

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-3546

SHERRY ABRAM,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015), before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on September 24, 2015, by webcast at sites in Fort Lauderdale and Tallahassee, Florida.

APPEARANCES

For Petitioner: Adrian Alvarez, Esquire  
Haliczer, Pettis, & Schwamm, P.A.  
One Financial Plaza, Seventh Floor  
100 Southeast Third Avenue  
Fort Lauderdale, Florida 33394

For Respondent: Robert F. McKee, Esquire  
Robert F. McKee, P.A.  
1718 East Seventh Avenue, Suite 301  
Tampa, Florida 33605

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists, pursuant to section 1012.33, Florida Statutes (2012), for Petitioner to suspend Respondent from her duties as a teacher, without pay, for three days.

PRELIMINARY STATEMENT

On or about December 6, 2012, Petitioner, Broward County School Board, took action against Respondent, Sherry Abram, to suspend her from her duties as a teacher, without pay, for three days. Respondent timely requested an administrative hearing, and the matter was referred to DOAH to conduct a hearing pursuant to sections 120.569 and 120.57(1). The case was assigned Case No. 13-1971. At the final hearing, the parties represented that they had reached a conceptual settlement, so the case was closed.

However, when the parties were unable to finalize the settlement, this proceeding was opened and assigned Case No. 15-3546. The final hearing initially was scheduled for August 31, 2015, but due to the approach of Tropical Storm Erika, was continued until September 24, 2015.

The final hearing was held on September 24, 2015. Petitioner presented the testimony of Lori McConaughy, Monica Soifer, Glendor Williams, and Claudia Dean by deposition. Petitioner's Exhibits 1, 2, 6 through 9, 11A, 12, 15, 16,

19 through 21, 24, and 25 were admitted into evidence without objection. Respondent testified on her own behalf and presented the testimony of Latoucha Jackson-Bush, Suzanne O'Neill, and Edith Stafford. Respondent's Exhibits 1, 2, 4 through 6, and 9 were admitted into evidence without objection, and Respondent's Exhibits 3, 7, and 8 were admitted over objection.

The two-volume Transcript was filed on October 15, 2015. Pursuant to motions for extension of time, the parties were given until November 30, 2015, to file their proposed recommended orders. The parties' proposed recommended orders were timely filed and duly considered in preparing this Recommended Order.

#### FINDINGS OF FACT

##### I. The Parties

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools in the School District of Broward County, Florida, pursuant to Article IX, section 4(b), Florida Constitution, and section 1001.32, Florida Statutes.

2. During the 2012-2013 school year, Respondent was employed as a teacher in the Head Start Program ("Head Start") at Quiet Waters Elementary School ("Quiet Waters") in Broward County, Florida, pursuant to a professional services contract.

## II. Evidence Adduced at the Hearing

3. Head Start is a federally-funded program that provides comprehensive early childhood education, health, and nutrition services to low-income children. In order for the school system to qualify, or continue to qualify, for Head Start funding, the Head Start Performance Standards must be met. Noncompliance with these standards may cause the school system to lose funding for the program.

4. At the beginning of the 2012-2013 school year, a schedule of deadlines titled "Head Start (HS) Program 2012-2013 Due Dates" ("HS Schedule") for various assessments conducted as part of Head Start was distributed to each Head Start teacher, including Respondent. Additionally, the HS Schedule was covered at an in-service workshop conducted for Head Start teachers. The HS Schedule provided a description of the assessment tasks and information due and the date on which each was due.

5. The HS Schedule established an October 3, 2012, deadline to complete the 45-day screening assessments for students who were enrolled in Head Start as of August 20, 2012.

6. It is undisputed that Respondent failed to meet the October 3, 2012, deadline for completing the 45-day screening assessments for the students in her class.

7. Pursuant to approved leave, Respondent missed approximately eight days of work between September 27, 2012, and October 8, 2012, due to illness of herself and a family member.

8. At the beginning of the school year, Respondent's classroom was not equipped with a functional computer. On or about September 14, 2012, the Head Start program provided a desktop computer to Respondent so that she could enter the information required by the program into the Head Start program computer database.

9. On October 23, 2012, Claudia Dean, the Head Start Coordinator for Broward County Public Schools, notified Respondent by electronic mail ("email") that her Head Start classroom was out of compliance with the Head Start program standards because she had missed the October 3, 2012, deadline for completing the 45-day assessments, in violation of Head Start Performance Standard 1304.20(b)(1). Dean informed Respondent that all of the 45-day assessment information had to be entered into the computer database no later than "Friday, October 23, 2012."<sup>1/</sup>

10. It is undisputed that Respondent did not enter this information by Friday, October 26, 2012, so she also failed to meet this deadline.

11. As part of her October 23, 2012, email correspondence with Respondent, Dean reminded Respondent of the Head Start

program's impending Fall Checkpoint deadline of October 26, 2012, for completing Teaching Strategies GOLD® ("TSG") Assessment Portfolios for her students.

12. Additionally, on October 25, 2012, the supervisor of the preschool curriculum for Broward County Public Schools sent a reminder email to all Head Start teachers, including Respondent, regarding the October 26, 2012, Fall Checkpoint deadline and the requirement to have all TSG Assessment Portfolios information entered into the computer database by that date.

13. It is undisputed that Respondent did not enter the TSG Assessment Portfolios information for her students by the Friday, October 26, 2012, deadline.

14. On or about October 30, 2012, Respondent received a laptop computer for her use in entering the required information into the Head Start program computer database.<sup>2/</sup>

15. As of November 2, 2012, Respondent still had not entered the information for the Head Start program that was due on October 3 and October 26, 2012, into the computer database.

16. On November 2, 2012, McConaughy conducted a meeting with Respondent and other Head Start team members, specifically, Claudia Dean; William Hartner, assistant principal at Quiet Waters; Monica Soifer, teacher specialist for the Head Start program at Quiet Waters; Glendor Williams, social worker for the

Head Start program; Ed Peddell, Broward Teachers Union representative for Quiet Waters; and Deputy Debra Bridgman, school resource officer at Quiet Waters. This meeting was prompted by email communication from Respondent to McConaughey, Soifer, Dean, and others, regarding Respondent's inability to work with Soifer, and requesting that another teacher specialist for Head Start be assigned to Quiet Waters.<sup>3/</sup> McConaughey conducted the meeting specifically to address these issues so that the Head Start team could more smoothly work together.

17. At the meeting, Respondent claimed that her email was being delayed so that she was not timely receiving it, and that it was being deleted from her computer. She contended that she was deliberately being sabotaged.<sup>4/</sup> She further claimed that because she had not timely received a laptop computer, she was unable her to enter the required information.

18. At the meeting, Respondent represented that on November 5, 2012, she could enter all of the information due for the October 3 and October 26, 2012, assessments, and she requested that Head Start pay for a substitute teacher to cover her classes on that day so that she could complete those tasks.

19. With the specific understanding that Respondent would spend the school day on November 5, 2012, completing the entry of the overdue information, Dean approved the use of Head Start funds to pay for a substitute teacher to cover Respondent's

classes that day. Thus, Respondent was approved for "TDA" on November 5, 2012—meaning that she received temporary duty authorization for that school day specifically to enable her to enter the overdue information into the Head Start computer database.

20. However, Respondent did not log into the Head Start computer database until approximately 2:00 p.m. the afternoon of November 5, 2012, and then only for a short period of time, even though she had been approved for TDA for that entire school day.

21. It is undisputed that Respondent did not complete the entry of the overdue information into the Head Start computer database on November 5, 2012.

22. To the extent Respondent entered some of the information into the Head Start database that day, the information either was incomplete or substantially inaccurate.

23. On the evening of November 5, 2012, Dean notified Respondent of these deficiencies and the need to expeditiously address them, and again informed Respondent that her classroom remained out of compliance with Head Start program performance standards.

24. As of the morning of November 9, 2012, Respondent still had not correctly entered all of the overdue information, and her classroom remained out of compliance with the Head Start program performance standards.



25. By then, Dean had notified Respondent at least twice that her classroom remained out of compliance with Head Start performance standards.

26. On November 9, 2012, McConaughey issued a written reprimand to Respondent due to her failure to complete entry of the information that was due on October 3 and October 26, 2012.

In pertinent part, the written reprimand stated:

You have failed to meet the performance standards required of your position as a Headstart [sic] teacher. Specifically, you have consistently failed to adhere to Headstart [sic] Performance Standard 1304.02(b)(1), which requires that all developmental, sensory, and behavioral screenings be completed within 45 days of a child's entry into the program. Your poor performance adversely impacts Quiet Waters Elementary School and is contrary to the efficient and effective operation of the Headstart [sic] program at Quiet Waters Elementary School by failing to support the School Board of Broward County, Florida[,] in its goals of achieving the highest potential level for each of its students and meeting each student's achievement needs.

Your failure to adhere to federal guidelines of the Headstart [sic] program is a serious breach of conduct that cannot be tolerated. Therefore, I am issuing you this written reprimand that is consistent with School Board Policy 4.9 and past practices of the School Board of Broward County, Florida.

Please be advised that further failure on your part to perform to the standards established for the effective and productive performance of your duties as a Headstart [sic] [t]eacher will result in further

disciplinary action, up to and including termination of your employment.

27. As of November 14, 2012, Respondent still had not completely entered all of the required information into the Head Start computer database. At that time, Dean again notified Respondent that her classroom remained out of compliance with the Head Start Performance Standards.

28. On November 20, 2012, Dean notified McConaughey that Respondent still had not completed entry of the overdue information into the Head Start computer database.

29. On December 6, 2012, McConaughey prepared a letter formally notifying Respondent that she was recommending that Respondent be suspended for three days without pay. The stated grounds for the recommendation were as follows:

You have failed to meet the performance standards of your position as a Head Start Teacher. Specifically, you have consistently failed to adhere to Head Start Performance Standard 1304.02(b)(1), which requires that all developmental, sensory, and behavioral screenings be completed within 45 days of a child's entry to the program. Your poor performance adversely impacts Quiet Waters Elementary School and is contrary to the efficient and effective operation of the Head Start program at Quiet Waters Elementary School by failing to support the School Board of Broward County, Florida[,] in its goals of achieving the highest potential level for each of its students and meeting each student's achievement needs.

30. On February 5, 2013, Petitioner took action to suspend Respondent from her teaching duties, without pay, for three days. Respondent served her suspension on May 14 through 16, 2013.

31. Respondent acknowledges that she did not meet the October 3, 2012, or October 26, 2012, deadlines for entry of the required information into the Head Start computer database. She also acknowledges that she did not complete entry of the overdue information on November 5, 2012, as she had committed to do. However, she maintains that extenuating circumstances prevented her from meeting these deadlines.

32. Specifically, she claims that she did not have access to a functional computer that would enable her to do her work until mid-September, and that shortly thereafter she had taken medical leave, so she did not have time to complete the required tasks. She asserts that she should have gotten an extension of the October 3 and October 26, 2012, deadlines.

33. She also claims that she did not receive email regarding the Head Start program because someone was "sabotaging" her computer by deleting her email.

34. She further claims that on November 5, 2012, she attempted to access the Head Start computer database from several remote locations in Broward County in order to enter the overdue information, but she had difficulty accessing the

database so was unable to complete entry of the information that day.

35. The credible evidence shows that as of mid-September 2012, Respondent had access to a functioning desktop computer in her classroom. Thus, she had ample time to at least make substantial progress toward completing entry of the assessments information due on October 3, 2012; in any event, this does not explain or excuse her failure to meet the October 26, 2012, TSG assessments deadline. Further, even if the desktop computer in Respondent's classroom did not function properly, the credible evidence establishes that she had access to other computers at Quiet Waters on which to perform her work.

36. Respondent did not present credible, persuasive evidence supporting her assertion that her email and work were being sabotaged.

37. The evidence shows that Respondent did, in effect, receive extensions of the October 3 and October 26, 2012, deadlines to complete entry of the information due on those dates. Even after Respondent committed to enter the information on November 5, 2012, and then failed to do so,<sup>5/</sup> McConaughey still did not reprimand her until November 9, 2012 (the end of that school week)—and then only after Respondent repeatedly had been reminded that week that she needed to expeditiously complete those tasks.

38. Further, even after she received a written reprimand that fully informed her of the reasons why she was being disciplined and notified her of the consequences of her continued failure to meet the Head Start performance standards, Respondent still had not completed entry of the overdue information as of late November 2012.

### III. Findings of Ultimate Fact

39. Based on the foregoing, it is determined that Respondent engaged in misconduct in office, as defined in Florida Administrative Code Rule 6A-5.056(2), and gross insubordination, as defined in rule 6A-5.056(4).<sup>6/</sup>

#### A. Misconduct in Office

40. Respondent's conduct in failing to complete the required Head Start tasks well after the applicable deadlines reduced her ability to effectively perform her duties as a Head Start teacher, and had the potential to disrupt the student learning environment by jeopardizing the continued funding of the Head Start program at Quiet Waters due to noncompliance.

41. Respondent's ongoing failure to complete the required tasks evidence that she did not exercise the best professional judgment and that she did not make the students her primary professional concern, in violation of Florida Administrative Code Rule 6B-1.001.

B. Gross Insubordination

42. Respondent's failure to comply with Dean's and McConaughey's repeated requests and directives regarding entry of the overdue information into the Head Start database constituted gross insubordination. Respondent's ongoing conduct over a period of weeks evidences her intentional refusal to obey direct orders, reasonable in nature, from McConaughey and Dean, both of whom possessed the authority to issue such directives to Respondent.

43. Based on the foregoing, it is determined that just cause exists to suspend Respondent from her teaching duties for three days without pay.

CONCLUSIONS OF LAW

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

45. In this proceeding, Petitioner seeks to suspend Respondent from her teaching duties for just cause under section 1012.33—specifically, on the basis of misconduct in office and insubordination as defined in rule 6A-5.056.

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

47. To do so, Petitioner must prove, by a preponderance of the evidence, that Respondent committed the alleged violations, and that such violations constitute a basis for suspension and termination. McNeil v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

48. Whether Respondent committed the charged violations 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); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

49. Section 1012.33 provides in relevant part:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: . . . misconduct in office, . . . [and] gross insubordination.

50. Rule 6A-5.056<sup>7/</sup> defines the grounds enumerated in section 1012.33(1)(a) for finding just cause. This rule provides in pertinent part:

"Just cause" means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:

\* \* \*

(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-1.081, 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.

\* \* \*

(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.



51. Rule 6B-1.001, the Code of Ethics of the Education Profession in Florida, provides in pertinent part: "(2) [t]he 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."

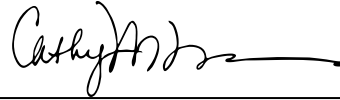
52. Based on the foregoing Findings of Fact, it is concluded that Respondent engaged in misconduct in office, as defined in rule 6A-5.056(2), and gross insubordination, as defined in rule 6A-5.056(4).

53. Accordingly, it is concluded that just cause, pursuant to section 1012.33(1)(a), exists to suspend Respondent from her teaching duties, without pay, for three days.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Broward County School Board, enter a final order upholding Respondent's suspension from her teaching duties, without pay, for three days on the basis of just cause under section 1012.33, Florida Statutes.

DONE AND ENTERED this 27th day of January, 2016, in  
Tallahassee, Leon County, Florida.



---

CATHY M. SELLERS  
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 27th day of January, 2016.

#### ENDNOTES

<sup>1/</sup> The email from Dean to Respondent was sent on October 23, 2012, a Tuesday. Thus, Dean's reference to "Friday, October 23, 2012" appears to be an error. In any event, as discussed below, Respondent did not enter the information to which Dean referred by Friday, October 26, 2012.

<sup>2/</sup> Because two laptop computers previously had been stolen while in her possession, Respondent was not authorized to take the laptop computer off of school premises. The persuasive evidence did not establish that Respondent's inability to take the laptop off of school premises rendered her unable to enter the required information into the Head Start computer database.

<sup>3/</sup> Respondent's email, dated September 12, 2012, alleged a variety of issues and incidents between herself and Soifer.

<sup>4/</sup> The previous school year, two laptop computers had been stolen while checked out to Respondent and in her possession. The credible evidence showed that although Respondent was not provided a laptop computer until approximately October 30, 2012, due to lack of availability of funds to replace the laptop computers that had been stolen while in her possession, she had access, since mid-September 2012, to multiple desktop computers in her classroom.

<sup>5/</sup> Respondent's explanation as to why she was unable to enter the information into the Head Start computer database on November 5, 2012, was not credible.

<sup>6/</sup> Respondent's contention that the Administrative Complaint is legally insufficient lacks merit. The Administrative Complaint alleges facts sufficient to place Respondent on notice regarding the conduct alleged to violate rule 6A-5.056, and identifies the specific provisions of rule 6A-5.056 alleged to have been violated—i.e., subsections (2) and (4) of that rule. This is sufficient to meet the standard that the administrative complaint must be specific enough to inform the accused, with reasonable certainty, of the nature of the charge. Seminole Cnty. Bd. of Cnty. Comm'rs v. Long, 422 So. 2d 938, 940 (Fla. 5th DCA 1982). Although the Administrative Complaint did not specify the provisions of rules 6B-1.001 and 6B-1.006 alleged to have been violated, that shortcoming is immaterial in this case because the undersigned found only that Respondent violated one provision of rule 6B-1.001—a very short rule—and that she did not violate any provisions of rule 6B-1.006.

<sup>7/</sup> The version of rule 6A-5.056 applicable to this proceeding went into effect on July 8, 2012. At that time, rules 6B-1.001 and 6B-1.006 were still in effect. On January 11, 2013, rule 6B-1.001 was transferred to rule 6A-10.080 and rule 6B-1.006 was transferred to rule 6A-10.081.

COPIES FURNISHED:

Robert F. McKee, Esquire  
Kelly & McKee  
1718 East 7th Avenue, Suite 301  
Tampa, Florida 33605  
(eServed)

Eugene K. Pettis, Esquire  
Haliczer, Pettis, and Schwamm, P. A.  
One Financial Plaza, Seventh Floor  
100 Southeast Third Avenue  
Fort Lauderdale, Florida 33394  
(eServed)

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

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

Robert Runcie, Superintendent  
Broward County School Board  
600 Southeast Third Avenue, Floor 10  
Fort Lauderdale, Florida 33301-3125

Adrian J. Alvarez, Esquire  
Haliczer, Pettis, and Schwamm, P.A.  
One Financial Plaza, Seventh Floor  
100 Southeast Third Avenue  
Fort Lauderdale, Florida 33394

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.