

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-1741TTS

LIBBY STROUD,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on August 17 through 18, 2015, and September 24, 2015, in West Palm Beach, Florida.

APPEARANCES

For Petitioner: Jean Marie Middleton, Esquire
School District of Palm Beach County
Office of General Counsel
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For Respondent: Nicholas Anthony Caggia, Esquire
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Suite 309
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent without pay and terminate her employment as a teacher.

PRELIMINARY STATEMENT

By letter dated February 9, 2015, Petitioner, Palm Beach County School Board ("School Board"), notified Respondent, Libby Stroud ("Stroud"), of the School Board's intent to suspend her for 15 days without pay and terminate her employment. On March 4, 2015, at its scheduled meeting, the School Board took action to suspend Respondent for 15 days without pay and terminate her employment as a teacher.

On March 10, 2015, Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

The final hearing was initially set for July 13 through 14, 2015. On June 23, 2015, the School Board filed an unopposed request for a continuance. On June 29, 2015, the undersigned entered an Order resetting the final hearing for August 17 through 18, 2015.

The final hearing commenced as scheduled on August 17 and 18, 2015, and concluded on September 24, 2015, with both parties present. At the hearing, the School Board presented the testimony of Deneen Wellings, Yevola Falana, Respondent, Carissa

Battle, Robert Pinkos, Vincent Caracciolo, Juanice Brown, and Kiwana Alexander-Prophete. The School Board's Exhibits 5, 10, 15, 26, 29, 31, 32, 34 through 38, 40, 43 through 51, 54, 56, 59 through 67, 69, 70, 72, 74, 77, 79, 81, 84 through 86, and 89 were received into evidence. Respondent testified on her own behalf and presented the additional testimony of Lilia Perez, Linda Loomis, Lorenzo Odom, and Kevin McCabe. Respondent's Exhibits 2, 4 through 6, 12, 14, 19, 28, 30, 40, and 49 were received into evidence.

At hearing, the parties stipulated to the filing of proposed recommended orders 30 days after the filing of the final hearing Transcript. The five-volume final hearing Transcript was filed at DOAH on October 27, 2015. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order.^{1/}

On August 6, 2015, the parties filed their Joint Pre-Hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise the public schools within Palm Beach County, Florida.

2. At all times material to this case, Respondent was employed by the School Board as a reading/social studies teacher at Carver Middle School ("Carver"), a Title I public school in Palm Beach County, Florida. Respondent was initially hired by the School Board as a teacher in 1993.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law, the School Board's policies, and the collective bargaining agreement between the School Board and the Palm Beach County Classroom Teachers Association.

4. Kiwana Alexander-Prophete, the principal of Carver, was authorized to issue directives to her employees, including Respondent.

The 2013-2014 School Year

5. On April 24, 2014, Principal Alexander-Prophete held a conference with Respondent to address concerns regarding students' grades because an overwhelming number of students were failing Respondent's class.

6. This conference occurred after report cards for the third nine-week grading period had been sent home to the parents

of Respondent's students. Out of 106 students, 72 students received an F grade; 17 students received a D grade; 11 students received a C grade; three students received a B grade; and one student received an A grade.

7. Respondent failed to demonstrate that the students earned these grades; she failed to provide samples of students' graded work; and she failed to notify parents of the students' failing grades prior to issuance of the report cards.

8. Principal Alexander-Prophete issued Respondent a conference memorandum on April 30, 2014, specifically directing Respondent to, among other things:

Maintain a student portfolio which was established for all teachers at the beginning of the school year. Have each student write name on folder and then place all their tests, work, notes/letters home to parents in the folder. This would be the documentation used for parent conferences, progress reports and report card grades.

Maintain a telephone log and maintain copies of letters sent home to parents.

* * *

Maintain a GradeQuick documenting a minimum of at least two grades per week.

9. Respondent was advised in the April 30, 2014, conference memorandum that failure to follow the directives is insubordination, which could subject her to discipline, including termination.

10. On May 12, 2014, Respondent received specific written directives regarding communications, grades, portfolios, and recordkeeping.

11. These directives were specifically detailed to improve Respondent's overall job performance and optimize the level of education to her students. The directives were specifically targeted to Respondent for her to correctly measure and track student growth, accurately maintain records of assignments, compute grades in a fair and understandable manner, and communicate effectively with students, staff, and parents. Specifically, Respondent was directed as follows with regard to student portfolios:

Properly maintaining student portfolios is the strategic centerpiece of your improvement plan. Therefore, you are directed to maintain an up to date student portfolio for each student assigned to you. You are directed to have a folder for each student where any and all work will be saved. This folder will be known as the student's portfolio. Any and all assignments that will be used in the calculation of the final report card grade will be memorialized in the students' portfolios. At the end of each semester portfolios will be housed in a secure classroom location or an area to be designated by the school's administration. Students will begin a new portfolio at the start of each semester. You are specifically directed to have:

- Students print their first and last names on folders on the outside of each folder.

- Students attach to the outside of the folders a teacher prepared rubric displaying how report grades will be calculated. As an example:

Chapter Quizzes 15%
Unit Exams 25%
Final Exam 20%
Projects and Presentations 15%
Homework 15%
Class Participation 10%

- Folders organized on classroom shelves by period and then divided by gender.
- Students pick up and return their folders to and from the designated area as they enter and exit the classroom each day.
- All documents in the folder include the student's name, period, date, and the category of the assignment (i.e. chapter quiz, hw).
- All student work, assessments, exams, quizzes, homework graded, entered into GradeQuick into the appropriate assessment category, returned to students, and placed into their portfolios no more than three (3) student school days from the day the student submitted it to you.
- Documents in the student portfolios match the grades registered by you in GradeQuick.
- Portfolios available for students, parents, and administrative personnel on the day of the request.

12. With regard to student grades, the directives specifically advised Respondent of the importance of grading students in "quantifiable, definitive, and well-documented" methods. Respondent was specifically directed to:

- Record daily each student's classroom participation in GradeQuick using the 1-4 rubric similar to the conduct grade. For an absent student do not record a grade. Use the average of the daily grades to determine the classroom participation grade for the semester.
- Enter no less than two (2) grades into GradeQuick each week, exclusive of the daily class participation grade.
- Provide each student with a hardcopy rubric explaining how grades will be determined for a student project or presentation at the time the assignment is given.
- Have at least one higher order question (Bloom's Taxonomy) requiring students to respond in a short essay format (5-12 sentences) for all unit and final exams. Examples: *Compare & Contrast . . .*, or *If you were _____, would you have made the same decision to _____? Why?*
- Grade all quizzes, tests, exams, projects, presentations, and any other similar type assessment as percentage, not a letter grade.
- Write short praise comments or words of encouragement on 50% of each student's homework assignments, quizzes, tests, exams. Examples: *Way to go!*, *You're improving!*, *I know you can do better*^[2/1]

13. In order to improve Respondent's communication and recordkeeping with parents, Respondent was also specifically directed to:

- Maintain a parent contact log book with first and last names of mothers, fathers, and legal guardians with their telephone numbers (home, work, and cell), and email address for each student assigned to you. The log will be

maintained by instructional periods and alphabetized by the last name of students. Allow for one complete page for each parent/student entry so that as the school year progresses there will be ample room for notes resulting from your parent contacts. You may use computer software rather than paper/pen to maintain the log.

- Write the date, the method of communication (i.e. in-person conference, phone, email), the name of the person you contacted, the salient points made by you and the parent(s) for each parent contact. Should a parent be unavailable, record the date/time and method of attempted contact.
- Make verbal contact (phone or in person) with at least one parent of the each student assigned to you within fifteen (15) days of the first day of a new school year.
- Notify parents whose child has a grade average of a D or F, no less than fifteen (15) days prior to the conclusion of a semester.
- Notify parents whose child has a less than satisfactory behavior grade no less than twenty (20) days prior to the conclusion of a semester.
- Have an in-person parent-teacher-student conference for any students experiencing severe behavioral issues or repeated patterns of unacceptable conduct within ten (10) days of you determining that such a problem exists.
- Have an in-person parent-teacher-student conference for any students receiving a failing semester grade within ten (10) days of the issuance of the report card.
- Not to contact parents when you are scheduled to teach students.

- Have your parent contact log available to the school's administration on the day of request.

14. The May 12, 2014, directives were effective immediately, as well as for the 2014-2015 school year.

15. Respondent was specifically advised that failure to adhere to the directives will constitute insubordination and subject her to disciplinary action, including termination.

16. Respondent refused to sign and acknowledge her receipt of these directives.

17. However, Respondent received the written directives on May 12, 2014.

2014-2015 School Year

18. On August 21, 2014, Respondent attended a pre-determination meeting with Principal Alexander-Prophete and Robert Pinkos, the School Board's human resources manager. Respondent refused to participate in the meeting.

19. On August 21, 2014, Principal Alexander-Prophete delivered to Respondent a memorandum of the meeting, reminding Respondent of the May 12, 2014, directives. Respondent was specifically directed to deliver to Principal Alexander-Prophete's office her current parent contact log, student portfolios, and records of grades by the close of the school day on September 4, 2014. Respondent was further advised that if she needed assistance delivering the material to

Principal Alexander-Prophete's office, she should contact Principal Alexander-Prophete by the close of the school day on September 3, 2014, so that the principal can make the necessary arrangements.

20. Again, Respondent refused to sign and acknowledge her receipt of this memorandum.

21. However, Respondent received the memorandum on August 21, 2014.

22. On September 5, 2014, Respondent attended a pre-determination meeting with Principal Alexander-Prophete and Mr. Pinkos. During the meeting, Principal Alexander-Prophete found Respondent was insubordinate for failing to adhere to prior directives by failing to maintain student portfolios, recordkeeping, and grades as directed. Again, Respondent refused to participate in the meeting and failed to sign and acknowledge receipt of the September 9, 2014, memorandum memorializing the meeting.

23. However, Respondent received the September 9, 2014, memorandum.

24. On September 12, 2014, Principal Alexander-Prophete issued to Respondent a written notation of a verbal reprimand for neglect of duty and insubordination for failing to adhere to directives regarding the following: insufficient work in student portfolios; no submission of lesson plans for the 2014-2015

school year; multiple class periods with no recorded grades; and insufficient contact with parents. Again, Respondent refused to sign and acknowledge receipt of the September 12, 2014, written notation of a verbal reprimand.

25. However, Respondent received the written notation of a verbal reprimand on September 12, 2014.

26. On September 18, 2014, Principal Alexander-Prophete specifically directed that Respondent meet with her on Tuesday, September 23, 2014, at 9:45 a.m., in the principal's office and to bring with her to the meeting the following: "student portfolios, telephone logs of parent contact, and your GradeQuick grade print out for all class periods." Again, Respondent refused to sign and acknowledge receipt of the September 18, 2014, memorandum containing this directive.

27. However, Respondent received the September 18, 2014, memorandum.

28. Respondent did not provide any records for review on September 23, 2014, as directed.

29. On October 3, 2014, Respondent attended a pre-determination meeting with Principal Alexander-Prophete and Mr. Pinkos. During this meeting, Respondent was found to be grossly insubordinate and negligent for her repeated failure to adhere to prior administrative directives by failing to provide a parent contact log, student portfolios, and grades as directed.

30. On October 14, 2014, Principal Alexander-Prophete issued to Respondent a written reprimand for dereliction of duty and gross insubordination for failing to have her student portfolios, grades, and parent contact log available for administrative review on September 23, 2014, as directed.

31. Notably, the documents reviewed by Principal Alexander-Prophete during the October 3, 2014, meeting demonstrated that Respondent's student portfolios did not contain any student work, and there was no rubric to show how grades would be determined. Grades in GradeQuick had not been entered on an ongoing basis, and grades that had only recently been entered in GradeQuick could not be authenticated because there were no assessments or student work in the portfolios. There was no daily record of student conduct grades, and the parent log was noncompliant.

32. Respondent was advised in the written reprimand that failure to adhere to the directives would result in further disciplinary action, including up to termination.

33. Again, Respondent refused to sign and acknowledge receipt of the written reprimand.

34. However, Respondent received the written reprimand on October 14, 2014.

35. On October 24, 2014, Carissa Battle, a vice-principal at Carver, sent an email to Respondent reminding Respondent that

her lesson plans were due October 7, 2014, and that this was the "second and final notice that your plans have not been submitted for Administrative Review." Respondent was directed to submit her lesson plans by 4:10 p.m., on October 27, 2014.

36. On October 27, 2014, Principal Alexander-Prophete sent Respondent a memorandum directing Respondent to meet with her on Monday, November 3, 2014, at 10:30 a.m., in the principal's conference room. The purpose of the meeting was to review Respondent's recordkeeping and her adherence to the prior directives. In the memorandum, Respondent was directed to bring with her the following: student portfolios, telephone logs of parent contact, and her GradeQuick grade print out for all class periods. Respondent was informed that failure to attend this meeting will be considered insubordination and may result in disciplinary action.

37. Again, Respondent refused to sign and acknowledge receipt of the memorandum.

38. However, Respondent received the memorandum.

39. Respondent failed to attend the meeting scheduled for Monday, November 3, 2014, at 10:30 a.m., and she failed to have the requested records available in the principal's conference room as directed.

40. When Respondent failed to attend the meeting scheduled for 10:30 a.m., Principal Alexander-Prophete and Mr. Pinkos went

to Respondent's classroom at approximately 11:00 a.m., during Respondent's scheduled break from teaching. At that time, Principal Alexander-Prophete and Mr. Pinkos reviewed Respondent's student portfolios, lesson plans, grades, and parent contact logs. There were no students in the classroom.

41. There was insufficient work in Respondent's student portfolios. The portfolios were folders with student names written on the outside. The portfolios were divided by instructional periods. In each of the first-period portfolios, there were two papers: "a T/F Chapter 1 Quiz answer sheet on notebook paper dated September 8, 2014, and a Section 1 Quiz [dated] September 10, 2014." There were no other documents in the first-period student portfolios. An examination of the student portfolios for Respondent's other classes showed that they were all empty.

42. No lesson plans had been received from Respondent for any period of time during the 2014-2015 school year. Respondent pointed to an envelope and provided Mr. Pinkos with a document inside the envelope titled "Carver Middle School [-] School wide Positive Behavior Matrix/Single School Culture Lesson Plans 2014-2015 School Year." Respondent indicated that this document constitutes her lesson plans. However, this document is not a teacher's lesson plan, but rather a published lesson guide not prepared by a teacher. The collective bargaining agreement

specifies a teacher's lesson plan format. Respondent failed to produce any lesson plans for the 2014-2015 school year, and she had no lesson plans for the 2014-2015 school year.

43. There was insufficient contact with parents. Respondent produced the identical parent contact log that Principal Alexander-Prophete previously reviewed. There were no new entries on the log provided by Respondent on November 3, 2015.

44. Principal Alexander-Prophete told Respondent she would continue the discussion of Respondent's recordkeeping in her office. However, Respondent refused to continue the meeting in the principal's office.

45. Principal Alexander-Prophete returned to her office and reviewed Respondent's student grades from GradeQuick. There were no recorded grades for multiple class periods. Moreover, a review of grades posted for certain class periods revealed an insufficient number of grades for Respondent's students.

46. At this point in the second marking period, all students should have received a minimum of four grades recorded as teachers are required to record two grades per week per student. Respondent failed to register any grades for most of her students, and for the few scant grades that she recorded, they could not be supported.

47. Teachers were directed by the school's administration to have their grades submitted by October 20, 2014, for the first grading period report card. Respondent failed to submit any grades for her students, and after attempts to have her do so, the school's administration formulated grades for Respondent's students that were posted on the first grading period report card.

48. The persuasive and credible evidence adduced at hearing clearly and convincingly establishes that Respondent is guilty of misconduct in office in violation of Florida Administrative Code Rule 6A-5.056(2).

49. Maintaining student portfolios, submitting lesson plans, recording grades, and maintaining sufficient contact with parents are essential functions of Respondent's job as a teacher.

50. By failing to comply with the specific directives regarding maintaining student portfolios, submitting lesson plans, recording grades, and maintaining sufficient contact with parents, Respondent violated Florida Administrative Code Rule 6A-10.081 and School Board Policy 0.01 2.c. by engaging in conduct which failed to make reasonable effort to protect her students from conditions harmful to learning. Respondent violated rules 6A-5.056(2)(d) and (e) by engaging in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform duties. Respondent

violated School Board Policy 1.013(1) by failing to carry out her assigned duties in accordance with state rules and school board policy. Respondent violated School Board Policy 1.013(4) by failing in her recordkeeping. Respondent violated School Board Policy 2.34 by failing to faithfully and accurately keep the records she was specifically directed to keep. Finally, Respondent violated School Board Policy 3.10(6) by failing to carry out her responsibilities in accordance with reasonable directives from her supervisor that did not pose an immediate serious hazard to health and safety or clearly violate established law or policy.

51. The persuasive and credible evidence adduced at hearing clearly and convincingly establishes that Respondent is guilty of incompetence in violation of rule 6A-5.056(3).

52. By failing to comply with the specific directives identified above, Respondent failed to discharge her required duties as a teacher as a result of inefficiency. Respondent was inefficient by failing to perform duties prescribed by law, and by failing to communicate appropriately with and relate to students, administrators, or parents.

53. The persuasive and credible evidence adduced at hearing clearly and convincingly establishes that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by

intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

54. By failing to comply with the specific directives detailed above, Respondent intentionally refused a direct order, reasonable in nature, and given by and with proper authority.

55. The persuasive and credible evidence adduced at hearing clearly and convincingly establishes that Respondent is guilty of willful neglect of duty in violation of rule 6A-5.056(5) by intentionally refusing to carry out required duties.

56. By failing to comply with the specific directives detailed above, Respondent intentionally refused to carry out required duties.

57. Respondent's failure to comply with the specific directives detailed above was clearly flagrant and purposeful. Respondent was capable of performing each of the required tasks specified in the directives, yet she intentionally chose to ignore them.

58. Respondent refused to acknowledge her receipt of directives and was warned on multiple occasions that her failure to comply with the directives could result in disciplinary action, including her termination. Rather than adhere to the directives, however, Respondent made a conscious decision to ignore them and not comply.

CONCLUSIONS OF LAW

59. DOAH has jurisdiction of the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

60. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes (2015). Petitioner has the authority to suspend and terminate instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

61. Ordinarily, the School Board would be required to prove, by a preponderance of the evidence, that Respondent committed the violations alleged in the Petition, and that such violations constitute "just cause" for suspension and dismissal. § 1012.33(1)(a) and (6), Fla. Stat.; Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990). However, pursuant to Article II, Section M of the Collective Bargaining Agreement between the School Board and the Palm Beach Classroom Teachers Association, the violations must be proven by clear and convincing evidence. Moreover, because the School Board seeks to skip a step of progressive discipline and proceed directly with the termination of Respondent's employment, the violations must be shown to be "clearly flagrant and purposeful" in order to justify the penalty of termination.^{3/}

62. The "clear and convincing evidence" standard requires that the evidence be found credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. In re Davey, 645 So. 2d 398, 404 (Fla. 1994); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

63. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); McMillian v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 228 (Fla. 1st DCA 1993).

64. Sections 1012.33(1)(a) and (6) provide in pertinent part that instructional staff may be terminated during the term of their employment contract only for "just cause." § 1012.33(1)(a) and (6), Fla. Stat. "Just cause" is defined in section 1012.33(1)(a) to include "misconduct in office," "incompetency," "gross insubordination," and "willful neglect of duty."

65. 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.

66. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), effective July 8, 2012, which provides:

(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.

67. Rule 6A-10.080, titled "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.

68. While rule 6A-5.056(2)(a) provides that violation of the Code of Ethics rule constitutes "misconduct," it has been frequently 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. Lantz, Case No. 12-3970 (Fla. DOAH July 29, 2014).^{4/}

69. Rule 6A-5.056(2)(b) incorporates by reference rule 6A-10.081, which is titled: "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081(3)(a) provides, in pertinent part:

(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.

70. School Board Policy 0.01 is a "rule" within the meaning of rule 6A-5.056(2) (c). School Board Policy 0.01 2.c. provides, in pertinent part:

2. In fulfilling his obligations to the student, the educator - -

* * *

c. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

71. School Board Policy 1.013 is a "rule" within the meaning of rule 6A-5.056(2) (c). School Board Policy 1.013 provides, in pertinent part:

1. It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules.

* * *

4. Teachers

It shall be the duty of the teacher to provide instruction, leadership, classroom management and guidance to pupils through democratic experiences that promote growth and development both as individuals and as members of society. Pursuant to § 231.09, Fla. Stat., teachers shall perform duties prescribed by the school board policies relating, but not limited, to helping students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully; using prescribed materials and

methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the school board.

72. School Board Policy 2.34 is a "rule" within the meaning of rule 6A-5.056(2) (c). School Board Policy 2.34 provides that:

All Board employees shall faithfully and accurately keep such records as may be required by law, State Board regulations, School Board policy or their supervisor. Such records shall include pupil attendance, property inventory, funds and other types of information. Reports of such records shall be submitted on forms prescribed for such purposes and at designated intervals or dates.

73. School Board Policy 3.10(6) is a "rule" within the meaning of rule 6A-5.056(2) (c). School Board Policy 3.10(6) provides, in pertinent part:

The District requires its employees to carry out their responsibilities in accordance to . . . reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate clearly established law or policy.

74. Consistent with its rulemaking authority, the State Board of Education has defined "incompetency" in rule 6A-5.056(3), which provides, in pertinent part:

(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;

75. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), which provides:

(4) "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

76. Consistent with its rulemaking authority, the State Board of Education has defined "willful neglect of duty" in rule 6A-5.056(5) to mean "intentional or reckless failure to carry out required duties."

77. Turning to the present case, the School Board proved by clear and convincing evidence that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2). As detailed above, the School Board proved by clear and convincing evidence that Respondent is guilty of misconduct in office, in that she failed to make reasonable effort to protect students from conditions harmful to learning; engaged in conduct which disrupted the students' learning environment and reduced

Respondent's ability to effectively perform duties; failed to carry out her assigned duties in accordance with state rules and school board policy; and failed to faithfully and accurately keep the records she was specifically directed to keep.

78. The School Board proved by clear and convincing evidence that the Respondent is guilty of incompetence in violation of rule 6A-5.056(3). As detailed above, Respondent was inefficient by failing to perform duties prescribed by law, and by failing to communicate appropriately with and relate to students, administrators, or parents.

79. The School Board proved by clear and convincing evidence that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

80. The School Board proved by clear and convincing evidence that Respondent is guilty of willful neglect of duty in violation of rule 6A-5.056(5) by intentionally failing to carry out required duties.

81. As detailed above, the School Board proved that Respondent's failure to comply with the specific directives was clearly fragrant and purposeful.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Palm Beach County School Board enter a final order upholding the suspension and terminating Respondent's employment.

DONE AND ENTERED this 31st day of December, 2015, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of December, 2015.

ENDNOTES

^{1/} Respondent's Amended Proposed Recommended Order was filed at DOAH on November 30, 2015, and has been considered in the preparation of this Recommended Order.

^{2/} The directives further provided, "Semester grades must correspond to your entries in GradeQuick and the contents in student portfolios."

^{3/} Pursuant to the Collective Bargaining Agreement, there are four steps in the disciplinary process: 1) a written notation of a verbal reprimand; 2) a written reprimand; 3) suspension without pay; and 4) termination of employment.

^{4/} The undersigned reaches the same conclusion with respect to sections 3.02(4)(a), (c), (f), and (h) of the School Board's "Code of Ethics."

COPIES FURNISHED:

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325 West Gaines Street
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West Palm Beach, Florida 33406-5869
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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.