respondent claimed that the guidance counselor had never requested the packet. When shown a copy of the request, Respondent quickly changed tactics to say that she had turned it in on time, which is clearly untrue.

21. Notwithstanding the previous directive to use the calendar math kit, Respondent was still failing to use this valuable teaching resource. When confronted with this fact,

Respondent again stated that she did not have a complete kit and added that she had seen another teacher's kit, which was neatly organized. The principal went to Respondent's room and examined the kit, parts of which were still wrapped in plastic, meaning that Respondent had not even bothered to open them. The principal explained that the other kit was organized because the teacher had organized it.

22. Displaying a profound lack of teaching competence, Respondent demonstrated confusion between the lesson plans contained in the BEEP and the actual reading curriculum materials, which was the Harcourt Trophies reading series. The principal had to tell Respondent that the Trophies series is the text, and the BEEP lesson plans are the means by which, day to day, Respondent may teach the Trophies series.

23. After this troubling exchange, the principal assigned the reading coach to help Respondent learn how to teach the Trophies series. Although BEEP had been available for elementary school grades for three or four years and Respondent had taught second grade the previous school year, Respondent was unfamiliar with the BEEP lesson plans.

24. The reading coach guided Respondent to the relevant BEEP materials and showed her how to retrieve them from the District online database. Then, for five days, the reading coach taught the Trophies series to Respondent's class to show

Respondent the proper way to teach this curriculum using the BEEP lesson plans. After teaching Respondent's class for five days, the reading coach observed Respondent teach the Trophies series for five days. When the reading coach tried to provide Respondent with feedback, Respondent replied that she did not need the reading coach's help. Relations between the two educators became strained, and, when the reading coach tried to help Respondent reorganize her cluttered classroom, Respondent became so loudly oppositional that the principal had to intervene to calm Respondent.

25. Not surprisingly, the reading coach shared the team leader's concerns about Respondent's teaching ability. As the principal had found, the reading coach found Respondent was very difficult to follow during a lesson, and her students often did not understand or were disengaged. Respondent failed to satisfy the needs of second graders for consistency and follow-through. Instead of sticking to a lesson plan, Respondent would futilely try to engage her students with irrelevant stories. When Respondent tried to use BEEP lesson plans, she skipped mandatory elements in the plans, apparently failing to understand herself the relative importance of different parts of the plans. Ultimately, the reading coach justifiably concluded that Respondent's incompetence was depriving her students of an educational environment.

26. By memorandum to Respondent dated December 6, 2007, the principal placed Respondent on a 90-day probationary period. The memorandum advises that, pursuant to section 1012.34, Florida Statutes, the principal will conduct formal performance evaluations during this period on a specified evaluation form and will prepare and administer a PDP, which will list Respondent's specific areas of unsatisfactory performance, a time period for correction, and suggestions for corrective action. The memorandum states that, within 14 days after the end of the 90 days, the principal will determine whether Respondent has corrected the performance deficiencies and forward a recommendation to the Superintendent, who will notify Respondent within 14 days whether she has corrected the performance deficiencies. The memorandum warns that, if the Superintendent determines that Respondent has failed to correct the performance deficiencies, he will recommend to the School Board that it terminate Respondent's contract. In boldface, the memorandum itemizes three performance deficiencies: lesson presentation, classroom management, and student performance.

27. When the principal tried to assign staff to help Respondent, as required by the PDP, Respondent insisted that the principal find educators not working at Norcrest to provide the required assistance. The PDP process was slowed by the amount of time that it took to find such educators and by Respondent's



numerous absences on days scheduled for assistance or PDP-related meetings.

28. By memorandum to Respondent dated February 11, 2008, the principal documented the discussion at a meeting on February 6, which largely covered what, if any, progress was being made in finding persons who could provide assistance to Respondent. By now, Respondent had suggested a young teacher, but she was unwilling to become involved in the PDP process.

29. In the interim, though, Respondent's work was still plagued with problems. For instance, despite the clear emphasis on the importance of conducting timely DRA tests, Respondent had failed to conduct the DRAs that were to have been completed by the end of January and had failed to conduct the Stanford Assessment Test, which also had to be administered. As confirmed by the principal, although Respondent was "improving" in classroom management, she remained "unsatisfactory" in lesson presentation and student performance evaluation.

30. As the end of the 90 days approached, Respondent felt growing stress and began to miss school due to what was eventually diagnosed as neurocardiogenic syncope, which is a form of fainting related to stress. Respondent's use of sick leave was pronounced from March 13 through April 9, 2008.

31. On the days that she was at school, Respondent continued to teach, meet with administrators, and generally fail

to perform her basic duties. For example, on March 25, 2008, the guidance counselor met with Respondent and tried, literally for the tenth time, to explain her responsibilities in the preparation of the Child Study Team packet. Failing again, the guidance counselor correctly concluded that Respondent would never produce a satisfactory packet.

32. The principal conducted another observation on March 18, which was followed by a meeting between the principal and Respondent on March 28. The principal noted that Respondent was not using a vocabulary-building program called "Word Wall," even though she had been given a packet of these activities previously. Likewise, the writing center showed no signs of recent use. Respondent failed to follow the BEEP lesson plan that she had adopted for the day.

33. Instead of using the Trophies intervention series for students reading substantially below grade level, Respondent used the Trophies grade-level series without informing the guidance counselor or reading coach. When asked about this practice, Respondent claimed that these students could meet the challenge with extra support. The principal directed Respondent to use the Trophies intervention materials until the students' assessments demonstrated that they could handle the Trophies grade-level materials.

34. On April 9, 2008, the principal issued a formal evaluation assessment to Respondent. Respondent received "satisfactories" in instructional planning, lesson management, communication, behavior management, records management, subject matter knowledge, and other professional competencies. She received "unsatisfactories" in lesson presentation, student performance evaluation, and classroom management. Pursuant to the collective bargaining agreement, a single "unsatisfactory," which is the lowest rating, causes the overall evaluation to be "unsatisfactory."

35. On April 9, Respondent appeared at a scheduled meeting with the principal and several other administrators to discuss her situation. However, as soon as she entered the room and saw the seven or eight persons sitting around the table waiting for her, Respondent felt faint and instead walked outside, where she sat for several minutes until she had recovered sufficiently to drive herself home. On that or the following day, Respondent went on medical leave for the rest of the school year.

36. Although Respondent had met some benchmarks among the three deficient areas listed in the PDP, mainly in classroom management, serious deficiencies remained. Lesson presentation and student performance evaluation remained poor. For instance, at the end of the school year, administrators learned that Respondent had failed to ensure that her students use an

important reading diagnostic computer, which customized lessons for each student based on his reading weaknesses.

37. Because Respondent had slowed the PDP process, as described above, the Norcrest principal determined that Respondent had not received all of the assistance that she had been promised in the PDP. The principal therefore elected to place Respondent on another PDP, rather than commence the dismissal process. By memorandum to Respondent dated April 9, 2008, the principal placed Respondent on a second PDP. The second PDP was substantially the same as the first PDP, except that it had a new deadline.

38. After missing the remainder of the 2007-08 school year, Respondent reported for duty at the start of the 2008-09 school year. Evidently due to Respondent's extended absence, by memorandum dated September 3, 2008, the Norcrest principal drafted a third PDP. The third PDP was substantially the same as the first and second PDPs, except that it had a new deadline.

39. The principal and Respondent discussed her 2007-08 evaluation and the proposed third PDP at meetings on September 3, 5, and 12. Respondent disagreed with the third PDP and again refused assistance from any personnel at Norcrest. Agreeing with one of Respondent's objections to the draft PDP, the principal agreed to delete the DRA benchmarks from the third

PDP because Respondent had eventually met them the previous school year.

40. On September 12, 2008, the principal revised the draft of the third PDP to incorporate some changes from her discussions with Respondent. As finalized, the third IEP notes, for lesson presentation, that Respondent fails to select and use appropriate instructional techniques, pose clear questions that require students to reflect before responding, and give explicit instructions with confirmation of students' understanding. Among the listed strategies are attending a specific training program (for which a substitute teacher will be provided), collaborating with the team in implementing the Treasures reading series, observing another teacher implementing the Treasures reading series, using appropriate assessments to determine reading groups, posing questions to the class within the curriculum and responding to student responses (for which Respondent will be observed twice so she can obtain feedback on her techniques), and implementing all components of the calendar math kit.

41. For student performance, the PDP states that Respondent fails to monitor student progress in attaining achievement standards and use test data to diagnose student weaknesses. Among the listed strategies are using the Successmaker Enterprise (SME) computer program to assess student

achievement, place students in appropriate reading groups, and determine suitable instructional strategies; administering DRAs to place students in appropriate reading groups and determine suitable instructional strategies; and accepting assistance from the reading coach and team leader to ensure the proper use of reading assessments and groupings.

42. For classroom management, the PDP states that Respondent failed to create and maintain an organized and pleasant working environment in the classroom and use appropriate procedures to refer individual students for further assessment or intervention. Among the listed strategies are identifying locations for required visual elements with separate areas for the Word Wall, posted student work, and lesson presentation, preparing a list of needed materials used by other second grade teachers, collaborating with the team to develop a class schedule that incorporates a 90-120 minute reading block and adequate time for other subjects, and reviewing existing Child Study Team packets with the guidance counselor, who will help in their completion by Respondent.

43. Before the Norcrest principal could sign the new PDP, the District directed her to surplus a number of teachers. When the principal asked for volunteers, Respondent said that she would accept a transfer. Due to Respondent's status as a teacher with a PDP, Respondent's voluntary transfer had to be

approved by the District, which did so. For the second time in as many years, Respondent surplused herself out of a deteriorating professional situation.

44. Arriving at Lyons Creek, Respondent learned from the principal that she was to teach reading and sixth-grade science. Respondent asked to switch from science to social studies, and, after obtaining the consent of the teacher who had been assigned to teach social studies, the principal reassigned Respondent to teach social science, instead of science. As ordered by the District, the principal discarded the third PDP, so that Respondent could start at Lyons Creek with a clean slate.

45. Respondent's slate did not long remain clean, though. Based on two observations that he performed in October, the principal concluded that this was one of the worst classrooms that he had ever observed. In social studies, Respondent was misinforming the students. In reading, Respondent was not collecting crucial fluency data and, when she collected it, it was unusable. By mid-November, the Lyons Creek principal began preparing a fourth PDP for Respondent. Again, the PDP process was slowed by Respondent's lack of cooperation. Several attempts to schedule meetings were unsuccessful due to Respondent's refusal to accept hand-delivered notices, claims of a lack of notice of previously scheduled meetings, and absences from school due to illness.

46. On January 12, 2009, the principal presented to Respondent her fourth PDP, which addresses the three deficiencies addressed previously: lesson presentation, student performance evaluation, and classroom management. The deadline for elimination of the itemized deficiencies is April 23, 2009. Any protestation to the contrary notwithstanding, it appears from the similarity of the third and fourth PDPs that the principal or his staff consulted the third PDP in the preparation of the fourth PDP; however, the fourth PDP was entirely appropriate in its contents.

47. The deficiencies listed for lesson presentation are the failure to use appropriate instructional techniques, including available materials and technology that support learning of the specific knowledge and skills; ask clear questions that require students to reflect before responding; give brief, explicit directions and check for understanding; and provide timely and specific written or verbal feedback on student work. Strategies include meeting with the department chair regularly to implement the required curriculum on a daily basis and obtain feedback based on the chair's observations; meeting with the New Educator Support System (NESS) coach, who will model appropriate presentation techniques; and collaborating with the reading coach to incorporate vocabulary



into the lesson, teach words in context, and use techniques from 9 High Yield Strategies.

48. The deficiencies for student performance evaluation are the failure to monitor student progress in meeting achievement standards and to use test data to diagnose individual student weaknesses and strengths. Strategies include working with the reading coach to understand and use Virtual Counselor; working with the testing coordinator to obtain the students' test scores; under the guidance of the department chair, regularly testing the students; and, in cooperation with the department chair, determining which students need remediation and acceleration.

49. The deficiencies for classroom management are the failure to create and maintain an organized and pleasant working environment in the classroom, to encourage students to participate and contribute to class activities, and to use appropriate procedures to refer individual students for further assessment or intervention by other professionals. Strategies include working with the NESS coach to implement classroom procedures that are conducive to learning, observing other teachers implement effective classroom management practices, and viewing videotapes portraying effective classroom management.

50. At the mid-point of the 90-day period, the principal scheduled a meeting, as is customary. He set it for 10:00 a.m.

on February 24 and arranged for coverage of Respondent's classes. Instead of attending the meeting at its scheduled starting time, Respondent spent an hour caucusing with her union representative and a private attorney, trying to decide which of them would represent her. Finally, at 11:00 a.m., Respondent entered the meeting with her union representative. At that time, the principal advised her that, based on his most recent observation on February 19, she was still deficient in lesson presentation, student performance evaluation, and classroom management.

51. Respondent's performance deteriorated after she received the fourth PDP. In January, Respondent failed to enter her students' interim scores. The next month, Respondent failed to record grades for students' reports. For the second term's grades, Respondent had only three or four graded items, and they were all in the same month. For one entire grading period, Respondent administered no quizzes or tests. Respondent could not meet the District deadline for reporting grades without relief from other duties. Before long, Respondent's grades bore no correspondence to student performance.

52. An important reading test, known as the San Diego assessment, requires three administrations to report each student's growth during the year. The Lyons Creek principal described it as an "ordeal" to get Respondent even to administer

the test. When she finally entered data, it was unusable. Just as she had done the previous year with the DRA data, Respondent entered the same data for the second and third administrations, making it impossible to determine if a student had grown or was in need of remediation and, if the latter, to identify the specific curriculum that would assist the student. Just as was the case with the reporting of obsolete DRA data, the reporting of the same San Diego data for the second and third assessments also made it less likely for others to notice that Respondent was not performing important job duties.

53. Respondent continued to misinform her class. One day, while the principal was observing her, Respondent told the class that they would have three hours to complete the upcoming FCAT. In fact, they would have only 80 minutes.

54. Within three months of her arrival at Lyons Creek, Respondent and her classes were coming apart. Respondent called a girl in one class a "vicious dog." (The student claimed that Respondent called her a "bitch.") Respondent routinely yelled at the class.

55. The principal was inundated by cascading complaints from parents covering poor teaching, unreliable grading, failure to respond to parent communications, inappropriate comments to students, and classrooms in chaos. The beleaguered team leader implored the principal to assign an administrator to

Respondent's parent-teacher conferences due to their explosiveness.

56. On May 5, 2009, the principal prepared a formal evaluation of Respondent. He assigned her "unsatisfactoriness" in lesson presentation, student performance evaluation, and classroom management and, thus, an overall rating of "unsatisfactory." The principal recommended to the superintendent that Respondent's contract be terminated. Respondent eventually retired in September 2010.

57. After presenting to Respondent the 2008-09 evaluation, the principal relieved her of her teaching duties and assigned a substitute teacher to finish the remaining weeks of school. In preparing to discharge her duties, the substitute teacher found boxes of ungraded papers and assignments.

#### CONCLUSIONS OF LAW

58. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat.

59. Section 1012.795(1) provides:

The Education Practices Commission may suspend the educator certificate . . . for up to 5 years . . .; may revoke the educator certificate of any person . . . for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person . . .; 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 . . .  
\* \* \*

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

60. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Bank. & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

61. It is unlikely that Respondent is guilty of personal conduct that seriously reduces her effectiveness as a District employee. Nearly all of the evidence portrays a teacher who is either incapable of teaching or incapable of making the effort to teach. The little evidence of intentional wrongdoing on Respondent's part, which consists of the reporting of obsolete reading achievement data on two occasions, is incidental to the incompetence and probably insufficient to prove a case of seriously reduced effectiveness. In any event, it is unnecessary to address this alleged violation.

62. Petitioner has met its burden of proving by clear and convincing evidence that Respondent is incompetent to teach.

Respondent's incompetence is startling in its width, depth, and persistence.

63. Both proposed recommended orders merit discussion, if only to reject the analysis contained in each. Respondent treats this as a dismissal case and bases her argument on the shortcomings in Petitioner's case under section 1012.34. This section addresses teacher-evaluation instruments and a teacher's failure to timely correct performance deficiencies--neither of which is at issue or alleged here. This section is reserved for dismissal proceedings (and does not necessarily preclude reliance on incompetence, as another aspect of "just cause" under section 1012.33)--which is not at issue here. In fact, section 1012.34(5) requires superintendents to report to the Department of Education certain under-performing teachers, so that the department may decide whether to take disciplinary action under section 1012.795.

64. In his proposed recommended order, Petitioner requests discipline of a five-year revocation followed by three years' probation. This request is supported by one fact: the absence of any other discipline over Respondent's long teaching career. Several facts support harsher discipline.

65. For two years, the consequences of Respondent's incompetence have been borne by every student entrusted to her, their parents, Respondent's administrators at two schools, and, not least of all, Respondent's teaching peers at two schools.

66. Among students, those most vulnerable to neglect have suffered the most. Respondent's failure to prepare Child Study Team packets for students suspected of having disabilities has delayed the work of other professionals in identifying students with disabilities and implementing specialized instruction and related services to help these students obtain educational benefit. Respondent's failure to administer and report standardized reading achievement data has delayed the work of other professionals in identifying students with reading problems and implementing remedial reading programs to help these students access the remainder of their curriculum.

67. For two years, Respondent has not only ignored her incompetence, despite the best efforts of two principals to help her recognize and eliminate her many specific weaknesses. Rather than accept personal responsibility for dealing with these problems, Respondent has instead: 1) blamed other persons, faulty technology, and incomplete materials; 2) tried to conceal her shortcomings by misreporting evaluative data; and 3) disrupted the PDP process by a series of evasions and irresponsible behaviors.

68. Respondent's tactics are especially troubling given the extent to which the needed corrective action required no more of Respondent than modest effort. After the Norcrest principal ordered her to use the calendar math kit, Respondent did not even both to open all of the packets within the kit to investigate thoroughly its use. When confronted a second time about her failure to use the calendar math kit, Respondent complained that

her kit lacked the organization of another teacher's kit-- failing, again, to have sufficiently familiarized herself with the resource to realize that the other teacher had taken the time to organize her kit. Respondent complained about a "broken" computer when the smallest effort on her part would have meant summoning the tech specialist to discover that the computer was merely in a sleep state and only slightly more effort would have consisted of checking out the computer herself.

69. The full dimensions of the hoarded materials defy much analysis on this record. But laziness appears at least partly to blame for this behavior too. Sparing herself the effort of finding a grade-appropriate Halloween handout, Respondent instead grabbed from a box a grade-inappropriate Halloween handout, not caring about the missed opportunity to use a suitable handout to reinforce the current curriculum or the confusion that some students might experience from exposure to math that they had not yet been taught.

70. A complete lack of effort, coupled with a disturbing lack of competence, explain Respondent's confusion about the BEEP lesson plans pertaining to the reading curriculum. It is difficult to say how much time and thought it would have taken for Respondent, without assistance, to examine the BEEP lesson plans and Trophies reading series and discern that the BEEP materials are means of teaching the Trophies curriculum materials. Obviously, Respondent never invested the required time and thought to figure out this simple relationship. Perhaps worse, again seeking the easiest path, Respondent taught under-



achieving students with the same Trophies series used for students who were reading on grade level, relying on her deficient teaching skills to make these more advanced materials accessible to the under-performing readers.

71. A complete lack of effort, coupled with a disturbing level of incompetence and effort at concealment, explain Respondent's misreporting of obsolete reading achievement data from standardized tests on two separate occasions over two years. Rather than invest the time and effort to figure out how to administer the tests and enter the resulting data on the proper database, Respondent chose to carryover prior test results and avoid detection for awhile.

72. Some of Respondent's more prosaic shortcomings might prove most resistive to change. Respondent's disorganized lesson presentation, inability to engage her students, and vague (and sometimes incorrect) statements to her class are critical flaws whose elimination would require considerable effort--effort that, on this record, Respondent is unprepared to make.

73. In the final analysis, Respondent herself is responsible for the rejection of Petitioner's lighter discipline. Respondent's success in frustrating the efforts of two principals to have her perform her basic duties and, failing that, to impose accountability for these failures necessitate the rejection of Petitioner's proposed discipline. The permanent revocation of Respondent's certificate eliminates the risk that another school and another school district will have to endure what these schools and District have endured, which is the misuse of a

certificate to interfere with the educational process and undermine the education profession.

RECOMMENDATION

It is RECOMMENDED that the Education Practices Commission enter a final order finding Respondent guilty of incompetence, in violation of section 1012.795(1)(c), Florida Statutes, and permanently revoking her educator certificate.

DONE AND ENTERED this 7th day of August, 2012, in Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
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 7th day of August, 2012.

COPIES FURNISHED:

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

Lois Tepper, Interim 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

Jeffrey S. Sirmons, Esquire  
Johnson and Sirmons, LLP  
Suite 309  
510 Vonderburg Drive  
Brandon, Florida 33511  
keckler@verizon.net

Charles T. Whitelock, Esquire  
Charles T. Whitelock, P.A.  
Suite E  
300 Southeast 13th Street  
Fort Lauderdale, Florida 33316  
charles@ctwpalaw.com

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.