

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CITRUS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-3340

BETH STONE,

Respondent.

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RECOMMENDED ORDER

On November 6, 2013, a duly-noticed hearing was held in Inverness, Florida, before Suzanne Van Wyk, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: R. Wesley Bradshaw, Esquire  
Bradshaw and Mountjoy, P.A.  
209 Courthouse Square  
Inverness, Florida 34450

For Respondent: Mark Herdman, Esquire  
Herdman and Sakellarides, P.A.  
Suite 110  
29605 U.S. Highway 19, North  
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether Respondent's employment as a teacher by the Citrus County School Board should be suspended or terminated for the reasons specified in the letter of notification of suspension and termination dated June 17, 2013.

PRELIMINARY STATEMENT

Petitioner sent Respondent a letter of notification of suspension without pay and initiation of dismissal proceedings dated June 17, 2013, advising her of the alleged grounds for termination and of her right to an administrative hearing. In a letter dated June 20, 2013, Respondent, through counsel, requested an administrative hearing. The matter was referred to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge on September 13, 2013. The case was scheduled for final hearing on November 6, 2013, and commenced as scheduled.

The parties stipulated to certain facts, which were accepted at hearing, and are included among those set out below. The parties stipulated to the introduction of Petitioner's Exhibits 1 through 12, which were admitted into evidence. Petitioner presented the testimony of five witnesses. Respondent testified on her own behalf. The parties stipulated to the introduction of the deposition transcripts of students E.B., K.K., and F.F.

The one-volume Transcript of the hearing was filed with DOAH on November 21, 2013. The undersigned granted the parties' Stipulated Motion for Extension of Time to file proposed recommended orders. Both parties timely filed Proposed

Recommended Orders on December 6, 2013, which were considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Citrus County School Board (School Board or District), is the entity authorized to conduct public education in Citrus County, Florida.

2. Respondent is employed as an instructor by the School Board pursuant to a professional services contract. She has taught third grade at Crystal River Primary School (the School) for seven years. Respondent previously taught in Marion County schools, and has taught school for a total of 22 years.

3. Respondent is active in her community, serving as the choir director at her church and teaching Vacation Bible School. Respondent is also a member of the American Regional auxiliary.

STAR Testing

4. The District administers a number of standardized tests to elementary school students. Second- and third-grade students are administered a STAR test four times during the school year. The STAR test is an assessment tool to gauge student growth in reading.<sup>1/</sup>

5. The STAR test is given to students at the beginning of the school year ("the first test"), and at the end of the school year ("the last test"). The results of these two tests are compared to measure the students' growth in reading.

6. Student growth in reading is achieved when a student's last test score is at least one point higher than his or her first test score.<sup>2/</sup> Alternatively, if a student's first test score is above the mean for the entire grade, growth is achieved, even if the last test score is lower than the first test score, as long as the last test score remains above the mean.

7. The STAR test is also given two additional times during the school year to monitor student progress. The scores on these "interim" tests do not factor into a determination of a student's reading growth for the school year.

8. School policy instituted in the 2011-2012 school year requires both the first and last administrations of STAR to be conducted in the school's computer lab under strict guidelines. The tests must be proctored. Both the teacher and the proctor must sign a Test Administration Agreement (Agreement) in which they agree not to engage in activities which may threaten the integrity of the test, such as explaining or reading passages for students, and changing or otherwise interfering with student responses to test items. The Agreement also binds the teacher and the proctor to follow test protocols, including testing only during the designated testing windows for the first and last tests.

9. The District also requires the teacher to read a specific script to students prior to beginning the test. The teacher is prohibited from answering questions from students after the test begins.

10. The "interim" tests are not proctored, but are administered in the school's computer lab.

11. Second- and third-grade students do not take the Florida Comprehensive Assessment Test (FCAT). One reason for administering STAR under strict guidelines is to prepare these students for the FCAT testing environment. While a student may not be retained in third grade for failing a STAR test, that student may be retained in fourth grade for not passing the FCAT.

12. The record evidence conflicted as to whether 2012-2013 School policy prohibited teachers from administering the STAR test outside of the computer lab under any circumstances. During both the 2011-2012 and 2012-2013 school years, the STAR program was available to teachers on computers in their classrooms. Respondent testified that she and other teachers had given the STAR test in their classrooms.

13. Valerie Komara, who runs the school's computer lab, testified first that teachers had access to and did give STAR tests in their classrooms prior to the 2012-2013 school year:

Q. And the Star test, was that -- to your knowledge was the Star test ever given outside of the lab, even on the progress test?

A. Not this past year, no. No, it has not been.

Q. Meaning, do teachers -- to the best of your knowledge do teachers give the Star test in the classroom at any point in time?

A. Previous to this year, to the year that we're talking?

Q. Yes.

A. I know that it was on their computers, yes, sir. It was available to them.<sup>[3/]</sup>

14. When the undersigned asked for clarification, Ms. Komara testified that teachers "were not to test in their room" during either the 2011-2012 or 2012-2013 school years.<sup>4/</sup>

15. Ms. Komara's testimony is not competent substantial evidence on which to find that 2012-2013 School policy prohibited teachers from administering the STAR test in the classroom under any circumstances.

16. Virginia George, the Teacher on Special Assignment (TOSA) in charge of test administration for the school, testified, "we do all our testing in our test tech labs."<sup>5/</sup> However, Ms. George was not aware, until after the events of May 1 and 2, 2013, that STAR was available to teachers on computers in their classrooms.<sup>6/</sup> Thus, Ms. George's testimony as to whether School policy prohibited teachers from giving the

STAR test in their classrooms prior to May 1 and 2, 2013, is not reliable.

17. Implementation of STAR has evolved since the 2011-2012 school year. Thus, School policy has been somewhat fluid.

18. In 2011-2012, the School did not administer the first test until October. In subsequent years, the first test has been administered during a narrow test window in late August and early September.

19. During both the 2011-2012 and 2012-2013 school years, STAR was available to, and utilized by, teachers in their classrooms. Following the 2012-2013 school year, the School removed STAR from computers in teachers' classrooms.

20. During both the 2011-2012 and 2012-2013 school years, STAR was administered to students four times during the school year. Currently, the District administers STAR only twice during the school year -- fall and spring.

21. From the totality of the evidence, the undersigned finds that 2012-2013 School policy did not prohibit teachers from administering STAR to students in their classrooms in addition to the four STAR tests administered in the computer lab.

## STAR Factor in Teacher Evaluations

22. Beginning with the 2011-2012 school year, the District began using students' reading growth, based on STAR test results, as a factor in their teachers' evaluations.

23. Fifty percent of third-grade teachers' evaluations is based on their students' reading gains for the given school year. If 80 percent of the students achieve growth, the teacher may be rated either "effective" or "highly effective" on the Student Learning Growth/Performance Data portion (Student Learning Growth) of the evaluation. If less than 80 percent of the students achieve growth, the teacher may receive a "needs improvement" or "unsatisfactory" rating.<sup>7/</sup>

24. The second portion of the evaluation is the Professional Standards portion, in which a school administrator (i.e., principal or assistant principal) rates the teacher based on factors such as the teacher's leadership, support of the District, design and implementation of lesson plans, class work, and monitoring of student progress, as well as achievement of goals stated in his or her professional development plan.

25. Teachers receive a final rating based on the following matrix, which combines both the Student Learning Growth portion and the Professional Standards portion:



<b>Student Learning Growth/Data Portion</b>					
<b>Professional Standards Portion</b>		<b>HE Highly Effective</b>	<b>E Effective</b>	<b>D/NI Developing/Needs Improvement</b>	<b>U Unsatisfactory</b>
	<b>HE</b>	<b>HE</b>	<b>HE/E</b>	<b>E</b>	<b>E/D/NI</b>
	<b>E</b>	<b>HE/E</b>	<b>E</b>	<b>E</b>	<b>D/NI</b>
	<b>D/NI</b>	<b>E</b>	<b>D/NI</b>	<b>D/NI</b>	<b>D/NI</b>
	<b>U</b>	<b>D/NI</b>	<b>D/NI</b>	<b>U</b>	<b>U</b>

26. If a teacher receives an "unsatisfactory" on the Student Learning Growth portion, and a "highly effective" rating on the Professional Standards portion, he or she may receive an overall rating of either "effective" or "needs improvement." The school principal has the discretion to assign either rating under that factual scenario.

27. The School has no discretion in assigning ratings for the Student Learning Growth portion. The students' test results are reported to the District and the District assigns the rating based solely on the test results.

28. The importance of STAR testing significantly increased in 2011-2012 when STAR results became a factor in teacher evaluations. Thus, testing protocols were introduced to protect the integrity of the first and last tests upon which the students' growth determination is based. Requiring proctors, signed Agreements, and a limited timeframe in which to administer the first and last tests are measures which ensure

consistent test conditions and comparable results. These measures likewise ensure fair evaluation of the teachers.

#### Respondent's Performance Evaluations

29. For the 2011-2012 school year, Respondent received an "unsatisfactory" on the Student Learning Growth portion of her evaluation because less than 80 percent of her students achieved reading growth during the school year.

30. Respondent did not agree with the "unsatisfactory" rating as a fair assessment of her teaching abilities. The first STAR test for the 2011-2012 school year was not given until October. Respondent noted on her evaluation that if growth had been measured from August to May, rather than October to May, she would have met, if not exceeded, the 80 percent growth standard.

31. Respondent received a "highly effective" rating on the Professional Standards portion of the evaluation.

32. Among the glowing comments noted in the Professional Standards portion of Respondent's 2011-2012 evaluation are the following:

Ms. Stone's care and compassion for her students and classroom is evident in her day-to-day decision making. She is always looking for innovative ways to improve instruction.

Her dedication included an active part in our school events.

She adapted her learning environment to accommodate the needs of her students.

33. Respondent received an overall "effective" rating for the 2011-2012 school year.

34. No evaluation of Respondent prior to the 2011-2012 school year was introduced into evidence. Nor was any evidence introduced of prior disciplinary action against Respondent by either the School or the District.

35. For the 2012-2013 school year, Respondent was rated "highly effective" by the principal on the Professional Standards portion. The Student Learning Growth portion was dependent on the outcome of her students' STAR tests.

STAR testing May 1, 2013

36. On the morning of May 1, 2013, Respondent took her class to the computer lab for administration of the last STAR test of the year. This is the test that would determine her students' reading growth for the year.

37. Valerie Komara runs the School's computer lab, and proctored the STAR test with Respondent that morning. Both Respondent and Ms. Komara signed the Agreement and followed all test protocols. The test was administered without incident.

38. At the conclusion of the test, Ms. Komara generated a growth report and handed it to Respondent. A growth report

shows the score of the first and last STAR test for each student in the class, and the calculated growth.

39. Following the test, Respondent took her students to her classroom. After lunch, the students reported to an assembly.

40. From the growth report, Respondent knew that her class did not achieve the 80 percent growth necessary for her to receive an "effective" rating on the Student Learning Growth portion of her evaluation.

41. The evidence was insufficient to determine what percentage of Respondent's students did achieve growth. Of the 16 students in Respondent's class, only 13 took both the first and last proctored STAR test during the 2012-2013 school year.<sup>8/</sup> Of those, only three students achieved at least a one point increase in their STAR score.

42. The third-grade mean score was not introduced into evidence. It is impossible to determine how many, if any, of Respondent's students scored above the mean for the third grade such that growth was achieved despite a gain of less than one point.

43. If none of the students' scores was above the mean for the third grade, only 23 percent achieved growth. Based on the preponderance of the evidence, the undersigned finds that the growth percentage for Respondent's class was very low.

44. Respondent was especially concerned about the scores of three students, K.K., F.F., and E.B. Each of these students' final test score was either lower than, or the same as, their first test score, despite progress having been made on interim tests.

45. K.K.'s final score of 3.4 was lower than the 3.7 she received on the first test, and lower than the 3.6 and 3.9 scores recorded on her successive interim tests.

46. F.F.'s final score of 3.6 was the same as her initial score. F.F. had scored 4.3 and 3.6 on the two interim tests.

47. E.B.'s final score of 2.9 was lower than her initial score of 3.0, and lower than the scores of 3.2 and 3.8 recorded on her successive interim tests.

48. Respondent testified, credibly, that she knew each of these students could do better. Respondent explained her belief that students are tested so often during the school year that they "burn out" by the end of the year and do not perform as they should.

49. Respondent pulled students K.K., F.F., and E.B. out of the assembly and took them to her classroom. Respondent told the students that they had not scored well on the STAR test that morning, that they were going to take it again, and that they needed to try harder.

50. Respondent seated the students side-by-side at computer terminals, logged them into the STAR program in her classroom, and proceeded to administer the exam.

51. Respondent seated herself behind E.B., who was seated between K.K. and F.F.

52. When the students completed the STAR test, Respondent dismissed them back to the assembly.

53. Respondent ran a test record report for each of the three students to see whether their scores on the test administered in her classroom that afternoon were higher than their scores from the test given in the computer lab that morning. A test record report shows the date on which each STAR test was taken, as well as the corresponding scores.

54. Respondent was indeed pleased to see that each of the three students' scores had increased.

55. Respondent then ran a new growth report for her entire class and found that these three students' scores from the morning administration of the test had been replaced with the scores from the afternoon test.

56. Respondent testified that she did not expect the growth score for these students to be replaced by the second score and it was not her intent to substitute the scores. She maintained that her intent was to see how well these three students could do when they were taking the test seriously and

trying harder. Respondent's testimony was sincere and is accepted as credible.

57. Having seen the growth report, Respondent knew "I screwed up."<sup>9/</sup> She was asked why.

58. "[T]esting in Florida is everything," she responded. So true.

59. Respondent panicked. By her own admission, Respondent lied.

#### The Cover-Up

60. Respondent immediately prepared the following e-mail message and sent it to Ms. Komara and the principal, Donnie Brown:

**From:** Stone, Beth  
**Sent:** Wednesday, May 01, 2013 2:57 PM  
**To:** Brown, Donnie; Komara, Valerie  
**Subject:** puzzled

I was looking at my students' STAR test record and there is an extra with today's date for 3 students . . . []. While I certainly like those scores, they are very different from their scores this morning.

61. Respondent admits this e-mail was deceitful.

62. Ms. Brown was at a District meeting off-site and did not respond to the e-mail.

63. Ms. Komara received the e-mail after 3:00 p.m. on May 1, 2013, and went to Respondent's classroom to speak with her.

64. Respondent lied to Ms. Komara and told her that Respondent had misplaced the growth report Ms. Komara had given Respondent following her students' testing in the computer lab that morning. Respondent used this lie to explain why she had run the second growth report, which allegedly "revealed" the second set of scores for these three students.<sup>10/</sup>

65. Ms. Komara was upset because she had signed the Agreement for the morning test and knew that she was responsible, along with Respondent, for ensuring that test protocols were followed. Ms. Komara told Respondent she was going to inform Virginia George, the school's Testing Coordinator. Respondent told Ms. Komara not to worry about it. But, Ms. Komara was very worried.

66. Ms. Komara left Respondent's office to find Ms. George, who was not in her office. Ms. Komara next tried to find Ms. Brown, who was likewise unavailable. Ms. Komara returned to her room at approximately 4:20 p.m. and ran a growth report for Respondent's students. She circled on the report the scores from the three students' last test. Then, Ms. Komara ran a test record on Respondent's students, which showed that two separate tests were given that day to each of the three students. Ms. Komara then realized that the system reported a difference in reading growth for these three students.



67. The following day, May 2, 2013, Respondent went to Ms. George's office before school started. Respondent informed Ms. George that the test record for three of her students showed two STAR tests from May 1, 2013. Respondent asked Ms. George if she could delete the second set of scores.

68. Ms. George expressed concern over the second set of scores. While Respondent was still in her office, Ms. George began looking at the scores from other classes, trying to determine if a second set of test results were reported for students in other classes. Ms. George was concerned about a flaw in the testing program, a database error, or other system-wide glitch.

69. Respondent informed Ms. George that she had brought the matter to the attention of Ms. Komara as well. Ms. George asked Respondent to stop by the computer lab on the way to her classroom and let Ms. Komara know that Ms. George was going to handle the matter. Respondent left Ms. Komara the following note on her computer: "Val - Virginia is checking into the 2nd tests. She said not to worry. She'll get it taken care of."

70. Respondent hoped that Ms. George had the authority to delete the second set of test scores and that deletion would put the issue to rest. Respondent was wrong.

71. Ms. George spent the remainder of the school day investigating the origins of the second set of scores and

potential system errors. Ms. Komara contacted Jennifer Budden, who handles the STAR database for the school. Ms. Budden contacted Matt Biggs, a District employee involved in testing, to assist in finding out exactly when the second set of test scores was posted. Ms. Budden also contacted the software company directly.

72. During her inquiry, Ms. George discovered that the STAR testing program was available in the classrooms. She had not previously been aware of this. She ran through possible scenarios in her head -- did the three students accidentally log into the program when they returned to class after testing? Did another student log on using their passwords? Ms. George decided that she would have to interview the three students to get to the bottom of the issue.

73. At the end of the school day on May 2, 2013, Respondent came to see Ms. George again and inquired whether she had been able to delete the second set of scores for the three students. Ms. George explained the investigation she had undertaken that day, the various scenarios she was imagining, and her decision that she must interview the three students the following day. Respondent immediately offered to interview the students herself. Ms. George declined, explaining that it was important that she find out what had happened.

74. After Ms. George made clear that she was going to interview the students, Respondent stated, "I did it." Respondent then explained that she had tested the students again in the afternoon of the previous day because she knew they could have done better.

75. Ms. George then told Respondent they would have to bring Ms. Brown, the principal, into the issue. Ms. George asked Respondent whether Respondent wanted to talk with Ms. Brown herself or if Ms. George should contact her. Respondent indicated she would like to speak to Ms. Brown personally.

76. That evening Ms. George called Ms. Brown, explained the investigation she had undertaken that day and her concern that the system was flawed. Ms. George reported that the matter had been cleared up late in the day by Respondent, who would be coming to see her the following morning.

77. On May 3, 2013, prior to the start of school, Respondent saw Ms. Brown and confessed that she had retested the students, which explained the second set of scores.

Respondent's Intent in Administering the Second Test

78. The District maintains that Respondent intended to change the students' scores in the STAR system and that she was motivated by the need to achieve a satisfactory performance on the Student Learning Growth portion of her 2012-2013 evaluation.

The District relies upon the following alleged facts:  
Respondent disagreed with the District rating of "unsatisfactory" on the Student Learning Growth portion of her 2011-2012 evaluation; although she had received a "highly effective" rating on the Professional Standards portion of her 2012-2013 evaluation, an "unsatisfactory" rating on the District portion could result in an overall rating of "needs improvement" rather than "effective" on her 2012-2013 evaluation; Respondent had expressed concern to a fellow third-grade teacher that she was concerned her class would not achieve 80 percent growth; she retested the three students in her classroom secretly and told the students not to tell anyone; she had to have known that the second set of scores would replace the first ones on the growth report; and, of course, that her series of deceitful acts following the second test were designed to conceal the act of retesting which she knew to be wrong. These allegations are discussed in turn.

79. It is true that Respondent could have received an overall "needs improvement" rating on her 2012-2013 evaluation. The same was true for the 2011-2012 evaluation, but Respondent received the "effective rating." Administration was highly supportive of Respondent's teaching methods and strategies and clearly considered her an asset to the school and her students.

Respondent's testimony that she was not in fear of receiving a lower overall rating is accepted as credible.

80. Moreover, Petitioner did not prove that increasing the STAR scores for these three students to the "growth" threshold would have impacted her evaluation at all. Petitioner did not introduce the third-grade mean STAR score, which is the key to determine the percentage of Respondent's students who attained growth. Without that key evidence, the undersigned is left with the conclusion that only 23 percent of Respondent's students achieved growth. Adding three more students to the growth column would result in 46 percent growth -- far short of the 80 percent needed to achieve a "satisfactory" rating from the District. The undersigned finds that Respondent was not motivated by an unattainable goal of 80 percent growth.

81. Respondent's colleague, Jasmine Welter, testified that Respondent had expressed to her on three different occasions that she was concerned her class would not make the 80 percent goal. However, Ms. Welter also testified that the conversations took place on or near the final testing date and that such conversations among teachers were not unusual as the testing dates approached. This evidence does not demonstrate that Respondent was any more concerned about her students' upcoming STAR performance than any other third-grade teacher.

82. Respondent did retest her students in the classroom, rather than the computer lab, and without the stringent conditions under which the first and last tests are administered. As previously discussed, there was nothing inherently wrong in testing students in the classroom, a fact which was confirmed by the principal, Ms. Brown.

83. The District failed to prove that Respondent told the students not to tell anyone about the retest. Of the three students, one testified that Respondent told them not to tell anyone about the test. Another testified that Respondent told them not to tell anyone that she gave them lollipops for taking the test and doing better. The third student did not testify concerning the matter at all.

84. Respondent likely did know that the retest scores would replace the morning's STAR test scores on a growth report. However, her testimony that she was not thinking about the growth report at the time is accepted as credible. Respondent's focus was on her students and the potential to increase their performance. This is reflected in the fact that Respondent first ran a test record report, not a growth report, immediately after testing them. Respondent was focused on the individual students' achievement, rather than the overall growth percentage of her class. It was only when she ran the growth report that she realized the morning's test scores had been replaced with

the retest scores. Once she realized that, Respondent immediately took steps, however clumsy and surreptitious, to remove the second set of scores and reestablish the morning's growth calculation as the final one to be reported to the District.

85. The preponderance of the evidence does not support a finding that Respondent intended to replace these three students' STAR test results from the morning test with the results from the afternoon test.

#### Other Issues

86. The troubling issue with the retesting is the inescapable conclusion that Respondent assisted at least one of the students with the test.

87. E.B. is an exceptional education student under a 504 plan with a special accommodation for testing. E.B. did not take the STAR test on the morning of May 1, 2013, with the rest of Respondent's class, but was given the test in a different setting. Both K.K. and F.F. testified that Respondent helped E.B. with the test that afternoon. K.K. testified Respondent was seated directly behind E.B. and mumbled words to E.B., although she could not make out the words. F.F. testified that Respondent helped E.B. with words on the test, although she could not hear specifically what Respondent was saying.

88. E.B.'s highest STAR score was a 3.8, received on one of the interim tests. E.B.'s score on the retest was an unprecedented 6.1 -- a full 2.3 points higher than her previous highest score. The evidence supports a finding that Respondent assisted E.B. with the test.

89. The evidence raises a question as to whether Respondent also assisted K.K. with the test. K.K. scored a 4.5 on the afternoon test, six-tenths of a point higher than her previous high score of 3.9 on one of the interim tests. Both F.F. and K.K. testified that Respondent did not assist them with the test. E.B. testified that Respondent helped K.K. and F.F. with the test, but only by telling them to re-read the questions they were having difficulty with. The evidence is insufficient to support a finding that Respondent assisted either K.K. or F.F. with the test.

90. The District argues that by assisting students with the test, Respondent violated testing protocols and the Agreement she executed on the morning of May 1, 2013. That argument is not well-taken. Respondent cannot be said to have violated protocols for a test which was not administered for the purpose of official scores.

91. Finally, Respondent's deceitful attempt to have the second set of scores deleted was a clumsy, panicked effort to undo the mess she had made. It cannot be overlooked that it was



an attempt to correct her error, not perpetuate inaccurate test results for her own professional gain. It was wrong to lie, and it was wrong to involve so many professional colleagues in her attempt to have the scores deleted. Respondent should have known that, given the importance of the test results and the protocols surrounding the testing, the matter would not be cleared up by a simple deletion of test scores. While Respondent is to be commended for bringing the ruse to an end before the students were hauled in for questioning, the gesture was too little, too late.

#### CONCLUSIONS OF LAW

92. DOAH has jurisdiction over the subject matter and parties in this case, pursuant to section 1012.33(6) and sections 120.569 and 120.57(1), Florida Statutes (2013). Pursuant to section 120.65(11), the School Board has contracted with DOAH to conduct these hearings.

93. Petitioner is a duly constituted School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Citrus County, Florida, under section 1001.32.

94. Respondent's substantial interests are affected by suspension and termination of her employment and she has standing to contest Petitioner's action. McIntyre v. Seminole Cnty. Sch. Bd., 779 So. 2d 639, 641 (Fla. 5th DCA 2001).

95. Petitioner seeks to terminate Respondent's employment, and has the burden of proving the allegations set forth in its Suspension and Termination letter by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to the loss of a license or certification. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351 (Fla. 2d DCA 2009) rev. denied, 29 So. 3d 1118 (Fla. 2010); Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

96. Generally, a professional services contract is a continuous contract which renews automatically. Pursuant to sections 1012.22(1)(f) and 1012.33(6)(a), Florida Statutes (2012),<sup>11/</sup> the School Board has the authority to suspend or terminate employees under a professional services contract for just cause. Section 1012.33(1)(a) provides:

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.

97. According to the Charging Letter, Respondent is charged in this case with immorality, misconduct in office, gross insubordination, and willful neglect of duty.

98. Whether Respondent committed the charged offenses is a question of ultimate fact to be decided by the trier of fact 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).

99. Section 1001.02(1) 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. Immorality

100. Consistent with this rulemaking authority, the State Board of Education has defined "immorality" to implement section 1012.33(1).

101. Florida Administrative Code Rule 6A-5.056 defines "Immorality" as follows:

[C]onduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

102. In order to dismiss Respondent for immoral conduct, Petitioner must show that Respondent (a) engaged in behavior "inconsistent with the standards of public conscience and good morals, and (b) that the conduct was sufficiently notorious so as to [1] disgrace the teaching profession and [2] impair [Respondent's] service in the community." McNeill v. Pinellas

Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996) (emphasis in original).

103. In the instant case, Petitioner presented no evidence establishing the applicable "standards of public conscience and good morals" with which Respondent's behavior was inconsistent. Lack of evidence establishing the "standards of public conscience and good morals" has been the basis for recommending dismissal of charges of immorality. See Miami-Dade Cnty. Sch. Bd. v. Swirsky-Nunez, Case No. 10-4143 (Fla. DOAH May 16, 2012; Miami-Dade Cnty. Sch. Bd. Dec. 19, 2012); Broward Cnty. Sch. Bd. v. Harris, Case No. 10-10094TTS (Fla. DOAH Nov. 23, 2011; Broward Cnty. Sch. Bd. Feb. 7, 2012); Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842 (Fla. DOAH July 31, 2006).

104. The undersigned concludes that evidence as to the particular moral standards need not be introduced. It is axiomatic that, by virtue of their leadership position, teachers are traditionally held to a high moral standard in the community. Adams v. Prof'l Practices Council, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981). Teachers are expected to be leaders and role models for students. Id.

105. Assisting E.B. with the test in this case was not immoral. Respondent never intended to substitute the second set of scores for the official scores which would determine E.B.'s reading growth. E.B. was not tested with the class that morning

and there was no evidence Respondent was aware of the special accommodations due her. Under the circumstances, the undersigned cannot find that Respondent's action was contrary to public conscience and morals.

106. Lying to Ms. Komara, Ms. Brown, and Ms. George is a different matter. Respondent acted contrary to the high moral standard for teachers when she denied knowledge of the origin of the second set of scores.

107. However, it is not enough for Respondent's conduct to have been inconsistent with the standards of public conscience and good morals. It must also be "conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community." Fla. Admin. Code R. 6A-5.056(1).

108. No evidence was introduced to demonstrate that Respondent's actions were ever a subject of public knowledge or debate, much less an injurious one. The evidence fails to demonstrate that Respondent's misrepresentations brought "public disgrace or disrespect" to Respondent or to the education community.

109. Additionally, for conduct to constitute immorality it must also have impaired the teacher's service in the community. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 478 (Fla. 2d DCA 1996) (reversing school board order that conduct constituted

immorality where competent substantial evidence supported ALJ's finding that conduct did not impair individual's service in the community). Respondent is clearly involved in the community as the choir director at her church and a member of a civic group. Petitioner offered no evidence that Respondent's service in the community was impaired due to the misrepresentations she made to School personnel on May 1 and 2, 2013.

110. Impairment may be established in the absence of "specific" or "independent" evidence where the conduct engaged in by the teacher is of such a nature that it "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's service and effectiveness. In such cases, proof that the teacher engaged in the conduct also constitutes proof of impaired effectiveness. Abrams v. Seminole Cnty. Sch. Bd., 73 So. 3d 285, 295 (Fla. 5th DCA 2011) (while determined on an individual basis, impairment may be found as a matter of law for some misconduct); Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000) (commotion in class, including intoxicated student, showed class was out of control such that no evidence of impaired effectiveness was necessary, misconduct "spoke for itself").

111. Petitioner did not cite to any cases parallel to Abrams and Walker that would permit a finding of impairment of service as a matter of law in cases involving immorality, though

that would be logically consistent. Cf. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995) (dearth of record evidence to support required finding of fact that soliciting medication impaired service in community).

112. Petitioner offered insufficient evidence to show that Respondent's actions impaired her service in the community.

113. Petitioner failed to prove by preponderance of the evidence that Respondent's conduct constituted immorality as defined in rule 6A-5.056.

#### Misconduct in Office

114. Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code Rule 6A-5.056(2), which reads in pertinent part 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.

115. Rule 6B-1.001, renumbered without change as 6A-10.080, is entitled Code of Ethics of the Education Profession in Florida, and 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.

116. Rule 6B-1.006, renumbered without change as 6A-10.081, is titled Principles of Professional Conduct for the Education Profession in Florida. The School Board first alleges that Respondent violated sections (3)(a) and (d) of the rule, which reads as follows:

(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.

\* \* \*

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.



117. Petitioner presented no evidence that Respondent failed to protect her students from conditions harmful to learning or that she endangered the mental or physical health or safety of her students. There is no record evidence to support a finding that retesting students K.K., F.F., and E.B. subjected them to a harmful learning environment or put them in harm's way mentally or physically.

118. Petitioner did not prove that Respondent intentionally distorted subject matter relative to her students' academic program. Respondent never intended to change or inflate the students' STAR scores.

119. Petitioner did not prove by a preponderance of the evidence that Respondent violated rule 6A-10.081(3)(a) and (d).

120. Next, Petitioner alleges that Respondent violated Florida Administrative Code Rule 6A-10.081(5)(a), which requires an educator to "maintain honesty in all professional dealings."

121. Respondent admitted that she lied to both Ms. Brown and Ms. Komara in her e-mail of May 1, 2013, titled "puzzled." Respondent was not puzzled as to the origin of the second set of STAR scores for that date. As with most lies, this one required another. Respondent also lied to Ms. Komara by representing that Respondent had lost the first growth report given her that day to explain why she had generated a second growth report. Respondent continued the series of lies when she met with

Ms. George the following day to request deletion of the second set of scores. Respondent knowingly involved three professional colleagues in her scheme to cover up the fact that she had retested the students.

122. Petitioner proved by a preponderance of the evidence that Respondent violated rule 6A-10.081(5)(a).

123. The same facts support the conclusion that Respondent violated the more general Professional Code of Ethics provision in Florida Administrative Code Rule 6A-10.080(3) which requires educators to refrain from violating "the respect and confidence of one's colleagues . . . ."

124. Finally, Petitioner alleges that Respondent violated Florida Administrative Code Rule 6A-10.081(5)(h), prohibiting an educator from submitting "fraudulent information on any document in connection with professional activities." In contrast to rule 6A-10.081(3)(d), the rule does not hinge on the teacher's intent.

125. By retesting the students, Respondent changed the growth record report for K.K., F.F., and E.B. Those test results are the basis on which the District assigns ratings on the Student Learning Growth portion of teacher evaluations. Once the test was complete, Respondent submitted the fraudulent information. However, Respondent's punishment for violation of this rule must be tempered by the fact that, once she became

aware that the final scores upon which these students' growth would be measured had been replaced, she immediately attempted to remove the scores.

126. Petitioner proved by a preponderance of the evidence that Respondent violated rule 6A-10.081(5) (h).

127. Petitioner proved that Respondent violated both the Professional Code of Ethics and the Principals of Professional Conduct for the Education Profession in Florida.

128. Petitioner proved by a preponderance of the evidence that Respondent is guilty of misconduct in office, as defined by rule 6A-5.056(2) (a) and (b).

#### Gross Insubordination

129. Petitioner next charges Respondent with gross insubordination, which is defined in Florida Administrative Code Rule 6A-5.056(4) as follows:

[i]ntentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure to perform required duties.

130. Petitioner did not prove that 2012-2013 School policy prohibited teachers from administering STAR tests to students in their classrooms. Respondent's choice to retest her three students in her classroom during the testing window for the last proctored exam of the year was foolish and hasty. Based on the

evidence, the undersigned cannot find that it was in violation of a direct order.

131. Petitioner failed to prove that Respondent is guilty of gross insubordination as defined in rule 6A-5.056(4).

RECOMMENDATION

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

That the Citrus County School Board enter a final order finding Beth Stone guilty of misconduct in office, suspend her employment without pay for a period of 180 school days retroactive to May 24, 2013, and place her on probation for a period of one year.

DONE AND ENTERED this 22nd day of January, 2014, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of January, 2014.

## ENDNOTES

1/ A companion STAR math test is also administered, but is not the subject of this case.

2/ For example, if the first score is a 2.9 and the final score is a 3.9, growth is achieved.

3/ T.51:4-15.

4/ T.52:17.

5/ T.63:21-22.

6/ T.68:15-20.

7/ Teachers in their first three years of employment may receive a "developing" rating rather than "needs improvement" if less than 80 percent of their students achieve reading gains.

8/ The undersigned finds from the evidence that one student left before the last STAR test was administered, and two students were not enrolled until after the testing window for the first STAR test had closed.

9/ T.100:14.

10/ This lie is not logical. A growth report does not reveal sets of scores. A growth report shows the first and last tests administered, the scores from those tests, and the change or growth. The test record report shows each test, the date taken, and scores recorded.

11/ References to statutes and rules throughout this Recommended Order are to versions in effect from September 2012 through June 2013, the period of alleged incidents, except as otherwise indicated.

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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.