

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-1676

BARBARA RICE,

*AMENDED AS TO COPIES
FURNISHED ONLY

Respondent.

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AMENDED RECOMMENDED ORDER

Pursuant to notice, an evidentiary hearing was conducted in this case on September 10 and 11, 2013, by video teleconference with sites in Tallahassee and Fort Myers, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966

For Respondent: Robert J. Coleman, Esquire
Coleman and Coleman
Post Office Box 2089
Fort Myers, Florida 33902

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner has just cause to terminate Respondent's employment as a custodian.

PRELIMINARY STATEMENT

By letter dated April 1, 2013, Respondent Barbara Rice (Respondent) was notified that Petitioner Lee County School Board (Petitioner) intended to seek termination of Respondent's employment. The letter also informed Respondent that she would be suspended without pay, effective April 2, 2013.

On April 15, 2013, a Petition for Termination (Petition) was served on Respondent. The Petition set forth the allegations on which Respondent's proposed termination was based, and included charges of willful neglect of duties, gross insubordination, incompetence, failure to adhere to high ethical standards, and failure to satisfactorily and efficiently perform assigned job duties.

The Petition informed Respondent of her right to request a hearing on the charges. Respondent timely requested an administrative hearing, and Petitioner referred the matter to the Division of Administrative Hearings. The evidentiary hearing was scheduled in consultation with the parties regarding their mutual availability.

Prior to the hearing, the parties filed a Joint Pre-hearing Stipulation in which they set forth a number of admitted facts and agreed statements of law. The parties' stipulations are incorporated into this Recommended Order to the extent relevant.

At the hearing, Petitioner presented the testimony of the following witnesses: Andy Brown, investigator with Petitioner's Department of Professional Standards and Equity (DPSE); Jason Peters and Lisa Eastridge, both of whom were Lexington Middle School (Lexington) assistant principals during the relevant time period; Jeff Hancock, Lexington head custodian; Rosa Valentin, a custodian and former head custodian at Lexington; Mack Farmer, Lexington building supervisor; and Linda Caprarotta, Lexington principal. Petitioner's Exhibits 1 through 21 were admitted in evidence.

Respondent testified on her own behalf and also presented the testimony of Claytrina Griffin, a custodian at Lexington. Respondent's Exhibits 1 through 4, 6, and 7 were admitted in evidence. An objection to Respondent's proposed Exhibit 5 was sustained; the proposed exhibit was neither admitted nor proffered, and therefore, is not part of the record. See § 120.57(1)(f), Fla. Stat. (2013).^{1/}

The five-volume Transcript was filed on October 7, 2013. The filing deadline for proposed recommended orders (PROs) was extended pursuant to the parties' joint motion. The parties timely filed their PROs by the extended deadline, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is responsible for hiring, overseeing, and terminating employees in the school district.

2. Respondent has been employed by Petitioner as a custodian since September 13, 2002. Respondent worked at Dunbar Middle School (Dunbar) until August 6, 2010, when she was involuntarily transferred to Lexington. Respondent worked at Lexington from August 2010 until her suspension on April 2, 2013.

3. Respondent's personnel file documents that throughout her employment as a custodian, she has had problems with displays of disrespect and insubordination to her fellow employees and superiors. Respondent's disrespect and insubordination have been a consistent theme in written warnings and reprimands, incident reports, and conference summary reports. Respondent has been repeatedly advised in writing of the concerns with her behavior, instructed to stop the unacceptable behavior, and advised of disciplinary consequences if the behavior did not stop. The writings in turn refer to verbal communications with Respondent about the same subject addressed in the writings. The writings also reflect a consistent theme of Respondent's problematic behavior arising when a superior would attempt to address a problem with Respondent's job performance. For example, Respondent would be told to clean certain areas, but Respondent would fail to follow the directives, and then Respondent would

become agitated and loud when confronted regarding her failure to follow the cleaning directives.

4. The first memorandum, dated January 9, 2004, was issued by Respondent's then-supervisor, Carlos Morales:

Despite previous conversations regarding your job responsibilities as a member of the custodial staff at [Dunbar], it has become necessary for me to apprise you in writing of a serious concern regarding your insubordination . . .

On Monday, January 5, 2004, you were asked to vacuum all offices, rooms, and hallways of the administrative wing. Upon checking the administrative wing on the morning of January 8th, many areas appeared in need of vacuuming. During my discussion with you regarding this matter, your verbal, agitated response became loud, accusatory and insubordinate . . . It was then noted you were approaching other school personnel regarding the discussion and your accusations.

Employees who are insubordinate are subject to disciplinary action. I sincerely want you to be successful at [Dunbar,] but this requires more effort in your assigned duties.

The teachers, staff, and students depend on you to do your part in making this a clean and safe learning environment.

5. Respondent's performance evaluation for the 2003-2004 contract year echoed Mr. Morales' concern, by finding that Respondent "inconsistently practiced" effective communications with co-workers and supervisors. The comments informed Respondent that she needed "to work on her communication in times

of questions of job requirements." The same inconsistent rating in the same category, with similar comments, appeared in Respondent's evaluation for 2004-2005.

6. Respondent received good performance evaluations for contract years 2005-2006 and 2006-2007. No behavior problems were documented in her personnel file during that time.

7. Respondent's performance evaluation for 2007-2008, completed in March 2008, found that although Respondent's job performance was "adequate," her punctuality and attendance "continue to be" areas needing improvement. Later that same year, in June 2008, an incident report was prepared by the assistant principal to document an incident between Respondent and her then-supervisor, Pete Torres. According to the report, Mr. Torres tried to discuss a concern with Respondent about her chronic tardiness, but Respondent "became very loud and disrespectful towards her supervisor, Mr. Torres." The assistant principal met with Respondent to discuss the incident, and determined that Respondent "was disrespectful towards her supervisor. Disrespect towards any school employee will not be tolerated. Any type of future disrespect will result in [a] documented performance letter." Respondent was advised that a documented incident report would be placed in Respondent's personnel file.

8. Respondent's performance evaluation for 2008-2009 found Respondent's performance inconsistent in the areas of punctuality and communications with co-workers and supervisors. The comments noted inconsistencies with Respondent's "interpersonal skills and attendance issues." Shortly after this performance evaluation, on July 23, 2009, the assistant principal prepared another incident report to document an incident involving Respondent. According to the documentation, at a mandatory meeting and training session for all of the custodians with district zone manager Debbie Greene to review summer cleaning processes and procedures, Respondent "became very loud, disrespectful and belligerent towards her direct supervisor, head custodian Randy McMillan." The assistant principal held another meeting with Respondent to discuss the incident, and he determined that Respondent was disrespectful towards her supervisor. He also reminded Respondent that "this was the second documented incident involving disrespect towards a supervisor in the past two years." Respondent was told again "that this behavior is unacceptable and would not be tolerated." Respondent was advised that this documented incident report would be placed in her personnel file.

9. For the 2009-2010 contract year, Respondent's performance evaluation continued to reflect issues in the communications areas. Respondent was rated as "inconsistent" in the following areas: "responds appropriately to praise and

constructive criticism"; and "communicates effectively with coworkers, supervisors, and school-based staff." The comments regarding these ratings were: "Ms. Rice continues to have trouble responding appropriately to constructive criticism. Cooperating with supervisors continues to be an area of focus."

10. The documentation in Respondent's personnel file from her years at Dunbar portrays a pattern of similar behavior by Respondent in her dealings with a number of different supervisors. This documentation put Respondent on notice that her behavior was not acceptable. Nonetheless, Respondent did not take away from her years at Dunbar that her behavior was not acceptable and needed to change. When Respondent was asked if she recalled having problems with her supervisors and other employees at Dunbar, she responded:

Of course I've had problems with -- from the other school, but it was only by speaking my opinion because if someone asked me something I'm going to tell them how I feel, but it's not nothing about like cursing them or whatever, just let them -- I'm giving them my answer. And then the way I talk, they say that I be disrespectful to them because I have a hot-pitched tone voice, but I don't mean no harm on nothing I say. I just trying to express my opinion. Even when I talk, I talk with my hands and it don't mean that I'm trying to be rude or nothing, I'm just used to expressing my feelings.

11. Respondent was involuntarily transferred to Lexington shortly after the beginning of the 2010-2011 contract year. The

circumstances of this transfer were not established in the record.

12. Respondent began working as a custodian at Lexington on August 9, 2010. She worked during the day over the summer, as did all of the custodial staff. When school was in session, Respondent was assigned to what was variously described as the afternoon, evening, or night shift (hereafter referred to as the "night shift"), working from 2:00 p.m. until 10:00 p.m.

13. At Lexington, the building supervisor was in charge of the custodial department, and was the direct supervisor of the custodial staff. The work hours for the building supervisor position were from 8:30 a.m. to 4:30 p.m. Therefore, during the school year, the building supervisor's work day overlapped with the night shift by only two and one-half hours.

14. After the building supervisor left for the day, the head custodian served as acting supervisor of the night shift custodians. The head custodian was considered the liaison between the building supervisor and the custodians. The head custodian would receive instructions and directives from the building supervisor in the afternoon, and the head custodian was responsible for giving directives to the night shift custodians and supervising their work to ensure that they carried out the directives.

15. The head custodian position at Lexington was not a managerial position; the head custodian did not have authority to discipline the other custodians. However, by all accounts, the head custodian was vested with authority to give directives to the custodians working the night shift. The head custodian was reasonably expected to act as supervisor of the night shift custodians after the building supervisor left each day. Otherwise, these employees would be left unsupervised for two-thirds of their work day.

16. During Respondent's first year at Lexington, the building supervisor was Jack Duffy and the head custodian was Rosa Valentin. According to Respondent, that year was "okay," in that she did not have any problems at work. However, according to Respondent's performance evaluation, which recorded her absences and tardy days through March 2011, Respondent missed a lot of work. In fact, the evaluation comments refer to a meeting with Respondent in February 2011 to address concerns with her attendance; improvement in Respondent's attendance was noted in the month following that meeting.

17. Respondent had only been working at Lexington for seven months when assistant principal Jason Peters drafted Respondent's performance evaluation for the principal, Linda Caprarotta, to review and sign, in accordance with the standard practice. For this short period of time, during which Respondent frequently was

absent and late, Respondent's performance was found inconsistent in the areas of using leave only when necessary and punctuality, but her job performance otherwise was found to be effective.

18. However, the Lexington principal was not satisfied with the overall performance of the custodial department for the 2010-2011 contract year, because the school was not being cleaned well. Ms. Caprarotta determined that the building supervisor, Mr. Duffy, lacked appropriate management skills. She found him to be too lax with the custodial staff. He was not comfortable supervising, giving directives, or confronting the custodians when their work was unsatisfactory. Therefore, Mr. Duffy was let go at the end of the 2010-2011 contract year.

19. On July 6, 2011, Ms. Caprarotta hired Mack Farmer to replace Mr. Duffy as the Lexington building supervisor. Mr. Farmer had the management experience Ms. Caprarotta was looking for, having run his own cabinet manufacturing company for 25 years. Ms. Caprarotta informed Mr. Farmer of her expectations for better-quality cleaning services for her school, and her expectation that he would exercise stronger supervisory responsibility than the prior building supervisor to ensure that custodians were doing their jobs.

20. The credible evidence supports a finding that before Mack Farmer was hired, the custodial staff at Lexington had a relatively easy time, with little expected or demanded of them by

the building supervisor. The night shift workers, including Respondent, essentially had free rein to do things their own way, but their own way was not getting the job done. As Respondent put it, "Really I wasn't sure that they was watching me or anything, but they never told me that I wasn't -- that I needed to do better or anything[.]"

21. Although Respondent's attendance had improved after a meeting was held in February 2011 to address the problem, the improvement was short-lived. In addition, problems had become apparent with Respondent's performance when she was there working. On July 13, 2011, Ms. Caprarotta and Mr. Peters held a meeting with Respondent "to address absenteeism/tardiness and work performance." The meeting was documented in a conference summary performance report and placed in Respondent's personnel file. According to the report, with regard to Respondent's work performance issues, Respondent was reminded that she was "expected to work thoroughly and continue to work/clean during her designated work times."

22. Respondent testified that everything fell apart after Mr. Duffy was replaced with Mr. Farmer. Respondent was not happy with the change, and did not agree with it:

Q: You heard Ms. Caprarotta, she wasn't happy with Mr. Duffy, she didn't think that he was requiring satisfactory services from the custodial staff, you heard that, right?

A: Yes, I did.

Q: And do you agree that it's the principal's choice as to who she wants as the building supervisor?

A: Well, I don't agree, but I know that that's what I heard that that's mandatory that the principal have all the say-so on who she wants to be hired in her system.

* * *

Q: Okay. So whatever reason she had for replacing Mr. Duffy, is that your concern?

A: No, it's not my concern, but it come down to my concern whenever she replaces Mr. Duffy and end up -- it's a stress-free environment and then it's very stressful on the people that I'm working under.

23. According to Respondent, Mr. Farmer approached her on his first day of work and told her that he knew who she was and that she had better be careful because they were trying to get rid of her.

24. The more credible testimony was a bit different from Respondent's description. Ms. Caprarotta credibly testified that when Mr. Farmer was first hired, she talked to him about the broader issue of the lack of cleanliness and need for better management of the custodial staff. She briefed Mr. Farmer about all of the staff members whom he would be supervising; Respondent was included, but not singled out. Mr. Farmer credibly testified that he spoke with Respondent not on his first day, but shortly thereafter, to tell her that she needed to change her behavior

and improve her performance or she was going to lose her job. He had many conversations with Respondent, trying to get her to do her work, be a team player, and improve her behavior. Respondent acknowledged that she took away from Mr. Farmer's comments to her that she needed to improve: "I figure I better do a good job."

25. In August 2011, shortly after Mr. Farmer began as building supervisor, Respondent was involved in an altercation with Rosa Valentin, then-head custodian. Respondent was called in for a conference with the principal, assistant principal, and Mr. Farmer. A conference summary performance report dated August 10, 2011, documented the incident and the conference, at which Respondent was reminded that one of her job requirements was that she must have the ability to work well with others, and that Respondent was expected to do so. Respondent was informed that her failure to comply will result in further disciplinary actions.

26. The altercation addressed by the August 2011 conference summary performance report was described in somewhat-conflicting terms by several witnesses. The more credible testimony established that Respondent confronted Ms. Valentin, who was weeding the flower beds next to the school building. Another custodian was standing next to Ms. Valentin. Respondent made negative comments critical of Ms. Valentin, questioning why Ms. Valentin was not making the other custodian help with the

weeding, and suggesting that Ms. Valentin would have made Respondent help if it were Respondent standing next to her. Respondent and Ms. Valentin argued, and Respondent called Ms. Valentin a "b****." Ms. Valentin went inside to the main office to report the incident to the principal. Respondent followed Ms. Valentin into the main office, where Respondent resumed her verbal assault on Ms. Valentin. Respondent was the instigator and the aggressor, and her behavior was completely inappropriate.

27. Respondent did not deny the essential facts of this altercation. She did not deny having called Ms. Valentin a "b****." This incident stands in marked contrast to Respondent's testimony that she was never disrespectful and was just expressing her opinions. A custodian calling a head custodian a "b****" is no mere expression of opinion.

28. Respondent's friend, Claytrina Griffin, another custodian who was with Respondent during the altercation, testified without a great deal of credibility that she did not see anything wrong with Respondent's comments. However, Ms. Griffin admitted that, unlike Respondent, she did not say anything to Ms. Valentin because whether Ms. Valentin required the other custodian to help her weed or not was none of Ms. Griffin's business.

29. Shortly after this incident, Ms. Valentin requested to be moved to the day shift for personal reasons, even though that would mean she could no longer be the head custodian whose job was to supervise the night shift custodians. Ms. Valentin's request was granted, and her position was downgraded to a regular custodian at a lower pay grade. After advertising and interviewing candidates for the head custodian position, Jeff Hancock, who was a custodian at a different school, was hired as Lexington's new head custodian.

30. Mr. Farmer and Mr. Hancock had specific ideas about how the cleaning should be done by the custodians. Just as Respondent expressed her dislike for the new, more demanding building supervisor, Respondent also made clear that she did not like the new head custodian. Ms. Griffin echoed Respondent's sentiments, complaining that Mr. Farmer and Mr. Hancock were demanding. Ms. Griffin complained that Mr. Hancock would spend too much time (which she quantified as five minutes), hanging around to tell Ms. Griffin what to do and how to clean, and repeating the same directive over and over. Both Respondent and Ms. Griffin testified that Mr. Farmer and Mr. Hancock had their own ideas regarding how they wanted the custodians to clean and neither Mr. Farmer nor Mr. Hancock liked it when Respondent or Ms. Griffin would clean their own way, as they apparently had been able to do when they had enjoyed lax supervision or no

supervision at all. The key difference between these two custodians, however, is that Ms. Griffin would keep quiet and would just do her work in the way that Mr. Farmer and Mr. Hancock wanted it done. As a result, Ms. Griffin was able to finish her assigned cleaning duties by the end of her shift, even when she and the other custodians at work had to absorb extra duties because of absent workers.

31. Respondent did not respond appropriately to being told how to do her work by Mr. Farmer and Mr. Hancock. Instead, Respondent responded with displays of the same type of behavior for which she had been taken to task when she worked at Dunbar.

32. On December 16, 2011, Ms. Caprarotta issued a letter of reprimand to Respondent for being insubordinate and disrespectful to her supervisor, Mack Farmer, on December 7, 2011. Mr. Hancock was out that day, so Mr. Farmer stayed at work for the night shift. Mr. Farmer gave Respondent specific directions regarding cleaning her assigned rooms, telling her that she was to go into each room and clean it completely before going to the next room. Instead of following directions, Respondent went up and down the hallway, complaining and yelling at Mr. Farmer. Mr. Farmer directed Respondent to stop, but she continued. Respondent yelled at Mr. Farmer from one end of the hallway to the other, and followed him until she was in his face, yelling at him that he gave her too much work. If Respondent had not wasted the time

she should have spent cleaning to walk up and down the hallway, loudly "expressing her opinion" to her supervisor, she might have found there was not too much work.

33. That same night, in the middle of her shift, not during a break, Respondent went to Mr. Farmer's office to fill out a vacation request. Mr. Farmer instructed her to stop; he told her that she should not take the time to fill out a vacation request when she had not finished her cleaning assignments. Respondent ignored his directive, and kept filling out her request. As Mr. Farmer aptly described it, "This was [Respondent] doing what she wanted to do instead of doing her job."

34. As a result of Respondent's failure to follow Mr. Farmer's multiple directives on just this one day, Respondent failed to complete her cleaning duties by the end of her shift.

35. In the December 16, 2011, letter of reprimand, Ms. Caprarotta noted that Respondent had engaged in the same kind of insubordinate and disrespectful behavior on January 5, 2004, June 26, 2008, July 23, 2009, and August 8, 2011, and each time, Respondent's outbursts targeted a different supervisor.

Ms. Caprarotta gave Respondent the following directives:

Effective immediately, you are expected to treat your supervisor with respect. At no time should you be screaming or yelling in the work environment. You are expected to follow directives given to you by your supervisors. You are expected to finish all work assigned. Failure to comply with this directive will

result in further disciplinary action up to and including termination.

36. Despite the directives in the December 16, 2011, letter of reprimand, Respondent engaged in the same type of behavior, which was the subject of another conference summary performance report issued on February 16, 2012, and placed in Respondent's personnel file. The subject of this conference was Respondent's disrespect toward Jeff Hancock, the head custodian, described in the summary as Respondent's "Designated Supervisor . . . when the Building Supervisor is not present." When Mr. Hancock had given Respondent directives, she refused to listen to him and was rude and disrespectful. Respondent had to be reminded again that she was required to work well with others and was required to respect her designated supervisor by following directions.

37. In the early spring of 2012, Mr. Peters drafted Respondent's performance evaluation for the 2011-2012 contract year. This evaluation reflected a marked deterioration from the prior partial-year's evaluation, consistent with the documented problems added to Respondent's personnel file. Respondent did not improve in the dependability section, receiving two inconsistent ratings. In the job skills section, Respondent's performance was deemed inconsistent in all five areas measured. Likewise, Respondent's performance was inconsistent in five of the seven areas in the interpersonal skills section; her two

effective ratings in this section did not involve communications or interactions with others; instead, Respondent was found effective in dressing in an appropriate manner and being clean and neat in appearance. The evaluation comments reflected that Respondent "had issues with respecting authority," although, as before, she had shown improvement following the most recent meeting. In addition, Respondent was told that she needed "to improve her quality of work and be more efficient." Finally, her problems with tardiness and absences were noted.

38. In May 2012, the Lexington principal made a referral to the DPSE to investigate Respondent for misconduct, including excessive absenteeism, disrespect, and insubordination. The principal testified that she made the decision to make the referral to the district level because all of the school-level meetings, discussions, written reports, and reprimands had been ineffective in bringing about sustained improvement in Respondent's behavior and performance.

39. The details of the 2012 investigation were not established in the record. However, in accordance with the collective bargaining agreement between Respondent's union, the Support Personnel Association of Lee County (SPALC), and Petitioner (hereafter referred to as the SPALC agreement), the investigation file was provided to Respondent and her union representative, and then a predetermination conference was held.

The predetermination conference in July 2012 was attended by Ranice Monroe, director of the DPSE, Respondent, and her union representative, Mr. Rushlow. In the predetermination conference, Respondent and her representative were given the opportunity to respond to the investigation material.

40. The 2012 investigation concluded with a finding of probable cause to take disciplinary action against Respondent. Respondent received a formal letter of reprimand as disciplinary action for excessive absenteeism. In addition to the formal disciplinary action, Petitioner took other action to address Respondent's disrespectful and insubordinate behavior. Mr. Rushlow and Ms. Monroe went to Lexington to work with Respondent for the purpose of retraining, or "coaching," her. They gave Respondent instructions on how to relate to, and communicate better with, people. As Ms. Monroe recently reminded Respondent (in the 2013 predetermination conference that was the precursor to this disciplinary action), the hope was that Respondent would respond to this informal coaching assistance by improving her behavior.^{2/}

41. Instead of improving her behavior in response to the coaching assistance, Respondent made no effort to change, because she continued to deny that there was any problem with her behavior:

Q: Do you remember Mr. Rushlow and others coming out to the school and to try to coach you on how to relate to other people?

A: They had to come and coach me simply because they was making false accusations so I had to go to the meeting and attended the meeting. That don't mean that happened. That do not mean that I talk back to them and that don't mean that happened. The ones that say that I talked back, it was just that I was expressing and giving them my point of view. But disrespecting them? That wasn't really no disrespect[.]

42. According to the Lexington principal, after the July 2012 predetermination conference, Respondent had clear instructions to return to work, work hard, and keep her comments to herself; however, Respondent did what she was told for only about two weeks. She then fell into her old pattern of refusing to take instruction from her supervisors, Mr. Farmer and Mr. Hancock, and talking back to them.

43. As an example, Ms. Caprarotta got involved in an incident in September 2012 when Respondent would not listen to Mr. Hancock's instructions regarding the order in which Respondent was supposed to clean her assigned rooms. On several occasions, the kitchen science teacher had complained that her room was not being cleaned and she had to sweep and mop it herself. Meanwhile, Respondent was not able to regularly finish her cleaning assignments by the end of her shift, but Mr. Hancock would require her to clock out and leave her work unfinished,

because overtime pay was not allowed without prior approval. In an attempt to partially address these problems, Mr. Hancock instructed Respondent to clean the kitchen science classroom first, but Respondent responded rudely, yelling at him.

Ms. Caprarotta was informed, and spoke with Respondent about the incident. Respondent told the principal that "that man does not have to tell me what I need to do; you should hear what he says to me, he treats me like a slave." When Ms. Caprarotta asked what exactly she meant by that, Respondent replied: "He keeps trying to tell me what to do." Ms. Caprarotta informed Respondent that Mr. Hancock is her supervisor during the night shift and she had to listen to him and comply because her rooms were not getting clean every night.

44. At this point, Ms. Caprarotta instructed Mr. Hancock to keep Mr. Farmer, Mr. Peters, and herself informed regarding Respondent's behavior and job performance. In addition, she and Mr. Peters began following up to inspect areas where cleaning problems were called to their attention, so that they could judge for themselves. While Respondent contends that she was being unfairly targeted for scrutiny, the credible evidence established that Respondent's performance was reasonably subjected to scrutiny, brought on by Respondent's own failure to perform well, and by her inappropriate outbursts directed to her supervisors when they tried to address the problems with her work.

45. On November 20, 2012, Mr. Farmer inspected the school and provided Mr. Hancock with an inspection report that listed items and areas not cleaned sufficiently during the previous evening shift. The boys' and girls' bathrooms on the first floor, which were Respondent's assigned areas, were on the report, with specific items listed that were not cleaned.^{3/} Mr. Farmer also reported the cleaning deficiency to Mr. Peters, and had Mr. Peters personally inspect the first floor bathrooms. Mr. Peters agreed with Mr. Farmer's report that the bathrooms had not been cleaned properly.

46. Mr. Hancock gave Respondent the list of items that she had failed to clean adequately the previous day. Respondent did not complete the items on the list that day, and Respondent took leave the next day, so Mr. Hancock had to finish the cleaning.

47. Although Respondent first claimed that she was completely unaware that there were any problems with the quality of her cleaning in the fall semester of 2012, she admitted that she remembered Mr. Hancock going over a list of things that had not been cleaned in the bathrooms. Respondent minimized the problems, claiming that they were nothing substantial. Respondent's claim was not credible; Mr. Farmer observed such problems as not emptying and cleaning the feminine sanitary receptacles, and not cleaning dirt and grime on stall doors and

door handles that was built up to the point where it was clear that the cleaning had not been done properly in weeks.

48. On one afternoon after school in mid-October 2012, then-assistant principal Lisa Eastridge went to the "time-out room" to return some books. She found the room locked, with the lights off. She unlocked and entered the room, and started walking across to put away the books she was returning, when she was startled to see that Respondent was there, seated at a student desk, with her head down on the desk. At about the same time, Respondent realized that Ms. Eastridge was in the room and jumped up. Ms. Eastridge asked Respondent if she was all right, and Respondent said she was fine. Ms. Eastridge put the books down and left. Thereafter, she checked with Mr. Farmer to find out if Respondent was on her break at the time, and confirmed that it was not Respondent's break time. The next day, after Respondent learned that Ms. Eastridge had spoken to Mr. Farmer about the incident, Respondent sought out Ms. Eastridge to tell her that she had not been sleeping. Ms. Eastridge told Respondent that she did not tell Mr. Farmer that Respondent had been sleeping, but told him that she found Respondent in the time-out room with the door locked and lights off, and Respondent's head down on the desk.

49. At the hearing, Respondent claimed that Ms. Eastridge was lying about this encounter, although Respondent offered no

reason why Ms. Eastridge would lie. Respondent claimed that the actual encounter between herself and Ms. Eastridge in the time-out room was over the summer, that there were no desks in the time-out room because they had been removed so the floors could be done, that Respondent was in the bathroom off of the time-out room, and that Ms. Eastridge found her there when she exited the bathroom. While the encounter Respondent described may have also occurred, Ms. Eastridge's description of a different encounter in mid-October 2012 was credible, and not credibly refuted by Respondent.

50. Later in October 2012, Ms. Eastridge was exiting a stairwell when she observed Respondent in a confrontation with Mr. Farmer. They had their backs to her, and so they did not see her. Mr. Farmer was speaking politely and softly, attempting to go over the cleaning procedures with Respondent, explaining that she needed to clean the home science classroom first and then make sure the bathrooms are clean. Respondent responded loudly and disrespectfully, yelling at Mr. Farmer that she knew what she was supposed to be doing, and arguing with him as he was gently trying to explain why she needed to clean the areas in a certain order. Ms. Eastridge stood there for a moment to see if she needed to intervene, but Respondent and Mr. Farmer proceeded down the hallway away from Ms. Eastridge, so she just went on her way.

51. Ms. Eastridge also observed Respondent in similar confrontations with Mr. Hancock. On one occasion during the 2012 fall semester, Ms. Eastridge came upon Respondent and Mr. Hancock in the hallway outside of the custodial office. Mr. Hancock was trying to talk to Respondent about making sure to clean the bathrooms properly. Respondent, however, was being very loud and argumentative, yelling and screaming at Mr. Hancock. Ms. Eastridge stopped to ask Mr. Hancock if she needed to intervene and assist. Respondent attempted to downplay the confrontation, saying that they were just having a conversation. Ms. Eastridge advised Respondent that she needed to conduct her conversations in a peaceful, quiet, respectful tone of voice, not yelling and screaming at Mr. Hancock.

52. Respondent was involved in another confrontation with Mr. Hancock on December 19, 2012. At the beginning of her shift that day, Respondent had cleaned the courtyard adjacent to the cafeteria, wiping down the outdoor tables and removing the trash. She then joined the other custodians to clean the cafeteria. Respondent noticed that teachers were bringing food out to the courtyard, and she learned that they would be meeting with parents for a parent-teacher organization (PTO) meeting. Respondent got angry and started yelling at Mr. Hancock across the cafeteria that she was not going to clean up again after the teachers were done. Respondent admitted that she asked

Mr. Hancock "what type of head custodian are you," and told him that it was dumb to send her out to clean the courtyard when the teachers were going out to mess it up again.^{4/} Respondent did not believe she was disrespectful to Mr. Hancock: "I'm only expressing and all I told him was that was a dumb -- you know, like that was a bad choice that you made[.]"

53. After Respondent "expressed her opinion" that Mr. Hancock was a bad head custodian who made dumb choices, Mr. Hancock just walked away. Respondent followed him to make sure he was not going to report what she had said to the principal. Mr. Hancock testified credibly that Respondent was shouting at him that he had better not report her to the principal.

54. On December 21, 2012, Mr. Farmer inspected the classrooms before the winter break. He found that several classrooms in Respondent's assigned areas had not been dusted, cleaned, or vacuumed for quite some time. Mr. Farmer had Ms. Caprarotta inspect the rooms, and she found them noticeably dirty, with corners full of dust, dirt, and paper scraps, and shelves and counters "filthy with dust." When Mr. Farmer spoke with Respondent about these problems, Respondent blamed the teachers for doing things in the classrooms to make them so dirty. Mr. Farmer ended up cleaning the rooms himself.

55. Mr. Farmer testified credibly that Respondent was repeatedly insubordinate to him by refusing to follow his directives, and by telling him that he was not her boss and could not tell her what to do. When Mr. Farmer tried to tell Respondent to do her job, she would laugh at him and tell him that she was going to bring harassment charges against him. Respondent denied that she ever told Mr. Farmer he was not her boss, but admitted telling him that "he really not no professional on being no building supervisor. He might have supervised where he had his cabinet shop, but you're not doing it right." Respondent also denied laughing at Mr. Farmer, but admitted threatening him with harassment charges when he would tell her to do her job.

56. As evident from the following exchange, Respondent ultimately admitted that she did not accept direction from either Mr. Hancock or Mr. Farmer, even though she acknowledged that Mr. Farmer was her direct supervisor; Respondent then tried to blame the union for her own refusal to follow Mr. Farmer's directions, as if the union somehow had led her to believe she could be insubordinate:

Q: Barbara, do you not believe that a supervisor or boss should be able to direct the people that they supervise?

A: I believe so. That's why I give Ms. Caprarotta so much respect because she's our boss, but because she acted like a boss,

she performed like a boss. But Mr. Farmer and Mr. Hancock, they didn't perform like they should be telling me nothing, and I should have went to the principal. I didn't never do it. I should have went to the principal with all of this, but I never did it.

* * *

Q: Doesn't it mean anything to you based on the respect that you have for Ms. Caprarotta that she hired Mr. Farmer and that should mean something?

A: Well, as we talking now it means something now. I have respect now. But then I wasn't thinking that way. I wasn't thinking that way. I was only thinking that she's just my boss, no one else, because the union kept throwing in my face that John [sic: Jeff] Hancock, he's not your boss, he can't tell you this, and this all I was going on. You know, you know, like miss -- like Bob Rushlow said, oh, I'm gonna file a grievance I don't even know what all the half of this stuff is.

Q: Do you feel like the union misled you?

A: That's right. I feel like they did. Maybe I wouldn't be doing the type of acts like I was doing.

57. Ms. Caprarotta credibly testified to the lengths that Lexington personnel went to in their attempts to curb Respondent's misbehavior and improve her work performance, including in the performance conferences detailed above and in informal conferences with Respondent and union representatives. In one of the informal conferences with Respondent and her union representative during the 2012 fall semester, attended by Ms. Eastridge, Respondent got angry and belligerent in response

to Ms. Eastridge's description of Respondent's confrontation with Mr. Farmer (addressed in paragraph 50 above). Respondent slammed her hands on the table angrily and yelled at Ms. Eastridge that she was not even there.

58. Ms. Caprarotta personally met with Respondent many times to address the numerous incidents brought to her attention during the 2012-2013 contract year. Ms. Caprarotta tried to coach, counsel, and direct Respondent to control her temper, listen to her superiors, and just do her work. Ms. Caprarotta told Respondent that if she did not heed the warnings she had been given time and time again, she was going to lose her job. Ms. Caprarotta testified that she liked Respondent and tried hard to get her on track. For a brief period after each time they met, Respondent's performance and attitude would improve. However, Respondent would always slide back into the unacceptable pattern of disrespect and insubordination directed to the head custodian and the building supervisor, and not doing a good job cleaning her assigned areas.

59. On January 9, 2013, Ms. Caprarotta gave Respondent a 30-day notice that she would be reassigned to the day shift. The principal made this decision because she believed it was necessary to micromanage Respondent, keeping her under the watchful eyes of the principal, assistant principals, and building supervisor.

60. There was not really a day-shift position for another custodian, and the reassignment would leave the night shift short one custodian. This move was, therefore, not so much of a solution or chance for redemption as it was a gesture of defeat. Before the reassignment went into effect on February 11, 2013, the Lexington principal made a referral to the DPSE, requesting that Respondent be investigated for insubordination and inadequate job performance.^{5/} As Ms. Caprarotta explained to the DPSE investigator:

I have been in an administrative position for the past 16 years. I have spent more time dealing with [Respondent] than I have with any others combined. The situation is continual with little to no progress. . . . [When the shift change goes into effect], I will have to micromanage her all day every day. . . . I do not need her during the day and the night shift will now be a person short, however, I will not tolerate the insubordinate and unprofessional behavior towards my staff any longer.

61. Respondent was under the impression that she was doing well on the day shift. However, the arrangement could not last; Respondent's job position was needed for the night shift, for cleaning empty classrooms and bathrooms when students and teachers were gone for the day.

62. Respondent made clear in her testimony at the hearing that she is unwilling to change her behavior. During the 2012-2013 contract year, up to the date of her suspension, Respondent

was repeatedly confrontational and disrespectful with her direct supervisor, with the head custodian when he was her acting supervisor, and with at least one assistant principal.

Respondent repeatedly refused to follow reasonable directives from her direct supervisor. Respondent repeatedly refused to follow reasonable directives from the night-shift acting supervisor. Respondent repeatedly refused to follow reasonable directives from the principal, such as the directive that Respondent must take direction from the head custodian.

63. Respondent attempted to establish at hearing that the 2013 investigation took her by surprise, because she had no idea that anyone had a problem with the quality of her work or with her behavior during the 2012-2013 contract year. This claim was not credible, and was refuted by Respondent's own testimony that was diametrically opposed to the claim of surprise. Respondent testified that she knew that her performance was under scrutiny, because Mr. Farmer and Mr. Hancock watched everything she did and picked on every little thing. Quite plainly, then, Respondent was aware that her supervisors were not pleased with the quality of her work, but she did not attempt to address their criticisms. Instead, Respondent viewed the criticisms and cleaning directives as provocation for her to respond angrily and disrespectfully. According to Respondent, Mr. Farmer and Mr. Hancock made her be disrespectful and insubordinate to them; they knew that if they

gave her directions, she would "snap" and refuse to follow their directions. As Respondent described it:

It was always whatever you have to do they would -- while I'm doing it they would steady coming in repeating the same thing over just torturing me when I already done heard them say it. And so that make me -- provoke me to snap and say I done heard that, just get out of my face, I done heard that or something like that. It's just like it was a ongoing, never stop situation on just nagging me, that's all. So it made me felt like . . . I was doing my job, but how can I finish in time if they steady come every other 30 minutes in the room saying speed up or saying the same thing over, I want you to do this or then the next one will say the same thing.

64. Notwithstanding Respondent's perception, a supervisor's directives to a subordinate employee regarding how the supervisor wants the employee to carry out his or her job does not constitute "nagging." Rather than treating such directives as nagging or as provocation that had to be met with a harsh response to "get out of my face," Respondent should have curbed her tongue, accepted the supervision, and followed the directives as part of Respondent's job responsibility. Respondent was not entitled to free rein to work in the manner she saw fit, nor was Respondent entitled to harshly criticize her supervisors when they sought to direct Respondent in the manner in which she was to carry out her job.

65. No credible evidence was presented to establish that the directives given to Respondent by either Mr. Farmer or

Mr. Hancock were unreasonable. Instead, Respondent just disagreed with how her supervisors wanted her to perform her assignments, and bristled simply because they would tell her what they wanted her to do. For example, when Respondent was having trouble cleaning all of her assigned rooms by the end of her shift, Respondent was directed to clean her rooms in a certain order so that the most important rooms, or the rooms that had been the subject of complaints (such as the home science classroom), would be done first. Respondent disagreed with this directive, and rather than simply following orders, she argued with the directive, violated the directive, and then argued some more. Respondent told her supervisor, Mr. Farmer, that he was not qualified for his job and had no business telling her how to clean. At the hearing, Respondent stubbornly stuck to the mantra that she was only expressing her opinion when asked, and did not intend any disrespect. Respondent's claim was not believable. Surely, Respondent does not expect anyone to believe that Mr. Farmer asked Respondent for her opinion regarding whether he was qualified to supervise her. Respondent's comments were blatantly disrespectful and grossly insubordinate.

66. Perhaps Respondent was capable of doing a good job cleaning, but with all of the time and energy she spent complaining, criticizing, and talking back to her supervisors, she proved incapable of doing her work in the remaining time.

And even though Respondent acknowledged that she had problems finishing her assigned work by the end of her shift, Respondent reacted badly whenever her supervisors would tell her to hurry up, that she needed to pick up the pace in order to finish in time. Respondent reacted to such comments as provocation for another round of angry responses, yelling at her supervisors that she did not need to hear "that junk" and that they should "get out of her face."

67. Respondent attempted to blame her inability to finish her assigned cleaning duties by the end of her shift on the extra cleaning duties she had to absorb when other custodians were absent or tardy. Respondent attempted to prove that the custodial staff at Lexington had an unusually high number of absences and tardy days during the 2012-2013 contract year, and therefore, her inability to finish her cleaning was the fault of administration for not hiring more staff. The credible evidence did not prove Respondent's theory. Attendance data was offered only for the 2012-2013 contract year; no comparative data was submitted for other years. Testimony by school officials was that the custodial staff always took a good number of days off, especially near weekends and holidays, and they were entitled to their leave time; 2012-2013 was not considered to be an unusual year in this regard. Although the attendance data offered by Respondent showed a fair amount of absences in 2012-2013, most of

the absences by night shift custodians did not take place until after February 8, 2013, which was Respondent's last day working the night shift. Respondent pointed to one custodian, in particular, who missed many whole and partial days due to an on-the-job injury. However, most of those absences were after February 8, 2013. Therefore, the absences of custodial staff were not shown to be the cause of Respondent's recurring inability to finish her assigned cleaning duties when she was on the night shift through February 8, 2013. Significantly, the only other regular night shift custodian to testify, besides Respondent, said that she has always finished her assigned cleaning duties by the end of her shift, even when she has extra cleaning duties to make up for other custodians who are not working.

68. During the 2012-2013 contract year, up until Respondent's suspension, Respondent repeatedly was told of the shortcomings in the quality of her work, from not cleaning the bathrooms properly, to not vacuuming and mopping the home science classroom floors, to not vacuuming and dusting her assigned classrooms, to not finishing her assigned cleaning duties by the end of her shift. Moreover, Respondent was well aware of the repeated confrontations she had with the head custodian, custodian, with the building supervisor, and with assistant principal Eastridge.^{6/} Respondent has no one but herself to blame

for minimizing or trivializing these incidents, and ignoring the many warnings and chances she was given. Inexplicably, despite all the warnings Respondent had been given that her misbehavior was unacceptable and could result in termination, Respondent decided that she did not have to take the warnings seriously, because she did not think her misbehavior was unacceptable as she had been told repeatedly:

I felt like disrespecting wasn't -- if you disrespect somebody, you got to be really cursing somebody out, or this here and that, or if for me to get to get to this far I have to done stole something or demolished the school or something.

69. In terms of process, the evidence established that Petitioner followed the procedural requirements of section 7.10 of the SPALC agreement, by conducting an investigation in early 2013 upon request of the Lexington principal, by providing the investigative file to Respondent and her union representative in advance of the predetermination conference, and by conducting a predetermination conference on March 14, 2013, at which Respondent and her representative had the opportunity to respond to the investigation material. The result of that process was the Petition, and Respondent has had every opportunity in this proceeding to put Petitioner to its burden of proof and to present evidence in defense of the charges against her.

70. As is evident to some extent from the hearing transcript, Respondent's testimony and demeanor at hearing only served to corroborate the testimony of Lexington personnel describing Respondent's chronic misbehavior. Despite numerous instructions by the undersigned and by Respondent's own lawyer, Respondent comported herself as follows: she would not listen to questions; she gave answers that did not match the questions or that went far beyond the questions; she criticized questions directed to her instead of answering; she repeatedly offered comments when there was no pending question; she repeatedly interrupted; she was angry and belligerent at times, and impatient at other times, at one point announcing to her own lawyer in the middle of his questioning: "I want to go home."^{7/} Respondent's lack of self-control on display at hearing added credence to the testimony of numerous witnesses describing Respondent's chronic misbehavior that was at the heart of the charges against her.

CONCLUSIONS OF LAW

71. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 120.65(6), Fla. Stat.

72. In this proceeding, Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proof, and the standard of proof is by a preponderance of the evidence. § 120.57(1)(j); McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d

476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

73. Respondent is an educational support employee. Section 1012.40(2)(b), Florida Statutes, provides that educational support employees such as Respondent may be terminated only "for reasons stated in the collective bargaining agreement."

74. The SPALC agreement provides that any discipline that constitutes "a verbal warning, letter of warning, letter of reprimand, suspension, demotion or termination shall be for just cause." SPALC agreement, § 7.10. The SPALC agreement does not define "just cause." Id. With regard to the concept of progressive discipline, the SPALC agreement states only generally that discipline "shall be, when appropriate, progressive in nature." Id.

75. Petitioner has construed just cause for purposes of discipline pursuant to the SPALC agreement in the same manner as in section 1012.33 relating to instructional staff. The parties stipulated that "just cause" should be interpreted in accordance with the following language in section 1012.33(1)(a):

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.

76. Florida Administrative Code Rule 6A-5.056 contains the definitions of the terms used in section 1012.33(1)(a). The rule definitions pertinent to the charges against Respondent are as follows:

(2) "Misconduct in Office" means one or more of the following:

* * *

(c) A violation of the adopted school board rules[.]

* * *

(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.

(4) "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance

as to involve failure in the performance of the required duties.

(5) "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

77. The Petition charged Respondent with willful neglect of duties, gross insubordination, incompetence, failure to adhere to high ethical standards, and failure to satisfactorily and efficiently perform assigned job duties.

78. Based on the Findings of Fact above, Petitioner met its burden of proving that Respondent is guilty of willful neglect of her duties, by intentionally failing to carry out her required duties. Respondent knowingly wasted time at work engaging in inappropriate communications, criticizing, disrespecting, and arguing with her supervisors, instead of doing her work. Respondent's intentional misbehavior caused her to fail to complete her assigned duties by the end of her shift.

79. Based on the Findings of Fact above, Petitioner met its burden of proving that Respondent is guilty of gross insubordination, by her repeated "intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority." Respondent takes the position that she could not be guilty of being insubordinate to the head custodian, because he did not have the "proper authority" to give her direct orders. As found above, the evidence established otherwise. In any

event, Respondent plainly is guilty of gross insubordination in her interactions with Mr. Farmer, who was admittedly Respondent's supervisor with proper authority to give her direct orders and to expect compliance with them. Moreover, Respondent is also guilty of having been grossly insubordinate to Ms. Caprarotta, even though Respondent was not as rude or confrontational in the ways in which she refused to carry out Ms. Caprarotta's direct orders. Respondent may have been nicer or more polite to Ms. Caprarotta's face, but that does not detract from the fact that Respondent repeatedly refused to carry out Ms. Caprarotta's direct orders.

80. Petitioner also met its burden of proving that Respondent is guilty of incompetence, by failing to discharge her required duties as a result of her "inefficiency," as defined in rule 6A-5.056(3). Respondent's PRO conceded that "there were instances when Respondent was less than efficient and failed to perform certain duties." As found above, the evidence does not support Respondent's theory that her failure to perform her assigned duties was justifiable or excusable due to Respondent being overburdened, either because of absences of other custodians or for any other reason. Instead, Petitioner proved that Respondent's intentional misbehavior was at the core of her failure to discharge her required duties. Respondent spent her days miscommunicating, misbehaving, and disrespecting those with whom she was required to work, listen to, and respect. The time

Respondent wasted engaging in misbehavior was time that she needed, and should have used, to complete her assigned cleaning duties. This chronic inefficiency caused her to fail to discharge her required duties.

81. The last two charges in the Petition are based on alleged violations of rules adopted by Petitioner. If established, the rule violations would constitute "misconduct in office" as defined in rule 6A-5.056(2)(c). According to the Petition, the first alleged rule violation is based on Petitioner's rule 5.02, which allegedly requires that employees such as Respondent dedicate themselves to high ethical standards. Petitioner did not prove the existence or contents of its adopted rule 5.02. In any event, the description of the rule in the Petition is of an aspirational goal that is too vague to proscribe particular conduct and to put employees on notice of the standard to which they must conform their conduct. The charge under this general aspirational standard adds nothing to the previous specific charges. The undersigned declines to find Respondent guilty of violating the aspirational standard that is allegedly codified in Petitioner's rule 5.02.

82. The final charge in the Petition--failing to satisfactorily and efficiently perform assigned job duties--does not identify any statute or rule allegedly violated. According to Petitioner's PRO, the charge is intended to assert a violation

of Petitioner's adopted rule 5.29. The undersigned declines to find Respondent guilty of violating a provision that is allegedly codified in Petitioner's rule 5.29. The rule was not identified in the Petition, and neither the rule's existence nor its contents were established in this record. In any event, the substance of the charge seems redundant with the charge of incompetence previously addressed.

83. Respondent contends that Petitioner failed to follow the SPALC agreement's requirements for discipline, by not initiating separate investigations or taking separate actions for each discrete episode of insubordination and inadequate job performance that occurred after Respondent's 2012 investigation was concluded. Respondent contends that this would have allowed her to address the problems with her performance and behavior, and to have progressive discipline imposed, rather than saving up all of the transgressions for one action. This argument is rejected. Respondent has had the benefit of a decade of warnings, progressive discipline, and more than ample opportunities to conform her performance and behavior to the expectations that were clearly laid out for her over and over again. Section 7.10 of the SPALC agreement requires that a certain process be followed prior to taking disciplinary action. As found above, Petitioner followed the required process in

conducting the 2013 investigation that was the precursor to this administrative hearing.

84. Respondent also contends that Petitioner's action is improper retaliation against Respondent for "prevailing" in the 2012 investigation by "only" receiving a written reprimand for excessive absenteeism. No improper retaliation was proven. Moreover, as found above, the record does not support Respondent's contention that she "prevailed" in the 2012 investigation. The 2012 investigation culminated in a determination of probable cause to take disciplinary action. In keeping with the progressive action concept set forth in the SPALC agreement, the action Petitioner decided to take was a combination of formal discipline and informal action. Petitioner worked in conjunction with Respondent's union representative to "coach" Respondent to try to teach her how to communicate better and relate to others more appropriately. Petitioner reasonably attempted a progressive approach, in the hope that Respondent would take the coaching attempt seriously and avoid harsher disciplinary action. However, just as Respondent ignored prior warnings, Respondent refused to accept coaching and refused to change her behavior.

85. Petitioner has met its burden of proving ample good cause for the termination of Respondent's employment. Indeed, the undersigned concludes that Respondent's persistent display of

gross insubordination would have been sufficient just cause to warrant termination under the circumstances. Respondent was put on notice time and time again, spanning over a decade, that such inappropriate behavior, directed by Respondent to no less than half a dozen different supervisors, would not be tolerated. Respondent cannot deflect the blame by accusing her current supervisors of provoking her; her attempted proof failed in this regard, and her track record confirms that the blame belongs squarely on her own shoulders.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Lee County School Board enter a final order terminating the employment of Barbara Rice.

DONE AND ENTERED this 20th day of December, 2013, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of December, 2013.

ENDNOTES

^{1/} All statutory references are to the Florida Statutes (2013). It is noted that Petitioner's statutory authority to terminate Respondent's employment and to suspend Respondent pending the outcome of this proceeding has not changed during the time period relevant to the allegations in the Petition.

^{2/} Respondent attempted to cast the 2012 investigation and resulting letter of reprimand as implicitly reflecting Petitioner's determination that there was insufficient cause to terminate Respondent's employment based on her disrespectful and insubordinate behavior. However, there was no such determination. The only determination was that there was probable cause to take disciplinary action against Respondent. "Just cause" is the standard for any form of discipline under section 7.10 of the SPALC agreement. Although the "just cause" standard applies to disciplinary investigations, considerations of progressive discipline and alternatives to discipline may shape the action taken at the conclusion of an investigation. Where just cause exists, section 7.10 of the SPALC agreement provides that "actions shall be when appropriate, progressive in nature and may include, but are not limited to, verbal warning, letters of warning and reprimand, suspension without pay, retraining or other assistance and termination from employment." (emphasis added). The joint attempt by the union and the district to retrain or coach Respondent to curb her misbehavior was consistent with this provision.

^{3/} Respondent attempted to prove that reports of her inadequate cleaning, such as Mr. Farmer's November 20, 2012, bathroom inspection report, may have resulted from poor cleaning by other custodians on nights when Respondent was absent, or from Respondent being overburdened on nights when other custodians were absent. The attendance records in evidence, however, show that Respondent was working on November 19, 2012, as were all other custodians, so absenteeism could not excuse Respondent's failure to clean the bathrooms well on November 19, 2012.

^{4/} Respondent's criticism was not only very disrespectful to Mr. Hancock, but it also demonstrated her clear unwillingness to perform cleaning duties that were part of a custodian's job. Respondent's view was that to make it easier for the custodian, Mr. Hancock should have not required that the courtyard be cleaned until after the PTO meeting, because the teachers and parents would just mess it up again. While that would have meant less custodial work, it also would have meant that the PTO

meeting would be held in a dirty courtyard that needed cleaning after it had been used by the students that day. Instead, it was reasonable for the head custodian to require that the courtyard be cleaned before the PTO meeting, even if that meant the courtyard would have to be cleaned again after the meeting. The record is replete with similar examples of Respondent complaining when she is only being told to do her job, and blaming others for her failure to do her job. For example, when Respondent's assigned classrooms were found dirty before the winter break in December 2012, Mr. Farmer tried to address the problems with Respondent, but her reply was that "these teachers need to stop doing stuff in these classrooms to make them so dirty."

^{5/} Section 7.10 of the SPALC agreement, addressing discipline, provides two parallel tracks for investigating allegations of employee misconduct or unsatisfactory job performance. The allegations can be reviewed at the school level, and after the employee and his or her union representative are given an opportunity to respond to the allegations, any resulting discipline or other action is imposed by the "site based administrator." Alternatively, at the request of the site based administrator, the allegations can be reviewed in an investigation conducted by the district's DPSE if the allegations of employee misconduct or unsatisfactory job performance could result in suspension without pay or termination of employment. Similar to the school-level disciplinary process, the employee and union representative are given an opportunity to review the investigation material and respond to the allegations, and any resulting discipline or other action is imposed by Petitioner. Under either of these parallel tracks for investigating allegations of misconduct or job performance, the SPALC agreement provides that "[d]uring the investigation the District may temporarily reassign the employee."

^{6/} In accordance with instructions from the district's human resources department, Ms. Caprarotta prepared a "final performance evaluation" for Respondent for the 2012-2013 contract year. The evaluation reflected the continued deterioration of Respondent's behavior and job performance, consistent with the testimony and findings herein.

^{7/} Respondent's counsel displayed remarkable patience under trying circumstances. He had to repeatedly instruct his client along the lines of the following examples: "Listen to the question"; "You have to let me finish"; "Let me stop you for a minute. I don't want to talk over you, but like the Judge said, try to focus on the question I was asking. Okay?" "Let's take it

a step at a time, okay?" "Well, let's start at the beginning. Listen to me." "But Barbara, I'm trying to ask you --" "Let me stop you." "What I'm trying to understand, Barbara, is --" "Wait, wait. We're talking over each other." "Let me interrupt, I'm sorry, just to kind of move it forward." "I mean, you tell us. I don't know, Barbara. I'm asking you to explain." "Barbara, stop. We're getting off point, okay? I need to redirect you because we're not going to get done in time." "Let me stop you." "Let me finish the question." "I've got to move forward." "Wait, let me finish the question."

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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.