

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-1341TTS

JOYCE QUILLER,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on May 28-29, 2014, in Jacksonville, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Wendy E. Byndloss, Esquire
Assistant General Counsel
City of Jacksonville
Office of the General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

For Respondent: Stephanie M. Schaap, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists to discipline Respondent based on allegations that she used inappropriate language when talking to students in violation of

the Code of Ethics and/or the Principles of Professional Conduct, and if so, what discipline should be imposed.

PRELIMINARY STATEMENT

By letter dated February 26, 2014, Dr. Nikolai P. Vitti, Superintendent of Schools, issued a letter to Respondent, Joyce Quiller, indicating that the Duval County School Board (the "School Board") had approved termination of Quiller's employment effective immediately. Quiller requested a formal administrative hearing to contest the School Board's action.

At the final hearing, the School Board called the following witnesses: Pamela Davis, principal for the Bridge for Success Program (the "Bridge"); T.C., student; C.F., student; Nicole Micheau, assistant principal at the Ribault High School campus for the Bridge; C.B., student; Alex Crimley, security guard at the Ribault campus of the Bridge; A.P., student; Sonita Young, chief human resource officer for the School Board; Dwayne Thomas, assistant principal at Edward White High School; Aaron Clements, investigator; Lya Crowden-Richardson, reading teacher for the Bridge; Cheryl Quaintance, site coordinator for the Bridge; Rita Franklin, retired assistant principal; and F.H., student. School Board Exhibits 1-2, 4-10, and 13 were admitted into evidence. (All hearsay evidence was admitted subject to corroboration by competent, non-hearsay evidence. To the extent

such hearsay was not corroborated, it will not be used as a basis for any finding herein.)

Respondent called two witnesses: D.R., student; and Quiller on her own behalf. Respondent did not offer any exhibits into evidence.

The parties advised the undersigned that a transcript of the final hearing would be ordered. They were given ten days from the date the transcript was filed at DOAH to submit proposed recommended orders. The Transcript was filed on June 18, 2014, making the proposed recommended orders due on or before Monday, June 30, 2014. The parties then requested and were granted leave to file their respective proposed orders by July 7, 2014. Each party timely submitted a Proposed Recommended Order, and both parties' submissions were given due consideration in the preparation of this Recommended Order.

Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2013 codification.

FINDINGS OF FACT

1. The School Board is responsible for hiring, firing, and overseeing all employees for public schools within Duval County. In addition to the regular K-12 classes, the School Board has created the Bridge for Success program. The Bridge operates at eight sites within the Duval County school system. One of those sites is Ribault High School ("Ribault").

2. The Bridge is a new program, created to assist students who have fallen behind their chronologically-aged peers due to academic or other problems. The program is an innovative approach aimed at helping students who have fallen behind catch up with their peers and graduate from high school at about the same time as others of their same age. Many of the students in the Bridge program have behavioral issues as well as academic struggles. They can be a difficult group of students to teach. The goal of the Bridge program is "to promote and graduate" those students, to improve their attendance, and to teach them how to function as students. At its inception, there were 864 students in the program, distributed among the eight campuses. There were 108 students assigned to Ribault. By the end of the first school year, only 75 to 80 students remained in the program at Ribault. Some students had dropped out of school, some had moved to a different school, and it was difficult midway through the school year to replace those who had left.

3. At all times relevant hereto, Quiller was a math teacher in the Bridge program at the Ribault location. She was hired for that position just prior to the 2013-2014 school year, the final year of the Bridge program. She had been teaching in the Duval County school system as a mathematics teacher for 21 years. Quiller is a graduate of Ribault and has very strong ties to the school.

4. Quiller was chosen as a teacher for the Bridge program for many reasons: she was a graduate of Ribault and held a special place in her heart for the school and its students; she was certified in grades six through 12 for math, a less than common certification; she had a master's degree in Guidance, giving her a better background and training for facing the Bridge students; she had been previously assigned to an alternative school for behavioral problem students; and, she demonstrated the kind of caring personality necessary for the challenges of teaching such students.

5. When Quiller was hired, she mistakenly thought her position would be in the area of guidance. However, she was hired to teach math, partly in recognition of her status as a certified teacher in that area. She was hired to teach several math classes in the Bridge program, including Algebra I and II, Math for College, and Geometry.

6. At the beginning of the 2013-2014 school year, the Bridge was not entirely ready for implementation at Ribault. There was a shortage of books and other materials and the program had not yet filled all the required staff positions. The start-up of the program was a challenge for both the teachers and school administrators. Also, the students in the Bridge program were not always cooperative or interested in school. No one denies that it was a difficult situation for all involved.

7. Despite the lack of materials and adequate staff, Quiller's classes began relatively well. She was a very strict teacher, demanding participation by all students regardless of their level of interest. She expected and required each student to be fully prepared when they entered the classroom. For example, the students were expected to have pen/pencil and paper, to have their homework completed, and to be ready for class. She was, however, very frustrated at times because many of the students seemed to ignore the fact that they were being given a second chance. They continued to demonstrate the kind of behavior that caused them to fall behind in the first place. As a result of their behaviors, many of the students in her classes were failing. Most of the students who testified at final hearing were in agreement that the classroom was fairly unruly, but agreed that Quiller was a stern disciplinarian and reacted promptly to quell any disruptions. Conversely, one student said the class was always quiet and that Quiller would make anyone making noise leave the classroom.

8. Principal Davis began getting some complaints about Quiller beginning in September 2013, a month or so after commencement of the school year. The first complaints were relayed to her from assistant principal Micheau. During the first pep rally of the year (in late August), Micheau had been sitting with a group of students who were being disciplined and

therefore, could not attend the rally. The students brought up unsolicited complaints about Quiller, saying that Quiller had used profanity towards her students. Micheau relayed these allegations to Principal Davis and Davis instructed Micheau to meet with Quiller and remind her that such language was not acceptable. Micheau met with Quiller and attempted to explain--without being accusatory--that it was improper to use such language in front of students. Quiller denied ever having used inappropriate language with students; Micheau took Quiller at her word at that time.

9. Sometime later, Micheau heard loud talking emanating from Quiller's classroom area. When she investigated, she saw Quiller standing in the hallway next to her room. She was yelling loudly at a student and was obviously very upset. Micheau attempted to call her over and calm her down, calling out her name over and over, "Ms. Quiller. Ms. Quiller. Ms. Quiller." Quiller yelled at Micheau to reprimand the student rather than her, saying, "You [Micheau] need to talk to these damn kids!" Micheau, shocked at Quiller's language and her anger, removed the student from the classroom, and went back to her office.

10. A few weeks later, Micheau was in her office adjacent to Quiller's classroom. She and Rita Franklin, who was at the school that day as a School Improvement Coach, heard a loud commotion outside the office and went to investigate. When they

came out of the office, they saw the school security guard already moving toward the sounds emanating from Quiller's classroom. Upon arrival at the classroom, Micheau and Franklin heard Quiller talking very loudly to her students. She threatened to throw one student's test paper into the trash. She told the students that the work they were being asked to do was third-grade work and they still could not get it right. She referred to the students as "hooligans" or "hoodlums." When Quiller saw Micheau and Franklin outside her door, she reduced the volume and changed the content of her comments to the students. Quiller's demeanor and actions were inconsistent with professional behavior by a teacher.

11. Quiller denies making any of the alleged statements, except for the comment about some of the work being third-grade level. According to Quiller, that comment was made about some supplemental work she had assigned to an algebra project; she told the students it was third-grade work so they should not be intimidated by it. As to the comments about being flunkies, Quiller maintains that all she said was that the boys were flunking her class, although that would not have been an appropriate thing to say in front of other students. While Quiller seems to be generally honest and forthright, the most credible evidence is that she made remarks to the students along the lines of what Franklin and Micheau reported.

12. Crimley, the security guard who was also present during one of the outbursts, heard Quiller say something about "getting this kid out of my damn class." Crimley usually went into Quiller's classroom three-to-five times a day but never heard her curse at students during those visits. Crimley attempted to testify at final hearing that some students had recanted their accusations against Quiller because "it had gone too far" and they did not want Quiller to be sanctioned. That testimony was not allowed due to its hearsay nature, but it is also inconsistent with the testimony of the students who testified at final hearing.

13. On another occasion, Quiller was talking loudly to a student named Wayne and one or two other male students. The boys were doing some sort of vulgar dance and were attempting to enter the classroom at about the time the tardy bell was ringing. Quiller said something to the effect of "you are a bunch of flunkies and you need my class" and "your dirty ass can't come into my class." Both Micheau and another teacher, Ms. Crowden-Richardson, heard those comments.

14. By the end of the first semester, i.e., about the time of the winter break from school, Principal Davis began getting additional complaints from students and their parents about Quiller. T.C., who was likely about to fail Quiller's class, remembers hearing Quiller saying such things as "you kids can't

remember [sh--]," and "[N---s] always coming into my class and sleeping," and she said students were coming into her class when high on drugs. C.F., who had a D and C on his first two grade reports from Quiller's class, heard Quiller say, "Y'all don't do [sh--]," and also that students had been "smoking weed." A.P., a D and F student in Quiller's class, reported that Quiller 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]." A.P. said these things were not yelled in anger, but in a normal tone of voice. F.H., an admittedly problem student, remembers Quiller telling a student to "Sit your ass down and come to class on time." She also heard Quiller say, "[N---], please," or some such comment.

15. None of the aforementioned students' testimony was individually very persuasive. Each of the students was struggling in class and had received their poor grades just prior to the time of the comments they reported hearing. It is certainly possible they had an axe to grind with Quiller. One student (D.R.) who testified that he never heard Quiller make such comments was passing the class, had regular attendance, and generally commended Quiller for being strict and stern with problem students.

16. Nonetheless, the students' description of Quiller's comments and behavior was fairly consistent. The things they

reported Quiller saying were very similar to contemporaneously written statements from them and other students. The alleged remarks were similar in nature to one another but not exactly the same, so the comments did not seem rehearsed or planned. The students were very direct and unwavering when testifying at final hearing. The greater weight of the evidence supports the contention that Quiller used inappropriate language in her classroom.

17. In the letter notifying Quiller of her termination from employment, it is alleged that Quiller made the following inappropriate communications:

- "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."

18. There was not enough credible testimony to support all of the allegations that each of those things was said to students or in the presence of students. There was, however, sufficient evidence to support that some of those statements had likely been made. The contemporaneous written statements by students and

staff support the verbal recollections made at final hearing, at least in part.

19. While the students were making disparaging comments about Quiller, she was in turn making complaints to school administration concerning the program. She lamented the lack of materials and raised concerns about her own safety in the classroom. More than once, Quiller walked out of her classroom as she became too frustrated to teach. It was undoubtedly a very difficult situation for Quiller and other teachers.

20. All in all, the Bridge program had elements of success as well as some problems. Some of the students were able to graduate with their classmates, some were able to catch up to those in their age cohorts, and some came to the realization that school simply would not be appropriate for them. The program gave students a good chance to make up for past failures. But it was not a panacea and did not work for everyone.

21. Quiller asked that certain students be removed from her classes because she believed they were poisoning the other students. Some were removed, some were not. Quiller gave far more D's and F's to her students than other teachers in the program. Many of her students began to receive passing grades after Quiller was replaced, however. Quiller maintains that the low grades were given because the students earned them, i.e., they were not issued as punishment or retribution for bad

behavior. But the students' subsequent success under a different teacher suggests otherwise.

22. Quiller appeared unemotional and stoic when discussing the allegations against her. Some of her responses to questions at final hearing seemed to be aimed at avoiding the allegations rather than denying them. She had undeniably been placed in a very trying and vexatious situation and tried to make the best of it, but she very well may have crossed the line at times with her words and behavior. It is impossible to place oneself in the environment in which Quiller was working, but it is easy to see that the classroom problems she faced could drive a person to outbursts on occasion. As opined by Davis and Micheau, there is never a valid reason to curse at students, but there are times when doing so could be more understandable.

23. Quiller had been reprimanded in the past for using profanity in the presence of students. She received discipline on two separate occasions for her language. While she denied the allegations, there is some support for the premise that Quiller, on occasion, used profanity around or directly to her students. Even those who support her recognized that Quiller would sometimes use profanity, albeit fairly innocuous and restrained in nature.

24. There is a strong suggestion in the testimony that Quiller was using such language in the hopes it would resonate

with these students, described as the worst of the worst. However, there is no acceptable rationale for using such language around students.

25. Quiller was placed in an almost untenable situation with the students assigned to her classes. They were unruly and generally well behind academically. She did not have all the tools needed to work with the students and her classes were too large. Nonetheless, she was expected to maintain her composure and professionalism. While that is easy to say without "walking a mile in her shoes," it is still a prerequisite for teaching that the teacher act professionally and not do anything to disparage the students.

26. Quiller was by all accounts a good teacher prior to her involvement in the Bridge for Success program. She received a most difficult teaching certification and had favorable annual reviews for most of her time as a teacher. She was sought and hired as a teacher at Ribault on the basis of her distinguished career and training. She is not a bad person or a bad teacher. However, she succumbed to a harsh situation and failed to maintain her decorum.

27. Quiller's prior disciplinary history included the following:

- December 2001--A written reprimand (Step II discipline) for using profanity in the presence of students;

- April 2013, 11 years later--A verbal reprimand (Step I) for making an inappropriate comment to a student;
- October 2013--A written reprimand (Step II) for using profanity and derogatory language in the presence of students; and
- February 26, 2014--The notice of termination at issue in the present case (Step IV).

28. The School Board began its recent discipline of Quiller with a Step I verbal reprimand followed by a Step II written reprimand. Due to the nature of Quiller's conduct, the School Board did not believe it had to follow the Step II discipline with Step III discipline, i.e., suspension without pay. Rather, it went directly to the most severe and extreme level of discipline, Step IV--Termination of employment.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to a contract with the Duval County School Board. The proceedings are governed by sections 120.57 and 120.569, Florida Statutes.

30. The superintendent of the School Board has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. § 1012.27(5), Fla. Stat.

31. The School Board has the authority to terminate the employment of or to suspend teachers without pay and benefits. See §§ 1012.22(1)(f) and 1012.40(2)(c), Fla. Stat.

32. The burden of proof in this proceeding is on the School Board to prove by a preponderance of the evidence that just cause exists to terminate Quiller's employment with the School Board or, presumably, to impose some other sanction. McNeil v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996). Preponderance of the evidence is evidence that more likely than not tends to prove the proposition set forth by a proponent. Gross v. Lyons, 763 So. 2d 276 (Fla. 2000).

33. In the absence of a rule or written policy defining just cause, the School Board has discretion to set standards which subject an employee to discipline. See Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA 1994). Nonetheless, just cause for discipline must rationally and logically relate to an employee's conduct in the performance of the employee's job duties and be in connection with inefficiency, delinquency, poor leadership, and lack of role modeling or misconduct. State ex. rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948); In Re: Grievance of Towle, 665 A.2d 55 (Vt. 1995). Quiller was clearly guilty of failing to provide good leadership and role modeling to her students on occasion.

34. Just cause for purposes of discipline is addressed in section 1012.33:

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 and found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

35. The Code of Ethics under which classroom teachers operate in the Duval County school system includes the following provisions:

6A-10.080(1)--The educator values the work 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.

6A-10.080(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.

6A-10.080(3)--Award 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.

Additionally, in the Principles of Professional Conduct, the following provisions are applicable to this case:

6A-10.081(3) (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.

6A-10.081(3) (e)--Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

36. Quiller's actions as set forth in the evidence presented suggests that she may have lost the respect and confidence of some of her colleagues, her students, and parents. She was stern and allowed her frustrations with students to become evident at times, but her overall demeanor and actions clearly showed an intention to help the students in her charge. Despite her best intentions, she did not always maintain her decorum and sometimes allowed her impatience to become manifest.

37. The greater weight of the evidence supports a finding that Quiller's actions, though limited and somewhat understandable under the circumstances, were in violation of the standards of conduct to which she was bound. A teacher must not use language in front of a student that will negatively affect her effectiveness, professionalism, or confidence in the eyes of students and their families.

38. Quiller's actions were not immoral, the misconduct in office was limited and understandable under the circumstances, there was no gross insubordination or willful neglect of duty, nor was a crime involved. She may not be the best teacher, but

her skills are a benefit to the School Board as a whole and especially to the Bridge to Success Program.

39. Article V, D. 1, of the Collective Bargaining Agreement between the School Board and the teachers' union to which Quiller belongs sets forth the Progressive Discipline Policy to be followed. It states in pertinent part:

The following progressive steps must be followed in administering discipline, it being understood, however, that some more severe acts of misconduct [not defined] may warrant circumventing the established procedure:

- a. Verbal Reprimand
 1. No written conference summary is placed in personnel file;
 2. Employees must be told that a verbal reprimand initiates the discipline process.
- b. Written Reprimand
- c. Suspension without pay
- d. Termination


40. There is sufficient reason for sanctioning Quiller, but termination of her contract would neither be appropriate under the circumstance nor in the best interests of the School Board. There is no proof that the behavior at issue constitutes "severe acts of misconduct" as contemplated in the progressive discipline policy. There seems to be no viable rationale for avoiding Step III of the progressive discipline policy.

RECOMMENDATION

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

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.

DONE AND ENTERED this 16th day of July, 2014, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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 16th day of July, 2014.

COPIES FURNISHED:

Wendy Byndloss, Esquire
Assistant General Counsel
City of Jacksonville
Office of the General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Stephanie M. Schaap, Esquire
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, Florida 32207

Dr. Nikolai P. Vitti, Superintendent
Duval County School Board
1701 Prudential Drive
Jacksonville, Florida 32207

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

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

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.