

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-2570TTS

JUDY CONOVER,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held October 19 through 21, 2016, in Sarasota, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Robert K. Robinson, Esquire  
Kirk Pinkerton, P.A.  
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Sarasota, Florida 34236

For Respondent: Ronald Angerer, II, Esquire  
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STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent from her employment with the Sarasota County School Board.

PRELIMINARY STATEMENT

By correspondence dated February 22, 2016, the Sarasota County School Board Superintendent Lori M. White informed Respondent, Judy Conover, that a recommendation seeking the termination of her employment would be submitted to the Sarasota County School Board (Petitioner or School Board) for appropriate action. Additionally, by correspondence dated April 26, 2016, Superintendent White informed Respondent that a second recommendation seeking the termination of her employment would be submitted to the School Board for appropriate action.

In response to the February 22 correspondence, Respondent timely requested a "DOAH hearing option." By correspondence dated May 6, 2016, the matter was forwarded to DOAH for a disputed-fact hearing. The final hearing was initially set for July 20 and 21, 2016. On July 1, 2016, Respondent filed a motion for judgement on the pleadings, and on July 5, 2016, Respondent filed a motion to compel better answers to interrogatories. On July 7, 2016, Petitioner filed a motion for continuance and requested three to four days for the hearing, instead of the original two-day request. Following a telephonic motion hearing on July 14, 2016, Respondent's motion for judgement on the pleadings was denied, and Petitioner's motion for continuance was granted. The matter was rescheduled and heard as listed above.

Additionally, as a result of the telephonic motion hearing, Petitioner was ordered to file a more definitive statement, and Respondent was granted 21 days following the issuance of the more definitive statement to file a response. Petitioner filed an Administrative Complaint on August 3, 2016, setting forth the allegations. "Respondent's Answer to Petitioner's Amended Administrative Complaint" was filed on September 9, 2016.<sup>1/</sup> Respondent's answer also included a section of "Affirmative and Other Defenses." Eight days before the hearing, Respondent filed an "Amended Answer to Petitioner's Amended Administrative Complaint," which revised paragraph 34, and set forth an additional affirmative defense, claiming that Petitioner was barred from "taking disciplinary action against Respondent on the basis of speech and activities protected by the First Amendment to the United States Constitution and Sections 4-5 of the Constitution of the State of Florida." Petitioner filed a motion to strike the pleading. To the extent necessary, the motion to strike is granted; the undersigned has no authority to rule on constitutional issues.

At the final hearing, Petitioner called: Scott Lempe, deputy superintendent of the School Board; LaShawn Frost, principal of Booker Middle School (Booker); Al Harayda, Petitioner's employee relations and equity administrator; Brian Dorn, assistant principal (AP) of Booker; Derek Jenkins, AP of

Booker; Jessica Scherzer, a teacher at Booker; and Respondent. Respondent testified on her own behalf and called Patricia Goodwin, a retired Booker teacher, and three current Booker teachers to testify on her behalf: Charles Woods, Cheryl Ann Kerr, and Angie O'Dell.

With the consent of both parties, Joint Exhibit 1 (which was originally Petitioner's Exhibit 4) was admitted into evidence. Petitioner's Exhibits 1 through 3, 5 through 27, 29 through 33, 35 through 48, 50, 51, 53 through 55, 57B,<sup>2/</sup> 58, 59, 63, 65, 67 through 72, 74, 76 through 85,<sup>3/</sup> 101 through 103B,<sup>4/</sup> 112, 114, 116, 117, and 125 were admitted into evidence. The following exhibits were taken under advisement, and now, after further review, are admitted: Petitioner's Exhibits 56, 60, 113, 120 and 121. Exhibit 57A is not admitted. Respondent's Exhibit 1 was initially taken under advisement; however, Respondent asked that judicial notice be taken, which is granted.<sup>5/</sup> Respondent's Exhibits 3, 4, 7 through 30, and 34 were admitted into evidence.<sup>6/</sup>

At the conclusion of the hearing, Petitioner's counsel requested additional time in which to file its proposed recommended order. Respondent did not oppose the request, which was granted.

The five-volume Transcript of the proceeding was filed with DOAH on November 8, 2016. On November 8, a Notice of Filing Transcript was issued advising the parties that the Transcript

had been filed and their respective proposed recommended orders (PROs) were to be filed before 5:00 p.m. on November 28, 2016. Both parties timely submitted their PROs. To the extent that either PRO contained new testimony or evidence, not subject to cross-examination, that information has not been considered. Otherwise, both PROs have been considered in the preparation of this Recommended Order.

Unless otherwise noted, all references are to Florida Statutes shall be the 2016 edition.

#### FINDINGS OF FACT

##### GENERAL BACKGROUND

1. Petitioner is responsible for operating the public schools in the Sarasota County School District and for hiring, firing, and overseeing both instructional employees and non-instructional "educational support" employees within Sarasota County, Florida.

2. At all times pertinent to this case, Respondent was employed by the Sarasota Board as a teacher at Booker. Respondent holds a multi-grade integrated teaching certificate, which allows her to teach middle school through ninth grade students. Respondent taught high school level algebra during the 2012-2013 and 2013-2014 school years, and social studies during the 2014-2015 and 2015-2016 school years at Booker.

3. Booker is a Title I public school which has approximately 800 to 900 students, and 60 to 80 instructional personnel. Ms. Frost is now the principal at Booker, having previously served as one of its assistant principals.

4. At the beginning of each school year, teachers report one week prior to the students (planning week). During planning week, teachers are reminded of the school's expectations for the coming year, they develop lesson plans for the coming year, they set up their individual classrooms, and they are provided additional professional development. Booker's administrators set high standards for their teachers and students.

5. The pertinent parts of the performance responsibilities within the job description for instructional teachers are as follows:

\*10) Establish and maintain effective and efficient record keeping procedures.<sup>7/</sup>

\* \* \*

\*(13) Participate in the development and implementation of IEP's, EP's & 504 Plans for exceptional education students, as appropriate.

\* \* \*

\*(15) Interpret data for diagnosis, instructional planning and program evaluation.

\* \* \*

\*(21) Apply appropriate instructional modification for students with special needs.

\* \* \*

\*(27) Communicate effectively, both orally and in writing, with other professionals, students, parents and the community.

\* \* \*

\*(35) Prepare all required reports and maintain all appropriate records.

6. There was no dispute that a collective bargaining agreement ("CBA") existed between the School Board and the Sarasota Classified/Teachers Association (SC/TA). Article XIX of the CBA references the evaluation of students. The pertinent part of Article XIX includes:

A. Teachers shall maintain the responsibility to determine grades and other evaluations of students within the terms of the grading regulations of the Sarasota County School system.

7. Ms. Frost believes that every child deserves a "high quality education" and she looks for highly effective teachers to ensure they are providing quality education for all Booker's students. Ms. Frost maintains that "regardless of what the socioeconomic situation might be for [the] children, they deserve to be educated, obtain a college- and career-readiness education." Booker teachers are expected and required to teach the Florida standards, which are "much more rigorous standards than" before. These standards require "teachers to be more

deliberate about their planning, . . . classroom procedures, and instructions” and develop a student-centered classroom.

8. A Weingarten hearing (Weingarten) is conducted as a fact-finding meeting where an employee is asked to attend and answer questions about whatever situation is being investigated. The employee may appear with or without representation. Based on the facts obtained during a Weingarten hearing and the investigation, a determination is made whether any disciplinary action is necessary.

9. A Professional Learning Community (PLC),<sup>8/</sup> is composed of all teachers in a specific grade level and subject area. During a PLC meeting, its members may discuss lesson planning, joint tests or assessments for each unit, goals, and students' accomplishments. The PLC leader (or one of its members) is required to document attendance and the content of the discussions to Booker's administrator. The PLC meeting times are established during the planning week at Booker and attendance is required. In the event a teacher is off-campus during the regularly scheduled PLC meeting time, their absence may be excused.

10. The Student Information System (SIS) maintains students' schedules, contact information for students and their parents or guardians, and other pertinent student information. The SIS is controlled through user name and password protection,



and all the information contained in the SIS is not available to teachers.

11. Gradebook is an electronic system by which teachers are to input students' grades (assignments, projects, tests and exams) on a regular basis. Parents can access their student's grades via the internet (including a telephone application) to monitor the student's progress in each class. Booker's expectation is that grades will be inputted on a regular basis, preferably within a week of the completion of the assignment or test. Once all the grades are entered, Gradebook calculates mid-term or final grades for the students. During the planning week teachers are provided time to set up their Gradebook, and a standardized schedule of when the mid-quarter and quarter grades are to be completed. The teachers are reminded of these deadlines throughout the year. If a teacher fails to enter the mid-quarter or quarter grades by the stated deadline, the system locks the teacher out, and the grades must be handwritten.

12. Additionally, Gradebook is used by Booker (and other schools) to take student attendance. Taking attendance in the first five days of each school year is critical because those attendance numbers are used to determine the appropriate funding for Booker (and other schools in the school system).

13. In order to access Gradebook, each teacher is assigned a confidential "A" number and password. Grades are to be entered

by teachers, not paraprofessionals or volunteers. When there are two teachers in a classroom, such as the inclusion room at Booker, the main teacher is responsible for inputting the grades.

14. Each night, information from the Gradebook (the grades posted that day) is uploaded to the SIS.

15. A performance improvement plan (PIP) is basically an action plan to assist an underachieving teacher to succeed. The administrator who supervises the teacher provides coaching and criticism in an effort to improve the teacher's performance.

16. The CBA provided for progressive discipline.

17. Turning to Article XXV of the CBA, entitled "Disciplinary Actions," the pertinent parts state:

A. Scope of Article

1. This article covers actions involving oral or written warnings, written reprimand, suspensions, demotions, dismissals, or reductions in grade or pay with prejudice.

2. Disciplinary action may not be taken against a teacher except for just cause, and this must be substantiated by sufficient evidence which supports the recommended disciplinary action.

3. All facts pertaining to a disciplinary action shall be developed as promptly as possible. Actions under this Article shall be promptly initiated after all the facts have been made known to the official responsible for taking the action.

\* \* \*

C. A teacher against whom disciplinary action is to be taken may appeal the proposed action through the grievance procedure.

D. A teacher against whom action is to be taken under this Article shall have the right to review all of the information relied upon to support the proposed action and shall be given a copy upon request.

E. The Union shall be provided with a copy of all correspondents that is related to the action of the teacher the Union is representing.

F. The teacher and his/her representative shall be afforded a reasonable amount of time to prepare and present appropriate responses to the proposed actions under this Article, through Step One of the Grievance Process. This amount of time is to be mutually agreed upon by the parties.

\* \* \*

H. Previous charges or actions that have been brought forth by the administrative may be cited against the teacher if these previous acts are reasonably related to the existing charge. All previous charges or actions must have been shared with the teacher.

1. The discipline, dismissal, demotion, and suspension of any teacher shall be for just cause.

2. Where just cause warrants such action(s), a teacher may be demoted, suspended, or dismissed upon recommendation of the immediate supervisor to the Superintendent of Schools. Except in cases that constitute a real immediate danger to the district or other flagrant violation, progressive discipline shall be administered as follows:

- a. Verbal reprimand. (Written notation placed in site file.)
- b. Written reprimand filed in personnel and site files.
- c. Suspension with or without pay.
- d. Dismissal.

\* \* \*

K. During the pendency of an investigation into an allegation of wrongdoing on the part of a teacher, the teacher may be temporarily reassigned only if the charges, if proven to be true, could lead to the teacher's termination or suspension or if the teacher's conduct poses a threat to any individual's safety.

18. Booker's administrators Frost, Dorn, and Jenkins, corroborated the collaborative or triangulation leadership style they utilized at Booker. If one administrator learned of a situation, all three administrators were involved in the investigation and determination of any necessary corrective measures. All three Booker administrators try to coach underperforming teachers through informal counseling or verbal assistance, and memoranda of instructions, both of which are not considered disciplinary actions. In most instances, when a teacher is apprised of a concern, the verbal assistance is sufficient to correct the concern. When the verbal assistance or memoranda of instructions are ineffective, the administrators use progressive discipline.

19. Respondent was verbally counseled at different times by AP Dorn and AP Jenkins of the need to take attendance and/or timely input grades. In October 2012 and February 2014, Respondent received a Memorandum of Instruction from AP Jenkins. The October memo highlighted the need for Respondent to take attendance each day, "within the first fifteen minutes" for each class. The February memo advised Respondent to enter her grades "weekly for parents to access and monitor."

#### DISCIPLINE AT ISSUE

20. A Memorandum of Understanding (MOU or agreement), dated October 29, 2015, was executed by Respondent, Barry Dubin, executive director of the SC/TA, and Deputy Superintendent Lempe. This MOU resolved three outstanding disciplinary actions (one recommendation for a suspension, and two recommendations for employment termination) against Respondent. The contents of the MOU provided:

With regard to the grievance filed on behalf of Ms. Judy Conover a Teacher currently assigned to Booker Middle School, the undersigned parties do hereby agree to the following terms:

1. The Board agrees to withdraw its two termination actions pending against Ms. Conover.
2. Ms. Conover agrees to serve a three (3) day unpaid suspension.
3. Should Ms. Conover fail to execute this Memorandum and elect to challenge the

proposed suspension, this suspension will be withdrawn and the matter to be decided by either an arbitrator or DOAH hearing officer will be the matter of all pending discipline including the two pending terminations.

4. Ms. Conover agrees to remain on assistance (PIP) until such time as her teacher Evaluation Score is within the Effective range.<sup>[9/]</sup>

5. The parties agree that by executing this Memorandum, this brings all matters pertaining to presently proposed disciplinary actions and grievances to a close. Ms. Conover understands that the next step of progressive discipline called for under the terms of the Instructional Bargaining Unit Agreement should there be a further transgression of the rules could be termination of her employment.

21. Prior to her executing the MOU, Respondent returned to Booker for the 2015-2016 school year as a social studies teacher. Principal Frost welcomed her back to school during the teacher's planning week in mid-August 2015. Principal Frost continued to supervise Respondent's PIP progress.<sup>10/</sup>

22. Shortly after the students returned for 2015-2016 school year, AP Dorn reminded Respondent to take attendance. In mid-September 2015, while conducting a random review of grades, AP Dorn emailed Respondent about the lack of grades for all of her classes, and that her Gradebook had not been set up. In that email, AP Dorn asked Respondent to see him. Respondent did not do so. Just before the mid-quarter grade deadline, Respondent

input grades back to August 28, 2015, the end of the first week of classes.

23. Respondent was notified of a Weingarten meeting scheduled for September 30, 2015. Based meeting was rescheduled for and held on November 9, 2015. During the Weingarten meeting, Respondent did not recall receiving or responding to AP Dorn's email about her grades and gradebook. Respondent acknowledged her understanding of "the need to get in grades" and that the administration had previously spoken with her about entering grades. However, Respondent did not furnish any facts other than non-answers.

24. A second Weingarten meeting was also held on November 9, 2015. The second Weingarten meeting sought information about Respondent sharing her "A" number and password with a paraprofessional who worked with her. Respondent admitted that she gave her "A" number and password to the paraprofessional, who then input grades into Gradebook.

25. Respondent served the agreed three-day suspension in December 2015.

26. On February 22, 2016, Superintendent White issued a certified letter to Respondent. This letter provided that Respondent had been:

[I]nsubordinate in performing your assigned duties as they relate to accurately recording and the placing of student grades in the

student information system. [W]e have concluded you have committed the following offenses among others: misconduct in office, willful neglect of duties and incompetency. Therefore, . . . I have just cause to terminate your employment with the Sarasota County School Board.

27. This February letter was the result of the two Weingarten hearings that were held on November 9, 2015.

28. On March 8, 2016, the regularly scheduled PLC meeting for the 6th grade social studies teachers was held. Respondent did not attend the meeting. Although Respondent was on campus that day, and initially told the PLC leader that she would be late, she did not attend.

29. Respondent was notified of a Weingarten meeting scheduled for March 24, 2016. This meeting was rescheduled to April 6, 2016, to accommodate Respondent's request for representation to be present. The meeting was rescheduled again and held on April 12, 2016.

30. The Weingarten meeting was to determine whether Respondent attended the March 8 PLC meeting, her reason(s) for missing the PLC meeting, and what Respondent may have discussed with her PLC members regarding how administration determined Respondent was not at that PLC meeting. Prior to attending the Weingarten meeting, Respondent telephoned her PLC leader, Ms. Scherzer, and asked who had informed the administration of Respondent's absence from the PLC meeting. Ms. Scherzer sensed



that Respondent was upset that the administration knew Respondent had missed the meeting. Respondent's demeanor was less than cordial toward Ms. Scherzer.

31. Of the 16 questions posed to her during the April 12 Weingarten meeting, Respondent answered three: 1) her current position; 2) her duty day at Booker; and 3) her knowledge that there was a PLC meeting on March 8, 2016. The remaining Weingarten questions provided Respondent with the opportunity to explain her PLC absence, yet she declined to answer the questions, except to say she didn't feel comfortable answering them without representation. There was no testimony that she advised Booker's administration at that time, that she was represented by a representative or an attorney. Respondent's testimony that she was upset that her paraprofessional had been called to the front office, and that no one bothered to question Respondent about her absence from the PLC meeting, is not accurate. Respondent was afforded the opportunity to provide answers and choose not to do so.

32. On April 26, 2016, Superintendent White issued another certified letter to Respondent. This letter provided that Respondent had been:

[I]nsubordinate in performing your assigned duties and exercising professional judgement and integrity. [W]e have concluded you have committed the following offenses among others: misconduct in office, willful

neglect of duties and incompetency.  
Therefore, . . . I have just cause to  
terminate your employment with the Sarasota  
County School Board.

33. This April letter was the result of the Weingarten hearing that was held on April 12, 2016.

34. Deputy Superintendent Lempe's job is to run the business operation of Petitioner and he is involved with the grievance process as the "formal level one grievance authority." He was directly involved with the MOU negotiations, and drafting of the "last chance agreement."

35. As outlined in the CBA, Petitioner utilizes a four-step progressive discipline structure. One of Deputy Superintendent Lempe's duties involves the grievance process as the "formal level one grievance authority." He was directly involved with the MOU negotiations, drafting of the last chance agreement, and referred to this last chance agreement "as step five in our four-step progressive disciplinary [sic] process." At the hearing, Respondent again acknowledged her understanding of the MOU provision: "that the next step of progressive discipline called for under the terms of the Instructional Bargaining Unit Agreement should there be a further transgression of the rules could be termination of her employment."

## RESPONDENT'S PRIOR DISCIPLINARY HISTORY

36. There was ample testimonial and documentary evidence presented regarding Respondent's disciplinary history. The following is a summary of the evidence regarding Respondent's disciplinary history:

a. February 24, 2014: Respondent was given a verbal reprimand<sup>11/</sup> for her use of disparaging comments and behaviors toward students in her class. Respondent did not grieve this action.

b. April 8, 2014: Respondent was given a written reprimand<sup>12/</sup> for an incident that affected Booker's FTE (full-time employees) survey, which directly related to Booker's funding for employees, and another colleague's VAMS (value added model system) score. Respondent inappropriately retained a student in her class when the student had been administratively transferred to and was on another teacher's roster. Respondent did not grieve this action.

c. October 29, 2014: Superintendent White notified Respondent that, acting on Principal Frost's recommendation, Superintendent White would recommend to the school board that Respondent be suspended for three days without pay. Respondent had been insubordinate, used inappropriate language, and had inappropriate interactions with students.

d. December 1, 2014: Principal Frost recommended Respondent's employment be terminated. Respondent refused to allow a student back in the classroom after the student had completed a suspension period.

e. April 6, 2015: Principal Frost placed Respondent on "administrative leave pending an internal investigation." A substitute teacher had found Respondent's handwritten note, which contained derogatory and offensive language regarding certain students in her class(es). Principal Frost had also entered Respondent's classroom, observed Respondent on the phone, and heard Respondent use obscenities that could be heard by students. Following the Weingarten meeting on this matter, Respondent was reassigned to the Landings, the School Board's administrative offices, during the course of the investigation.

f. On April 7, 2015, Superintendent White notified Respondent that, acting on Principal Frost's recommendation, Superintendent White would recommend to the School Board that Respondent's employment be terminated.

#### CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), 1012.33, Fla. Stat.

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

39. Petitioner is responsible for the operation, control, and supervision of the free public schools in Sarasota County, Florida. Art. IX, § 4(b), Fla. Const.; and § 1001.32(2), Fla. Stat. Petitioner has the authority to terminate the employment of a teacher. See § 1012.22(1)(f), Fla. Stat.

40. Petitioner bears the burden of proving by a preponderance of the evidence that "just cause" exists to terminate Respondent's employment. McNeill 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). 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).

41. Respondent is considered an educational employee. § 1012.01(2), Fla. Stat.

42. "Just cause" is the standard of discipline applied to actions involving instructional personnel. Just cause is defined in section 1012.33(1)(a), in pertinent part, as:

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, two consecutive annual performance evaluation

ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

43. In pertinent part, Florida Administrative Code Rule 6A-5.056 provides the following:

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 6A-10.080, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, 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.

(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;
4. Disorganization of his or her classroom to such an extent that the health, safety or welfare of the students is diminished; or
5. Excessive absences or tardiness.

(b) "Incapacity" means one or more of the following:

1. Lack of emotional stability;
2. Lack of adequate physical ability;
3. Lack of general educational background; or
4. Lack of adequate command of his or her area of specialization.

(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.

(5) "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

44. In pertinent part, Florida Administrative Code 6A-10.081 provides:

(1) Florida educators shall be guided by the following ethical principles:

(a) 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.

(b) 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.

(c) 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.

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(a) Obligation to the student requires that the individual:

1. 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.

2. Shall not unreasonably restrain a student from independent action in pursuit of learning.

\* \* \*

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

\* \* \*

6. Shall not intentionally violate or deny a student's legal rights.

\* \* \*

9. Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

45. In pertinent part, section 1001.41 provides the following:

General powers of district school board.--The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

(1) Determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.

(2) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it to supplement those prescribed by the State Board of Education and the Commissioner of Education.

46. Pursuant to section 1001.41, the School Board has adopted Policy 6.27, which provides in pertinent part:

An effective educational program requires the services of personnel of integrity, high ideals, and human understanding. All employees shall be expected to maintain and promote these qualities. The Board shall also expect all administrative, instructional and support staff members to adhere to the Principles of Professional Conduct for the Education Profession in Florida.

47. The School Board has adopted Policy 6.42 regarding its ability to approve or disapprove job descriptions. The pertinent part of the School Board's "Teacher" job description is set forth in paragraph 5 above, and is incorporated herein.

48. Petitioner satisfied its burden and proved by a preponderance of the evidence that Respondent executed the MOU, and then committed further transgressions. Having considered all of the facts set forth above, the undersigned concludes that termination of employment is appropriate.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner terminate Respondent's employment as a classroom teacher for Sarasota County School Board.

DONE AND ENTERED this 5th day of January, 2017, in  
Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of January, 2017.

ENDNOTES

<sup>1/</sup> Respondent did not seek an extension of time in which to file its answer, which was filed on the 37th day following the issuance of the Administrative Complaint. There was no "Amended Administrative Complaint" filed.

<sup>2/</sup> Page 1 of Exhibit 57 is not admitted.

<sup>3/</sup> Exhibit 81 is an incomplete PRIDE evaluation "long form." During the hearing Petitioner's counsel indicated Petitioner would look for the additional page(s). To date, no additional page has been filed.

<sup>4/</sup> Specifically, Bate-stamped pages 248 and 249.

<sup>5/</sup> Respondent's attempted reliance on a School Board's 2016-2017 Student Progression Plan is a red heron, and not responsive to Respondent's issues as outlined in the Administrative Complaint.

<sup>6/</sup> In each party's exhibits confidential information was noted (i.e., student names, social security numbers, etc.). Prior to submission of this material to a public meeting, each party should redact confidential information.

<sup>7/</sup> The asterisks before the numbers delineate "Essential Performance Responsibilities" as found in the job description. No testimony was received as to what the phrase actually means.

<sup>8/</sup> PLCs may also be known as Collaborative Planning Teams.

<sup>9/</sup> Respondent's evaluations were in the low effective range for several evaluations.

<sup>10/</sup> Respondent was placed on a PIP in December 2014 for classroom concerns. The PIP continued into the 2015-2016 school year.

<sup>11/</sup> The verbal reprimand set forth the Principles of Professional Conduct of the Education Profession that were being reinforced by the memo:

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.

Shall not intentionally expose a student a student to unnecessary embarrassment or disparagement.

The educator will seek to exercise the best professional judgment and integrity.

<sup>12/</sup> The written reprimand set forth the Principles of Professional Conduct of the Education Profession that were being reinforced by the memo:

Shall maintain honesty in all professional dealings.

Shall not submit fraudulent information on any document in connection with professional activities.

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.

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.

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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.