

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 13-1627TTS  
 )  
 FRANCIS MADASSERY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on August 7, 2013, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in sections 120.569 and 120.57(1), Florida Statutes.

APPEARANCES

For Petitioner: Sara Marken, Esquire  
Heather Ward, Esquire  
School Board of Miami-Dade County  
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For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether there is just cause to terminate Francis Madassery's employment with the Miami-Dade County School Board based upon the allegations made in its Notice of Specific Charges filed on August 6, 2013.

PRELIMINARY STATEMENT

By letter dated April 18, 2013, Francis Madassery ("Respondent" or "Madassery") was notified that Miami-Dade County School Board ("Petitioner" or "School Board") took action to suspend Petitioner without pay and initiate dismissal proceedings.

Respondent timely elected to dispute the reasons for the termination and requested a hearing. Because he requested a formal proceeding, the matter was referred to the Division of Administrative Hearings ("DOAH"). A Notice of Specific Charges was filed on June 19, 2013, and a final hearing was scheduled to start June 25, 2013. The case was continued and rescheduled.

On August 6, 2013, the School Board filed a Notice of Specific Charges (revised), in which it charged Madassery with Count I, Failure to Correct Performance Deficiencies and Count II, Incompetency Due to Inefficiency. The matter proceeded as rescheduled on August 7, 2013.

At hearing, School Board presented the testimony of three witnesses: Karen Powers ("Powers"), principal; Deborah Johnson-

Brinson ("Johnson-Brinson"), assistant principal; and Launa Fuller ("Fuller"), math coach. Petitioner's Exhibits numbered 1 through 24 were admitted into evidence. Respondent testified on his own behalf and presented the testimony of Gail Ann Clotman, Lillie Johnson, and Shenika Uptgrow (by deposition testimony). Respondent's Exhibits 1 through 3 were admitted into evidence. A late-filed exhibit consisting of student test data was entered into evidence as Respondent's Exhibit 4.

The proceedings were transcribed and the parties availed themselves of the right to submit proposed recommended orders after the filing of the Transcript. The two-volume Transcript of the final hearing was filed with DOAH on October 30, 2013, and October 31, 2013. The undersigned granted Petitioner's Unopposed Motion for Extension of Time to File Proposed Recommended Orders, which the parties filed by the due date, November 22, 2013. Both timely filed Proposed Recommended Orders have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within Miami-Dade County Florida. Article IX, Florida Constitution; § 1001.32, Fla. Stat. Specifically, the School

Board has the authority to discipline employees.

§ 1012.22(1)(f), Fla. Stat.

2. Madassery started his employment with the School Board in 2004. He was employed pursuant to a professional services contract.

3. From 2004-2011, Madassery taught Exceptional Student Education ("ESE") at Norland Elementary School ("Norland"). He was not subject to any discipline while employed as an ESE teacher, and his tenure in that position was successful. During that period, he received exemplary or satisfactory evaluations.

4. In October 2011, Norland Principal, Powers, moved Madassery from his ESE position to a regular mathematics second-grade education class after Norland lost an ESE teaching position because student enrollment declined. Throughout the rest of the 2011-2012 school year, Madassery co-taught with Shenika Uptgrow.

5. Madassery received a satisfactory performance evaluation for the 2011-2012 school year.

6. During the Norland 2012-2013 school year, Madassery expected to return to teaching ESE, but he was assigned to a second-grade regular mathematics classroom. Madassery co-taught with Johnson the same group of students in different subject areas. Madassery taught math, science, and social studies, and Johnson taught the same students reading and language arts.

7. Madassery and Johnson's second-grade class was challenging with approximately eight students out of the total 38 students with behavioral problems. Problems ranged from students unable to remain on task or complete assignments to students who disrupted the classroom.

8. Even though Johnson had been teaching for seven years, she found it difficult to teach the second graders at times because of the behavioral problems. Occasionally, she had to spend part of the class period dealing with the behavioral issues.

9. Madassery and Johnson discussed the behavioral problems of their students often and strategized on how to control their behavior.

10. On October 15, 2012, Powers observed Respondent in his classroom for an hour and fifteen minutes. Powers documented her observations on the Observations of Standards Form-Teacher.

11. During the observation, Respondent was deficient in the area of knowledge of learners, Performance Standard ("Standard") 2, and the area of instructional delivery and engagement, Standard 4. Respondent failed to meet Standard 2 because Madassery instructed every student in the same manner as opposed to using the different types of instruction for varying ability levels. Respondent should have instructed the students in groups based on their performance level and their baseline

scores. Madassery was deficient in Standard 4 because he failed to deliver a complete Go Math<sup>1/</sup> lesson for the day by allowing students to work on problems by themselves without any instructions, not introducing the problem-solving or hot questions. Powers saw Respondent walk around and work with students individually during the observation but he did not teach each student how to work through the problems as required. Instead, he wrote the correct answers for each student.

12. On October 17, 2012, Powers notified Madassery that a support dialogue meeting was being held to discuss the observation of October 15, 2012. During the meeting, Powers placed Madassery on a support dialog, a 21-day period wherein a math coach and another second-grade teacher were to provide assistance to Madassery so that he could improve his deficiencies.

13. On November 13, 2012, Powers performed a second classroom observation of Madassery teaching math for an hour and 26 minutes. During the observation, Respondent was deficient in three standards. Respondent still did not meet Standard 2 because he did not separate students into small groups for instruction based on their specific learning needs. As in the first observation, Madassery still walked around the room again checking the students' work and wrote correct answers in the workbooks instead of re-teaching the specific math skill to a

small group of students. Students who finished their work had nothing to do because Respondent spent most of the 90-minute lesson correcting answers in the workbooks.

14. Madassery was still deficient in Standard 4 because he presented information to his class that was unclear and not one of the 13 "students were able to break down the number to subtract into two numbers." Furthermore, Respondent answered his own questions while teaching the lesson and taught part of the lesson at his computer with his back to the students.

15. During the second observation, Madassery was also deficient of Standard 8 because he was unable to establish effective classroom management. Students got up to use the bathroom at will, two students fell out of their chairs, students were arguing with each other, and one student had his head down for approximately nine minutes. Respondent's only responses to improper behavior were to bang on the desk and whisper in the students' ears.

16. On November 19, 2012, Powers held a Conference for the Record with Madassery regarding the November 13, 2012, observation. Powers discussed her observations and placed Respondent on a 90-Calendar Day Performance Probation, which was documented by an Improvement Plan ("IP") for Respondent to follow.

17. Madassery's IP was designed to help improve his specified deficiencies and required that he complete six activities by December 19, 2012. As of January 17, 2013, Respondent had only shown two of the six requested activities to Powers. On January 17, 2013, Powers issued Respondent a written Professional Responsibilities memo. The memo dated January 17, 2013, stated:

On November 28, 2012, you were given Improvement Plans (IP) for Performance Standards 2, 4, and 8 with specific activities to complete and submit by December 19, 2012. As of this date, you have shown two of the requested activities to this administrator. The following is a summary of the activities which still need to be submitted for each performance standard:

Performance Standard 2:

- "Best Practice" summary from Ms. Fuller, Ms. Colbourne, and the UTD Mentor

Performance Standard 4:

- Submit a revised mathematics lesson plan
- Summarize a "Best Practice" after observing Ms. Buchanan

Performance Standard 8:

- Submit a parent communication log

Please be reminded that during the 90-Calendar Day probationary period, it is your responsibility to submit the requested activities to this administrator on time. You are requested to submit the remaining items by January 25, 2013. Please see me if you have any questions. Thank you in advance for your cooperation.



18. Madassery submitted the remaining IP assignments that were originally due on December 19, 2012, to Powers on January 25, 2013.

19. The third observation of Madassery was conducted by Assistant Principal Johnson-Brinson, on January 8, 2013. Johnson-Brinson observed Madassery teaching second-grade mathematics from 10:17 a.m. to 11:35 a.m. During the third observation, Madassery did not use the Go Math<sup>2/</sup> curriculum. Instead, Respondent wrote on the smartboard and lectured his second graders throughout the math lesson without using any manipulatives<sup>3/</sup> for the required objective of the math lesson taught for the day. Madassery was still deficient in Standards 2, 4, and 8.

20. After the January 8, 2013, observation, a post-observation meeting was held on January 17, 2013. Madassery was placed on a revised IP to help him learn techniques and improve his deficiencies. In order to improve deficiency in Standard 2, Madassery was given the following IP assignments, due on February 16, 2013: to read an article on Identifying Students' Learning Styles and then identify two strategies that he could use to address the learning styles of his students. Respondent was also required to attend a professional development session with his union mentor regarding differentiated instruction and summarize how he planned to implement differentiated instruction

in his classroom after the session. In the IP for deficiency Standard 4, Respondent was assigned to observe the math coach teach a lesson utilizing manipulatives, teach a lesson as the math coach observed, and get feedback from the math coach.

21. On February 14, 2013, Powers observed Respondent's math class for one hour and 25 minutes. The subject for the lesson was the use of grams versus kilograms to weigh objects. Madassery was still deficient in Standard 2 because he taught the whole group of students by asking and answering his own questions and never separated the students into differentiated instructional groups.

22. Madassery also demonstrated he was deficient in Standard 4 during the observation because he did not follow the Go Math curriculum by starting the lesson by explaining the purpose. Additionally, when Respondent used the smartboard, only two out of 17 students were paying attention. Of the remaining students, six were talking, three were out of their seats, three were on the computer, two had their heads down, and one was playing with a toy. Respondent also failed to teach the problem-solving portion of the Go Math lesson.

23. Madassery was deficient in Standard 5 because his student folders were not maintained in a way to record how each child was performing in class. When Powers reviewed the student folders, they were dated from August through November 2012, even

though it was the third grading period. None of the folders indicated how Respondent was evaluating grades for the second and third grading periods. Madassery provided Powers graded papers with smiley faces rather than the required letter grades. Additionally, there were two stacks of ungraded and undated math assignments in the classroom.

24. Madassery also spent the majority of the 90-minute class trying to control his students' behavior and Madassery failed to deal with the behavioral issues effectively. Therefore, Respondent was deficient in Standard 8.

25. On February 21, 2013, a post-observation meeting was held with Madassery regarding the fourth observation on February 14, 2013. Madassery was deficient in four areas during the observation. Additionally, Respondent had failed to timely turn in his IP assignments a second time. The deadline was February 16, 2013. Powers issued Madassery a second professional responsibilities memo regarding following the IP and deadlines.

26. During the meeting, Powers also provided Madassery another revised IP with assignments for him to complete to help improve the four February 14, 2013, observation deficiencies and gave a March 14, 2013, deadline. For deficiency of Standard 2, Madassery was to attend a professional development workshop on differentiated instruction and write a summary of how he

implements differentiated instruction in his classroom, analyze his students' data from the winter math interim test, and write a plan on how he will address his students' strengths and weaknesses.

27. For Standard 4, Respondent was assigned to watch the math coach model a math lesson and then submit an outline of a math lesson from start to finish.

28. For Standard 5, Respondent was assigned to communicate with another teacher about how to organize the students' folders and submit a summary on how he planned to implement an organizational plan, discuss grading papers with the math coach, and submit a procedure for how he planned to grade papers and place grades in the e-gradebook.

29. The February 19, 2013, IP also required Respondent to revise his discipline plan, and outline a best practice to be utilized in his classroom based on the article, "The Well-Managed Classroom," to help improve Respondent's skills for Standard 8.

30. Another evaluation was conducted by Powers on March 20, 2013. During the observation, Madassery displayed the same deficiencies as previous observations and no improvement had taken place despite all the assistance provided to Madassery. The observation lasted an hour and 10 minutes. Madassery still was deficient in Standard 2 because even though

he separated the students into groups, the groups were not divided according to the students' abilities. For example, three students needed math remediation but Respondent placed them at the computer to do a reading program. Also, he grouped two students together who understood the lesson and provided them remedial assistance even though they should have received enrichment activities.

31. Madassery was still also deficient in Standard 4 because he did not begin the lesson by explaining its purpose and connecting it to the students' prior knowledge.

32. During the observation, Powers reviewed Madassery's student folders to see if Respondent had brought them up to date as previously instructed. On March 20, 2013, the student folders still only contained papers dated from August 2012 to November 2012. Additionally, stacks of ungraded and undated papers were still located on a shelf behind Respondent's desk.

33. Madassery also still failed to manage the students' behavior effectively during the observation. For example, four students were continuously walking around the classroom, six students were off-task, and the remaining seven students sat at desks without doing anything.

34. After the observation, Powers determined that Respondent was incapable of effectively teaching in the

classroom and recommended that Madassery's employment contract be terminated.

35. On April 17, 2013, Petitioner took action to suspend and initiate dismissal proceedings against Respondent for just cause, including, but not limited to, failure to correct noted performance deficiencies within the 90-calendar-day performance probation period and incompetency due to inefficiency.

Petitioner ultimately charged Madassery with two counts in Notice of Specific Charges dated August 6, 2013, that included Count I, Failure to Correct Performance Deficiencies, and Count II, Incompetency Due to Inefficiency.

#### CONCLUSIONS OF LAW

36. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013).

37. Section 1012.33(6)(a), Florida Statutes, provides that the teacher "may be suspended or dismissed at any time during the term of the contract," but only "for just cause as provided in paragraph (1)(a)" of the statute.

38. The burden of proof in this proceeding is on the School Board to prove by the preponderance of the evidence that just cause exists to terminate the employment of Madassery.

McNeill v. Pinellas Cnty. Sch. Bd. 678 So. 2d 476, 477 (Fla. 2d DCA 1996) ("The School Board bears the burden of proving by a

preponderance of the evidence, each element of the charged offense which may warrant dismissal.") Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

"Preponderance of the evidence" is evidence that more likely than not tends to prove the proposition set forth by the proponent. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

39. This is a de novo proceeding for the purpose of formulating agency action, and not to determine whether the School Board's decision was correct at the time that it made the decision. The findings of fact "shall be based exclusively on the evidence of record and on matters officially recognized." § 120.57(1)(j) and (k), Fla. Stat.

40. In the Notice of Specific Charges, Petitioner sought to suspend and terminate Respondent by charging Respondent with two counts pursuant to sections 1012.34 and 1012.33. In its Proposed Recommended Order, paragraph 106, the School Board dismissed Count I, Failure to Correct Performance Deficiencies. Therefore, the undersigned will not address section 1012.34 as a basis for termination in this matter; Count II, Incompetency Due to Inefficiency pursuant to section 1012.33 is the only issue for the undersigned to consider.

Section 1012.33 provides:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

\* \* \*

(4)(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any school principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. Whenever such charges are made against an employee of the district school board, the district school board may suspend such person without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid. In cases of



suspension by the district school board or by the district school superintendent, the district school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the district school board and the employee is discharged, his or her contract of employment shall be canceled. Any decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided the appeal is filed within 30 days after the decision of the district school board.

41. Rule 6B-5.056 is entitled, "Criteria for Suspension and Dismissal," and it provides in relevant part:

\* \* \*

(3) "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

(a) "Inefficiency" means one or more of the following:

1. Failure to perform duties prescribed by law;
2. Failure to communicate appropriately with and relate to students;
3. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
4. Disorganization of his or her classroom to such an extent that the health, safety or welfare of the students is diminished; or
5. Excessive absences or tardiness.

42. In the instant case, the evidence demonstrates that Respondent was unable to adequately perform as a regular second-grade math teacher. Madassery was incapable of implementing the

Go Math curriculum properly, inept in instructional delivery and engagement, never became proficient in classroom management, and did not keep proper student files, even though Petitioner had placed him on three IPs with detailed activities to help improve Respondent's deficient areas.

43. It is unfortunate that Madassery failed to take his probation seriously and take advantage of all the IP activities assigned to help improve his deficient skills. Instead, he repeatedly failed to timely complete the IP assignments even after he was warned by memo several times of the requirements to complete the IPs by the deadlines.

44. However, Respondent's inefficiency does not fall within the parameters of rule 6B-5.056. Petitioner's position that there is sufficient evidence to establish just cause to terminate Respondent due to his incompetency because he repeatedly failed to communicate appropriately with and relate to his students is not persuasive. Despite the overwhelming evidence that Madassery was not performing his job adequately, the record lacks evidence of Madassery failing to communicate with and relate to the children in his classroom. Even though Respondent was repeatedly counseled about classroom management, he was never counseled regarding communicating appropriately with and relating to his students. Behavioral problems do not equate to communication. Furthermore, each of the observations

and the Observation of Standards Forms, all focus on Standards 2, 4, 5, and 8 but do not address failure to communicate or relate to students. Additionally, communication is neither addressed in Respondent's three IPs nor in the Professional Responsibilities memos Respondent received for repeatedly not completing his assignments timely while on probation.

Accordingly, because Petitioner has failed to meet its burden and show that Respondent was inefficient in communicating appropriately with and relating to the students to establish incompetency within the meaning for rule 6B-5.056, as alleged, dismissal of Count II is required.

#### RECOMMENDATION

Upon consideration of the Findings of Fact and the Conclusions of Law reached, it is

RECOMMENDED that the Miami-Dade County School Board enter a final order that:

1. Immediately reinstates Respondent Francis Madassery;
- and
2. Issues Respondent back salary.

DONE AND ENTERED this 30th day of December, 2013, in  
Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of December, 2013.

ENDNOTES

<sup>1/</sup> Go Math is the curriculum the public schools in Miami-Dade County use for grades K-5. It provides the steps for each math lesson, which includes several pages of instruction for the teacher to follow. Each lesson starts with an essential question that informs the students what the subject matter is that they will be learning that day. Next, the teacher has to unlock the problem, which is an activity that uses manipulatives to help the students understand the concept being taught by using their hands on items. After unlocking the problem, the teacher presents the check questions, which are informal assessments designed to give the teacher an assessment of the students' comprehension of the lesson. Based on how many answers a student answers correctly determines the next step. Students who get one or both questions correct go to the "On Your Own" section of the Go Math curriculum followed by enrichment activities. Students who miss both questions work with the teacher to grasp the lesson. After about 15 minutes of differentiated instruction, all the students return to a group and the teacher teaches the final step of Go Math, which is a problem-solving process within the class period.

<sup>2/</sup> Madassery's testimony that he followed the Go Math curriculum a majority of the time is rejected as not being credible.

<sup>3/</sup> Manipulatives are hands-on objects or tools that students use to help grasp the math concept for the lesson, such as: counters, marbles, cubes, etc.

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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.