DUVAL COUNTY
PUBLIC SCHOOLS

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Via Certified Mail

September 29, 2014

Honorable R. Bruce McKibben
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Re: **Duval County School Board (DCSB) vs. Joyce Quiller**
DOAH Case No.: 13-1505TTS

Honorable R. Bruce McKibben:

The Duval County School Board has reviewed the record in DOAH case number 14-1341TTS. Following a Hearing on September 8, 2014, the Board issued the attached Final Order.

If you have any questions regarding this matter, please do not hesitate to contact me.

Respectfully,

Brian K. McDuffie, Esq.
Executive Director, Policy and Compliance

Attachment: Final Order

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STATE OF FLORIDA
DUVAL COUNTY SCHOOL BOARD

DUVAL COUNTY SCHOOL BOARD,

Employer/Petitioner,

vs.

JOYCE QUILLER,

Employee/Respondent.
_____/

DOAH Case No.: 14-1341TTS

FINAL ORDER OF DISMISSAL

On February 26, 2014, Dr. Nikolai P. Vitti, Superintendent of the School District of Duval County, Florida ("School District"), issued to Respondent a Notice of Termination of Employment Contract and Immediate Suspension without Pay ("Notice of Termination") based on charges that she used profanity and other inappropriate language toward and in the presence of students and called students derogatory names, in violation of Florida Code of Ethics Sections 6A-10.080(1), 6A-10.080(2) and 6A-10.080(3), Principles of Professional Conduct Sections 6A-10.081(3)(a) and 6A-10.081(3)(e), and Section 1012.33(1)(a) of the Florida Statutes.

Respondent challenged her termination and, at her request, the above-styled case was opened and a hearing was held by the Honorable R. Bruce McKibben, an Administrative Law Judge ("ALJ") assigned by the State of Florida's Division of Administrative Hearings ("DOAH").

In sum, the ALJ was charged with determining whether: (a) the charges in the Notice of Termination were supported by competent and substantial evidence; and (b) the termination complied with due process and other protections afforded to Respondent under the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941)

("Tenure Act"), Chapter 120 of the Florida Statutes, and the Collective Bargaining Agreement between the School District and Duval Teachers United.

The DOAH hearing took place on May 28 and 29, 2014, and both parties were represented by legal counsel. Throughout the hearing, the ALJ took evidence and heard the sworn testimony of several witnesses. In light of the testimonial and documentary evidence, the argument of counsel, and both parties' proposed recommended orders, the designated ALJ issued an Order on July 16, 2014, which recommended that:

> a final order be entered by Petitioner, Duval County School Board, rescinding its termination of the employment of Joyce Quiller and, instead, suspending her for a period of time without pay and reassigning her to a less-challenging position. RO, p. 20.

Having filed no exceptions to the Recommended Order ("RO"), the parties thereafter appeared at a hearing before the School Board of Duval County, Florida ("Board") on September 8, 2014.

Upon an independent examination of the entire record in this matter, the Board hereby adopts the ALJ's Findings of Fact and Conclusions of Law, but rejects the recommendation to reduce Respondent's discipline from termination to suspension of employment without pay. In addition to those reasons discussed below, the Board's decision is grounded on the gravity of the *proven* charges against Respondent and the ALJ's failure to supply any meaningful reason for reducing the level of discipline in this matter.

As the ALJ found in his Recommended Order, Respondent's "demeanor and actions were inconsistent with professional behavior by a teacher," and Respondent "used inappropriate language in her classroom." RO, ¶¶ 10, 16. The ALJ determined that consistent with what Assistant Principal Nicole Micheau, other adults, and students had reported, Respondent used profanity toward or around students, including when

Respondent yelled at Ms. Micheau, "You [Micheau] need to talk to these damn kids!" RO, ¶¶ 9-10, 12, 16. The ALJ also found by the greater weight of evidence that Respondent referred to students as "hooligans" or "hoodlums" and told students the work they were being asked to do was "third grade," but they still could not perform it correctly. RO, ¶¶ 10-11. As reported by Ms. Micheau and another teacher, Lya Crowden-Richardson, Respondent told students "you are a bunch of flunkies and you need my class" and "your dirty ass can't come into my class." RO, ¶ 13. Significantly, the ALJ noted that even some of those who supported Respondent recognized that she sometimes used profanity. RO, ¶ 23.

In addition, four different students credibly testified regarding Respondent's use of profanity and other inappropriate language. RO, ¶ 14. The ALJ found their testimony to be "fairly consistent," not "rehearsed or planned," and "very direct and unwavering" that Respondent used profanity and other derogatory terms toward or around students. RO, ¶ 16. Notably, the ALJ recognized that the students' testimony was "very similar to contemporaneously written statements from them and other students." RO, ¶ 16. At the hearing, Respondent's students testified as follows:

1. T.C. testified that Respondent told students "You kids can't remember [sh--]," and "[N---s] always coming into my class and sleeping," and that "students were coming into her class when high on drugs." RO, ¶ 14.

2. C.F. testified that he heard Respondent state, "Y'all don't do [sh--]" and that students had been "smoking weed." RO, ¶ 14.

3. A.P. testified that Respondent told the class to, "Shut the [f---] up," told kids to get their "ass" out of the classroom, and referred to students as "[N---s]." RO, ¶ 14.

4. F.H. recalled Respondent telling a student to "Sit your ass down and come to class on time" and that she heard Respondent say, "[N---], please" or a similar comment. RO, ¶ 14.

In addition, the ALJ determined that there was "sufficient evidence" that Respondent had made some of the inappropriate statements listed in the Notice of Termination to students or in their presence, which included the following:

- "Kids do not do [sh--]"
- "You all should know this [sh--] already,"
- "Shut the [f---] up,"
- "Get out of my [f---ing] class,"
- "You do not do your [f---ing] work,"
- "You little [N---s]," and
- "You are all some lazy [N---s] for coming to class late."

RO, ¶¶ 17-18.

In sum, the ALJ found that Petitioner had proved by a preponderance of the evidence that Respondent had "used profanity around or directly to her students." RO, ¶¶ 22-23. Thus, the Board agrees with the ALJ's conclusion that Respondent's actions "were in violation of the standards of conduct to which she was bound." RO, ¶¶ 37. The Board specifically concurs with the ALJ's conclusion that "there is no acceptable rationale for using such language around students." RO, ¶ 24. Notably, the ALJ stated that although Respondent denied using profanity and other inappropriate statements, she "had been reprimanded in the past for using profanity in the presence of students" and had "received discipline on two separate occasions for her language." RO, ¶ 23, *see also* RO, ¶ 27.

The Board also agrees with the ALJ's conclusion that Respondent was "guilty of failing to provide good leadership and role modeling to her students" and as a result, "may have lost the respect and confidence of some of her colleagues, her students, and

parents." RO, ¶¶ 33, 36. As the ALJ stated, a teacher must refrain from using "language in front of a student that will negatively affect her effectiveness, professionalism, or confidence in the eyes of students and their families." RO, ¶ 37. Respondent was "expected to maintain her composure and professionalism" at all times. RO, ¶ 25. Instead of doing so, Respondent permitted her impatience with students to become evident, failed to maintain her decorum, and "walked out of her classroom" on more than one occasion when she "became too frustrated to teach." RO, ¶ 19. The ALJ also appropriately determined that although Respondent blamed her students for their low grades, the "students' subsequent success under a different teacher suggests otherwise." RO, ¶ 21.

Although the ALJ did not accord deference to the Board's judgment on the appropriate discipline, the ALJ did recognize that the Board has discretion when the ALJ recommends a lesser penalty than the Board's initial discipline of termination. An agency may increase the recommended penalty if it: (a) reviews the complete record, (b) states in its final order particular reasons for doing so, and (c) supports its reasoning via citations to the record. See §120.57(1)(1) Fla. Stat.; *see also Allen v. School Board of Dade County*, 571 So.2d 568, 569 (Fla. 3d DCA 1990) (upholding school board order which accepted ALJ's findings of fact and conclusions of law but increased the recommended penalty to termination). In *Department of Professional Regulation v. Bernal,* 531 So.2d 967, 968 (Fla. 1988), the Florida Supreme Court was mindful of the great discretion held by boards in determining appropriate discipline. The Court went on to state that "[r]eviewing courts cannot substitute their judgment for a board's determination if valid reasons for the board's order exist in the record and reference is made thereto." *Id.* at 968.

It was only after careful deliberation that this Board unanimously decided to terminate Respondent's employment at the outset of these proceedings. Thereafter, as a result of this administrative proceeding, the ALJ's recommended discipline appears to be based on his impression of what he considers to be fair due to the challenges Respondent alleges she faced teaching in the "Bridge to Success" (the "Bridge") program. RO, ¶¶ 6-7, 19-22, 25-26, 36-40. The ALJ's recommendation also appears to be based on his characterization of the profanity and derogatory language Respondent used toward and around students as "fairly innocuous and restrained in nature," and "understandable". RO, ¶¶ 23, 38.

But the Board finds no wisdom in the ALJ's unfounded determination that Respondent's use of profanity and derogatory language was "understandable" or "fairly innocuous and restrained in nature." RO, ¶¶ 22-23. Indeed, the Board does not believe that any parent, whose child has been subjected to Respondent's hard-core profanity or offensive statements, on even one occasion, would accept or underestimate the damaging, long-term effects such statements may have on a student. As the ALJ appropriately concluded, "there is never a valid reason to curse at students." RO, ¶ 22 (emphasis added). Regardless of the challenges a teacher may face, "it is still a prerequisite for teaching that the teacher act professionally and not do anything to disparage" her students. RO, ¶ 25.

The ALJ also correctly recognized that the students' testimony regarding Respondent's use of profanity was consistent with their own contemporaneous statements and that even Respondent's supporters conceded that she used profanity. RO, ¶¶ 17, 23. Therefore, rather than isolated or occasional incidents, Respondent repeatedly used profanity and other inappropriate language toward and around different students on multiple occasions, even after she had been recently disciplined for it. RO, ¶¶ 14, 17.

The Board notes that other administrators and teachers in the Bridge program, as well as in other challenging environments, have been able to maintain their professionalism and refrain from using profanity and other harmful language toward or around the students in their care. Therefore, the Board sees no reason why Respondent could not have done the same.

After careful deliberation before entering this Final Order for this administrative proceeding, the Board could not ignore its constitutional obligations and overarching duty to protect the welfare of the students in its care, particularly in light of the Board's adoption of the ALJ's Findings of Fact and Conclusions of Law, and the Board's findings set forth above. Therefore, in light of the foregoing, it is **ORDERED** that:

1. Administrative Law Judge R. Bruce McKibben's Findings of Fact and Conclusions of Law are hereby **ADOPTED;** however, based on the reasons set forth above, the Board rejects his recommendation to reduce Respondent's discipline from termination to suspension of employment without pay.

2. Respondent's employment with Duval County Public Schools is hereby **TERMINATED for cause.**

DONE and ENTERED this 23rd day of September, 2014.

THE SCHOOL BOARD OF DUVAL COUNTY, FLORIDA

Becki Couch

Becki Couch, Chairman

Brian K McGuffie

School Board Clerk

APPEAL OF FINAL ORDER

This Order may be appealed by filing two copies of a Notice of Appeal accompanied by a filing fee, as provided in §120.68, Florida Statutes and Fla.R.App.P 9.100(b) and (c) within 30 days of the rendition of this Final Order.

Copies to:

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