STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 13-2414TTS

SHAVONNE ANDERSON, *AMENDED AS TO RECOMMENDATION ONLY

Respondent.
_____/

*AMENDED RECOMMENDED ORDER

This case came before Administrative Law Judge Todd P. Resavage for final hearing by video teleconference on September 16, 2013, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Christina Rivera, Esquire
Heather Ward, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

For Respondent: Shavonne Anderson, pro se
2868 Northwest 197th Terrace
Miami, Florida 33056

STATEMENT OF THE ISSUE

Whether Respondent's employment as a teacher by the Miami-Dade County School Board should be terminated for the reasons specified in the letter of notification of suspension and dismissal dated June 20, 2013, and the Notice of Specific Charges filed on August 28, 2013.

PRELIMINARY STATEMENT

On June 19, 2013, at its scheduled meeting, Petitioner, Miami-Dade School Board, took action to suspend Respondent, Shavonne Anderson, without pay and initiate proceedings to terminate her employment. Respondent was notified of same via correspondence dated June 20, 2013, and of her availability to challenge the Board's action.

Respondent timely requested a formal administrative hearing, and, on June 26, 2013, Petitioner referred the matter to the Division of Administrative Hearings ("DOAH"), where it was assigned to the undersigned.

The final hearing initially was set for September 6, 2013. On August 7, 2013, the parties filed a Joint Motion to Continue and Reschedule Final Hearing. The motion was granted and the cause was re-scheduled for final hearing on September 16, 2013.

On August 28, 2013, Petitioner filed its Notice of Specific Charges alleging Respondent should be suspended without pay and dismissed due to her misconduct in office, gross insubordination, and incompetency.

On June 9, 2013, the parties filed a Joint Pre-hearing Stipulation and stipulated to certain facts contained in Section E of the Joint Pre-hearing Stipulation. To the extent relevant, those facts have been incorporated in this Recommended Order.

The final hearing went forward as planned. Petitioner presented the testimony of Dr. Carmen Jones-Carey, Jimmie L. Brown, Ed.D., Shawnda Green-McKenzie, and Dorothy De Posada and Petitioner's Exhibits 1-10, 12, 14-15, and 17-25 were admitted. Respondent, who appeared pro se, testified on her own behalf and presented the testimony of Dr. Carmen Jones-Carey and Shawnda Green-McKenzie.

The final hearing Transcript was filed on October 31, 2013. Petitioner and Respondent timely filed proposed recommended orders, which were considered in preparing this Recommended Order. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violation.

FINDINGS OF FACT

1. Petitioner is the entity charged with the duty to operate, control, and supervise the public schools within Miami-Dade County, Florida.

2. At all times pertinent to this case, Respondent was employed as a social studies teacher at Horace Mann Middle School ("Horace Mann"), a public school in Miami-Dade County, Florida.

3. At all times material, Respondent's employment was governed, in part, by a collective bargaining agreement between Miami-Dade County Public Schools and the United Teachers of Dade ("UTD Contract").

4. Dr. Jones-Carey, the principal at Horace Mann, was authorized to issue directives to her employees, including Respondent.

5. Dorothy De Posada, the assistant principal at Horace Mann, was authorized to issue directives to her employees, including Respondent.

6. Petitioner alleges, in its Notice of Specific Charges, an array of factual scenarios spanning several years that, when considered individually or in concert, supply just cause for Respondent's termination. Below, the undersigned has endeavored to address each seriatim.

2010-2011 School Year:

7. Dr. Jones-Carey issued Respondent a letter of reprimand on May 23, 2011, concerning an alleged incident that occurred on April 27, 2011. On May 25, 2011, Dr. Jones-Carey held a Conference for the Record ("CFR") regarding this alleged incident.[1/] Respondent was directed to strictly adhere to all Miami-Dade County School Board ("MDCSB") rules and regulations, specifically, rules 6Gx13-4A-1.21 and 6Gx13-4A-1.213.

2011-2012 School Year:

8. On April 13, 2012, subsequent to the investigation of an alleged incident that occurred on February 27, 2012, a CFR was held. Respondent was directed to adhere to all MDCSB rules and regulations, specifically 3210, Standards of Ethical Conduct, and

3210.01, Code of Ethics. Respondent was further directed to refrain from contacting any of the parties in the incident, refrain from using physical discipline, and "to conduct [herself] both in [her] employment and in the community in a manner that will reflect credit upon [herself] and M-DCPS." Respondent agreed to a 17-day suspension without pay regarding the alleged incident.

2012-2013 School Year:

A. October 24, 2012

9. On November 16, 2012, subsequent to an investigation of an alleged incident that occurred on October 24, 2012, a CFR was held. Respondent was directed to adhere to all MDCSB policies, specifically 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; refrain from contacting any parties involved in the investigation; and "to conduct [herself] both in [her] employment and in the community in a manner that will reflect credit upon [herself] and M-DCPS." Additionally, on November 28, 2012, Respondent was issued a letter of reprimand concerning the October 24, 2012, incident.

B. November 5, 2012

10. On November 5, 2012, Dr. Jones-Carey observed several male students standing outside of Respondent's classroom during the class period. While Petitioner contends said students were told to remain outside of the classroom at Respondent's

instruction due to body odor, Petitioner failed to present sufficient evidence to support such a finding.[2/]

C. November 26, 2012

11. Shawnda Green-McKenzie is the Horace Mann social studies department chair and a social studies teacher. Ms. McKenzie explained that, on or around November 26, 2012, it was necessary for several homeroom classes to be "dissolved." The students in the dissolved homeroom classroom were to be added to the roster of other homeroom classes. Ms. McKenzie further explained that the homeroom teachers, such as Respondent, were unaware of the number of additional homeroom students they would acquire until the day the additional students arrived.

12. On November 26, 2012, Ms. Green-McKenzie observed that a substantial number of the newly acquired students did not have desks or chairs available for their use in Respondent's homeroom class. She further observed some of the children sitting on the floor. Petitioner failed to present any evidence concerning when the new students presented themselves to Respondent's homeroom or the duration said students did not have available desks or chairs.

13. While Ms. Green-McKenzie agreed that children sitting on the floor would "be kind of a safety concern if someone were walking around in the classroom," she further opined that Respondent's classroom was "definitely too small to take any

additional desks" and adding additional chairs would make it "tight."

D. February 8, 2013

14. On March 21, 2013, subsequent to an investigation of an alleged incident that occurred on February 8, 2013, a CFR was held. Respondent was directed to adhere to MDCSB policies and conduct herself in her employment and community in a manner that would reflect credit upon herself and the teaching profession. On April 9, 2013, Respondent issued a letter of reprimand concerning the alleged incident which likewise directed her to adhere to MDCSB policies and conduct herself in her employment and community in a manner that would reflect credit to herself and the teaching profession.

E. February 20, March 7, and April 1, 2013

15. Dr. Jones-Carey testified that, on those occasions when a teacher is absent and a substitute teacher is unavailable, the students are typically "split" among classrooms within the same department. Teachers are expected to cooperate and receive the "split-list" students.

16. Prior to February 9, 2013, Respondent was accommodating and amenable to accepting students on the "split-list." On February 20, March 7, and April 7, 2013, however, Ms. Green-McKenzie was informed that Respondent was unable to receive, or uncomfortable in receiving, any additional students.

Respondent's refusal to accept the split-list students was premised upon her concern that accepting students, who may potentially have behavioral problems, may incite further problems between herself and the Horace Mann administration.

17. After the second occasion (March 7, 2013), Ms. McKenzie-Green simply stopped placing Respondent's name on the split-lists. On each of the above-referenced occasions, Ms. McKenzie Green accepted the Respondent's split-list students into her classroom. Ms. McKenzie-Green explained that her classroom is a "double" that always has additional space and seating and can accommodate upwards of 60 students.

18. Dr. Jones-Cary credibly testified that Respondent's unwillingness to accept the split-list children created a disruption in the "flow of instruction" and was disruptive to the operation of the school.

F. March 1 and 5, 2013

19. On March 1 and March 5, 2013, Ms. De Posada observed Respondent, during class, seated in a chair in the doorway of her classroom with her feet up on the doorframe. On both occasions, Ms. De Posada directed Respondent to move inside the classroom; however, she refused.

G. March 7, 2013

20. On March 7, 2013, Ms. De Posada observed that Respondent's classroom door was open. When Ms. De Posada

directed Respondent to close the door, Respondent refused. In addition to Ms. De Posada's directive, Dr. Jones-Carey had previously issued an email directive to all faculty and staff to keep the classroom doors closed in an effort to preserve the newly-installed air-conditioning system.

H. March 12, 2013

21. On March 12, 2013, Ms. De Posada was present in the main office with several parents, as well as clerical staff. Respondent was also present in the main office for the purpose of making photocopies. Due to the number and nature of individuals present, coupled with a pending deadline on another administrative matter, Ms. De Posada requested Respondent to leave the main office and offered clerical assistance in providing Respondent the needed copies. Ms. De Posada credibly testified that, in response to the request, Respondent complained loudly and defiantly, and refused to leave the office when directed.

I. March 21, 2013

22. On March 21, 2013, Ms. De Posada presented to Respondent's classroom to conduct an official observation. On that occasion, she observed that, after the class bell had rung, Respondent's students remained outside and unsupervised. Ms. De Posada took it upon herself to usher the students inside the classroom. Respondent arrived prior to the late bell and

took her seat at her desk. Ms. De Posada advised Respondent that she was there to officially observe and requested Respondent's lesson plans.

23. Ms. De Posada credibly testified that Respondent thereafter opened her desk drawer, tossed her lesson plans to Ms. De Posada without speaking, and slammed the desk drawer.[3/] Respondent proceeded to call roll and, upon completion of same, began reading the paper. Once finished her reading, Respondent remained in her chair and, with the exception of reprimanding three children, did not engage with the students. Respondent did not engage in any conversation with Ms. De Posada throughout the duration of the observation.

24. Respondent concedes that she did not interact with Ms. De Posada during the observation because of her concern of being falsely accused of irate or belligerent behavior.

J. April 3, 2013

25. On April 3, 2013, Horace Mann held a mandatory faculty meeting to provide training for the Florida Comprehensive Assessment Test ("FCAT"). Per the UTD Contract, teachers are required to extend their workday for the purpose attending faculty meetings; however, such meetings cannot exceed one hour and shall begin no later than ten minutes after students are dismissed.

26. On this occasion, the faculty meeting was scheduled to begin at 4:00 p.m., however, it began a few minutes later to allow all teachers to arrive. Respondent, believing the UTD Contract allowed for her to leave at 5:00 p.m., left prior to the meeting being formally dismissed and without prior approval, at approximately 5:00 p.m. When Dr. Carey-Jones called out to Respondent, she continued to walk away from the meeting.

27. Respondent was notified via a school-wide email that a make-up session for the FCAT training would be conducted at 8:20 a.m. Respondent perceived the make-up session was voluntary because it was scheduled prior to 8:30 (the time she believes she is required to work) and conflicted with a FCAT practice run also scheduled for that morning. Respondent did not seek clarification as to where she was to report. Accordingly, Respondent did not present to the training, but rather, went to the testing center.

28. It is undisputed that Respondent did not complete the requisite training, and, therefore, was unable to proctor the FCAT exam. As a result, other teachers were assigned to cover Respondent's duties or responsibilities.

K. April 24 and May 6, 2013

29. On April 24, 2013, a CFR was held and Respondent was directed to adhere to School Board polices and conduct herself in

her employment and community in a manner that would reflect credit upon herself and her profession.

30. On May 6, 2013, following Dr. Jones-Carey's recommendation that Respondent's employment be terminated, the Office of Professional Standards ("OPS") held a final CFR. Thereafter, OPS recommended that Respondent's employment be suspended pending dismissal.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6), 120.569, and 120.57(1), Florida Statutes. Pursuant to section 120.65(11), Respondent has contracted with DOAH to conduct these hearings.

32. Petitioner seeks to terminate Respondent's employment. In order to do so, Petitioner must prove by a preponderance of the evidence that Respondent committed the violations as alleged in the Notice of Specific Charges. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. Of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990).

33. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

34. Any member of the instructional staff in a district school system may be suspended or dismissed at any time during the term of his or her employment contract for just cause, as provided in section 1012.33(1)(a). § 1012.33(6)(a), Fla. Stat.

35. The term "just cause":

> [I]ncludes, 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 to, regardless of adjudication of guilty, any crime involving moral turpitude.

§ 1012.33(1)(a), Fla. Stat.

36. In its Notice of Specific Charges, Petitioner avers alternative grounds for terminating Respondent: "misconduct in office" (Count I), "gross insubordination" (Count II), and "incompetency" (Count III). Whether Respondent is guilty of these charges, which are discussed separately below, is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

37. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

MISCONDUCT IN OFFICE

38. As noted above, Petitioner contends that Respondent has committed "misconduct in office." Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" to implement section 1012.33(1) via Florida Administrative Code Rule 6A-5.056.

39. Florida Administrative Code Rule 6A-5.056(2) provides as follows:

> (2) "Misconduct in Office" means one or more of the following:
>
> (a) A violation of the code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;
>
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;
>
> (c) A violation of the adopted school board rules;
>
> (d) Behavior that disrupts the student's learning environment; or
>
> (e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

Fla. Admin. Code R. 6A-5.056(2).

Code of Ethics:

40. Rule 6B-1.001, renumbered without change as 6A-10.080, and entitled "Code of Ethics of the Education Profession in Florida," provides:

> (1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.
>
> (2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.
>
> (3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

41. It has been repeatedly noted that the precepts set forth in the above-cited "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." Miami-Dade Cnty. Sch. Bd. v. Regueira, Case No. 06-4752 (Fla. DOAH Apr. 11, 2007); Miami-Dade Cnty. Sch. Bd. v. Brenes, Case No. 06-1758 (Fla. DOAH Feb. 27, 2007; Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007); Miami-Dade Cnty. Sch. Bd. v. Diaz-Almarez, Case No. 12-3630 (Fla. DOAH July 30, 2013). Nevertheless, as currently drafted, rule 6A-5.056(2)(a), by its express terms, clearly provides that a violation of any of these laudable concepts, in isolation, is sufficient to establish

misconduct in office, and thus just cause for suspension or termination.

42. Turning to the instant case, the evidence is insufficient to establish that Respondent did not value the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Thus, Petitioner failed to prove that Respondent violated the Code of Ethics set forth in section 6A-10.080(1).

43. The evidence is also insufficient to establish that Respondent's primary professional concern was not always for the students and for the development of the students' potential. The evidence is insufficient to establish that Respondent did not strive for professional growth and seek to exercise the best professional judgment and integrity. Thus, Petitioner failed to prove that Respondent violated the Code of Ethics set forth in section 6A-10.080(2).

44. Additionally, the evidence is insufficient to establish that Respondent was unaware of the importance of maintaining the respect and confidence of her colleagues, of students, of parents, and of other members of the community, and that Respondent did not strive to achieve and sustain the highest degree of ethical conduct. Thus, Petitioner failed to prove that

Respondent violated the Code of Ethics set forth in section 6A-10.080(3).

Principles of Professional Conduct:

45. Rule 6B-1.006, renumbered without change as 6A-10.081, is entitled "Principles of Professional Conduct for the Eduction Profession in Florida," and provides in pertinent part:

> (1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.
>
> (2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.
>
> (3) Obligation to the student requires that the individual:
>
> (a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.
>
> * * *
>
> (e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

46. Petitioner alleges that Respondent breached the duty, imposed under rule 6A-10.081(3)(a), to protect students from harmful conditons; and that she committed the offense described in subparagraph 3(e) of that Rule.

47. Florida Administrative Code Rule 6A-10.081(3)(a)

imposes on teachers the affirmative duty to protect students from harmful conditions. Rule 6A-10.081(3)(a), however, is inapplicable, where, as here, the teacher's conduct constituted the alleged harmful condition. See Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842 (Fla. DOAH July 31, 2006). Accordingly, the undersigned concludes that Respondent is not guilty of failing to make reasonable protective efforts.

48. Florida Administrative Code Rule 6A-10.081(3)(e) prohibits teachers from intentionally exposing a student to unnecessary embarrassment or disparagement. As such, "[t]here can be no violation in the absence of evidence that the teacher made a conscious decision not to comply with the rule." Langston, 653 So. 2d at 491.

49. The evidence does not show that Respondent intentionally exposed any student to embarrassment or disparagment, unnecessary or otherwise.

School Board Rules:

50. Section 1001.41(2), Florida Statutes, grants district school boards the authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement their statutory duties and supplement rules prescribed by the State Board of Education.

51. Petitioner has adopted certain bylaws and policies consistent with said authority. School Board Policy 3210, entitled Standards of Ethical Conduct, sets forth specific

obligations of educational professionals, almost all of which are copied verbatim from the Principles of Professional Conduct for the Education Profession, as set forth above in rule 6A-10.081. Policy 3210 provides, in pertinent part, as follows:

> All employees are representatives of the District and shall conduct themseleves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.
>
> A. An instructional staff member shall:
>
> * * *
>
> 3. make a reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and safety;
>
> * * *
>
> 7. not intentionally expose a student to unnecessary embarrassment or disparagement;
>
> * * *
>
> 21. not use abusive and/or profane language or display unseemly conduct in the workplace.

52. School Board Policy 3210.01, entitled Code of Ethics, restates verbatim the three sections of the Code of Ethics of the Education Profession in Florida set forth above in rule 6B-1.001. Thereafter, Policy 3210.01 describes fundamental principles upon which the Code of Ethics is predicated and addresses conflicts of interest, conduct regarding students, and personnel matters.

53. With two exceptions, the alleged violations of these

School Board rules are substantively identical to alleged violations of the State Board of Education rules previously addressed and will not be revisited.

54. Policy 3210 A.21. directs that an instructional staff member shall "not use abusive and/or profane language or display unseemly conduct in the workplace."

55. In its Proposed Recommended Order, Petitioner contends that Respondent violated School Board Policy 3210A.21. by displaying "unseemly conduct, which at times was abusive and profane." The undersigned finds that the evidence is insufficient to establish that Respondent used abusive or profane langauge in the workplace. Thus, she cannot be guilty of that aspect of the offense.

56. The rule prohibits, but does not define, "unseemly conduct." As commonly used, the term "unseemly" means "not according with established standards of good form or taste" or "not suitable for time or place." See Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/unseemly. Petitioner argues that, "[w]hen Respondent refused to leave the office, challenging her assistant principal in front of students, parents and staff, she tarnished the image of Horace Mann." The undersigned concurs that Respondent's conduct in the main office on March 12, 2013, was inappropriate, and not properly suited for the occasion. Petitioner, however, failed to argue or provide

any objective, neutral standard, from which to judge her alleged misconduct, and, therefore, failed to establish a violation of Policy 3210A.21. See Miami-Dade Cnty. Sch. Bd. v. Brooks, Case No. 04-4478 (Fla. DOAH Oct. 17, 2005)("Consequently, if [the policy] makes it a disciplinable offense to behave in a way that causes someone not to hold the employee or the school system in high regard, then the decision-maker could apply the Rule in accordance with the rule of law only if he were able to conceptualize an objective standard of conduct, a neutral principle for defining reasonably esteem-worthy behavior under the circumstances at hand . . . . The School Board neither proved nor argued for the existence of such a standard of conduct. Without a neutral principle to apply, the undersigned, where he to attempt to pass judgment on Brooks's behavior, would be merely voicing a personal opinion—the very antithesis of the rule of law . . . . [T]o the extent the School Board has charged Brooks with a general failure to behave in a manner that reflects credit on himself and the school system, it has failed to offer sufficient evidence to sustain the charge.").

57. Petitioner also contends in its Proposed Recommended Order that Respondent violated the introductory language of Policy 3210 requiring all employees of the District to conduct themseleves, both in their employment and in the community, in a manner that reflects credit upon themselves and the school

system. With respect to this allegation, Petitioner has similarly presented no evidence of an objective standard of conduct to evaluate Respondent's actions and has failed to present sufficient evidence to sustain the charge.

GROSS INSUBORDINATION

58. Petitioner alleges that Respondent's conduct, at various times from March 2011 through April 2013, constituted gross insubordination. Florida Administrative Code Rule 6A-5.506(4), effective from April 5, 1983, through July 7, 2012, defines gross insubordination or willful neglect of duties as "a constant or continuing intentional refusal to obey a direct order, reasonably in nature, and given by and with proper authority."

59. In Forehand v. Sch. Bd. of Gulf Cnty., 600 So. 2d 1187, 1192-93 (Fla. 1st DCA 1992), the court construed the intentional component of gross insubordination as follows:

> Rule 6B-4.009, Florida Administrative Code, defines "gross insubordination" . . . as "a *constant* or *continuing intentional* refusal to obey a direct order, reasonable in nature, and given by and with proper authority" (emphasis added). The word "intent" has been defined as follows:
>
> The word "intent" is used throughout the Restatement of Torts, 2nd, to denote that the actor *desires to cause consequences* of his act, or that he *believes* that the *consequences are substantially certain to result* from it. Sec. 8A. *Black's Law Dictionary* 727 (5th Ed. 1979)(emphasis

> added). An "intentional" act has been defined as one "done *deliberately*." *American Heritage Dictionary of the English Language* 683 (New College ed. 1979)(emphasis added).

60. Applying the rules of law to the allegations prior to July 8, 2012, the undersigned finds that the evidence is insufficient to establish that Respondent was grossly insubordinate. Petitioner's presented evidence that Respondent was investigated for several alleged incidents. Additionally, Petitioner established that CFRs were held for the alleged incidents. Finally, Petitioner established that either through a letter of reprimand or the CFR itself, Respondent was thereafter directed to comply with all MDCSB rules, and some rules specifically.

61. Admonishing a teacher to comply with all MDCSB rules is not tantamount to a direct order, reasonable in nature, and given by and with property authority. To hold otherwise would permit a Principal, on the first day of school, to direct all teachers to follow all MDCSB rules, and upon a violation of any rule conclude that the teacher was grossly insubordinate. The undersigned is not willing to reach such a conclusion.

62. Florida Administrative Code Rule 6A-5.056(4), effective July 8, 2012, defines gross insubordination as "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." Absent from the current version of rule 6A-5.506(4) is the requirement that the refusal be constant or continuing.

63. Applying the rules of law to the allegations post July 8, 2012, Petitioner has established Respondent was grossly insubordinate concerning the incidents of March 1, 5, 7, and 12, 2013. On each of those occasions, Respondent was given a direct order, reasonable in nature, by an individual with proper authority, and Respondent refused to obey the order.

INCOMPETENCY

64. Petitioner alleges that Respondent's conduct, at various times during the 2012-2013 school year, constitutes incompetency due to inefficiency, and, thus just cause for her termination. Florida Administrative Code Rule 6A-5.5056(3) provides as follows:

> (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.

65. Petitioner argues that Respondent failed to perform the following duties prescribed by law: 1) accept other students in her classroom on March 7, 2013 and April 1, 2013; 2) engage her students and be present in the classroom by sitting in the doorway; and 3) complete required FCAT training. Petitioner has failed to identify the legal source(s) from which the supposed obligations flow. The undersigned is unwilling to engage in speculation as to same, and, therefore, Petitioner has failed to establish a violation of rule 6A-5.056(3)(a)(1).

66. Petitioner further argues that Respondent violated rule 6A-5.056(3)(a)(2) and (3) by her alleged failure to "communicate appropriately" and "relate" with students, colleagues and administrators. The terms "communicate appropriately" and "relate" are relative. As a condition precedent to finding a violation of these relative terms, the undersigned must have an objective standard of conduct for defining same under the facts and circumstances at issue. Without a neutral principle to apply, the undersigned would be simply advancing his personal opinion as to whether Respondent communicated inappropriately or failed to relate with students, colleagues, and administrators.

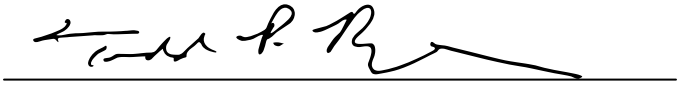
Here, Petitioner neither proved nor argued for the existence of such a standard of conduct, and, therefore, has failed to present sufficient evidence to sustain the charges.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED:

That the Miami-Dade County School Board enter a final order finding Shavonne Anderson guilty of gross insubordination, suspend her employment without pay for a period of 180 school days, and place her on probation for a period of two years.

DONE AND ENTERED this 14th day of January, 2014, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 2014.

ENDNOTES

[1/] Jimmie L. Brown, Ed.D., the District Director of the Office of Professional Standards for MDCPS, defined a CFR as "a fact finding meeting where the employee is notified of specific

concerns and the employee is given an opportunity to respond to those concerns."

[2/] Petitioner's evidence concerning this allegation consisted entirely of hearsay evidence, which does not fall within an exception to the hearsay rule. See Fla. Admin. Code R. 28-106.213(3).

[3/] Ms. De Posada conceded that she received the requested lesson plans and that the plans were consistent with the class agenda.

COPIES FURNISHED:

Shavonne Anderson
2868 Northwest 197th Terrace
Miami, Florida 33056

Sara M. Marken, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Pam Stewart, Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Alberto M. Carvalho, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue
Miami, Florida 33132-1308

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.