

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VOLUSIA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-0394TTS

SUSAN L. JOY,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final formal administrative hearing was conducted in this case on March 21, 2018, in Deland, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Thomas Martin Gonzalez, Esquire
Nathan J. Paulich, Esquire
Thompson, Sizemore, Gonzalez
and Hearing, P.A.
Suite 1600
201 North Franklin Street
Tampa, Florida 33601

For Respondent: Susan L. Joy, pro se
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STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists for the action taken by Petitioner, Volusia County School Board (the

"Board"), to terminate the employment of Respondent, Susan L. Joy.

PRELIMINARY STATEMENT

By letter dated December 19, 2017, the Director of Professional Standards for the Board notified Ms. Joy that a recommendation would be made to the Board at its next scheduled meeting that Ms. Joy's employment be terminated. Ms. Joy timely requested an administrative hearing to contest the proposed recommendation. The request for a hearing was referred to DOAH on January 23, 2018. The final hearing was set on the date noted above. Two days prior to the final hearing, Ms. Joy filed a motion seeking a continuance, but did not show the existence of any emergency as required by Florida Administrative Code Rule 28-106.210. Ms. Joy stated at final hearing that she had not received a copy of the Notice of Hearing which had been issued by DOAH on February 6, 2018. The records at DOAH do not reflect a return of the notice, which had been sent to Ms. Joy's address of record. Ms. Joy did not make the assertion about the notice in her request for a continuance, and the best evidence is that she had timely and proper notice of the final hearing. Thus, the request for a continuance was denied.

At the final hearing, the Board called four witnesses: Carolyn Carbonell, principal at Deltona High School (the "School"); Jennifer Lastowski, math coach; Jayne Baxter,

assistant principal at the School; and Brandy Hogue, coordinator for evaluation and assessment for the Board. The Board offered Exhibits 1 through 15 into evidence, each of which was admitted. Ms. Joy testified on her own behalf but did not call any other witnesses. She did not offer any exhibits into evidence.

The parties advised the undersigned that a transcript of the final hearing would be ordered. By rule, the parties are allowed 10 days from the date the transcript is filed at DOAH to submit proposed recommended orders ("PRO"). The Transcript was filed on April 12, 2018. The Board timely submitted a PRO; Ms. Joy's PRO was filed late due to her erroneous calculation of days. Nonetheless, both parties' PROs were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Board is responsible for hiring, retaining, and/or terminating employment of all teachers in Volusia County. The recommendation for direct hiring or firing of teachers is made by individual schools, but the Board has ultimate authority over those decisions.

2. Ms. Joy has been a teacher for 17 years. She holds certifications in several areas, including: Health, grades K through 12; Physical Education, grades 6 through 12; Exceptional Student Education ("ESE"), grades K through 12; and Math, grades 5 through 9; as well as endorsements in autism,

English as a second language, gifted students, and elementary education.

3. Prior to the 2016-2017 school year, Ms. Joy applied for a teaching position at the School. She was interviewed by assistant principal Baxter and math coach Lastowski, who recommended to Principal Carbonell that Ms. Joy be hired as a math and ESE teacher. When Principal Carbonell reviewed Ms. Joy's employment history and references, she had some reservations about hiring Ms. Joy. There were too many "red flags" and Principal Carbonell decided it would not be in the School's best interest to have Ms. Joy on staff. However, Principal Carbonell began to have second thoughts and decided to interview Ms. Joy personally. After the interview, Principal Carbonell decided to offer Ms. Joy a position as a teacher for ESE in parallel classrooms, Algebra I and Geometry. Principal Carbonell, however, imposed certain caveats to the hire, including immediate monitoring of Ms. Joy's performance upon commencing her employment at the School. Principal Carbonell also advised Ms. Joy to forego coaching cross country (one of Ms. Joy's passions) and to concentrate on academic matters. Ms. Joy accepted her hiring on those conditions.

4. At the commencement of the 2016-2017 school year, assistant principal Baxter was assigned to supervise Ms. Joy and make sure her teaching methods and processes were sufficient.

Ms. Joy was also advised that the math coach, Ms. Lastowski, was available for consultation as needed. Ms. Joy agreed to utilize the math coach and to rely on her guidance and expertise.

5. With that support in place, Ms. Joy began teaching at the School. However, even though Ms. Lastowski made recommendations that specific strategies be employed, Ms. Joy did not cooperate. Instead, Ms. Joy would reject the strategies, saying they did not work for her class or that "her brain did not work that way." Ms. Lastowski's efforts were essentially futile.

6. As it became evident that Ms. Joy was having difficulties in her classrooms, Principal Carbonell decided to institute a semester (18 weeks) of additional support. This support was consistent with the system hammered out by the Board and the local teachers' union. This system, entitled Volusia System for Employment Teachers ("VSET"), included provisions such as this to help struggling teachers retain their jobs. Despite the support, Ms. Joy did not demonstrate improvement in her teaching skills.

7. As a result, Ms. Joy was placed on an "improvement plan" under the VSET. An improvement plan calls for establishment of a support team picked jointly by the teacher and School administration. For the team, Principal Carbonell selected Gail Burton, a regional resource teacher; Nicholas

Fidance, assistant principal at another Volusia County school; and Jennie Hughes, a principal intern. Ms. Joy chose Jennifer Lastowski, math coach; Sharon Lavallee, a principal intern at another school; and Sandra Tweedy, a math specialist. This support team was not created to perform evaluations of Ms. Joy's work. They merely provided support in their area of expertise to assist Ms. Joy in improving her teaching skills.

8. The VSET Handbook sets a timeline of 90 days for a teacher to show improvement once a support team is in place. Typically, one support meeting per month is held for the purpose of offering suggestions to the teacher. In between the meetings, the team members may shadow, or be shadowed by, the teacher for the purpose of constructive feedback. The VSET states, at page 34: "If sufficient improvement has not been demonstrated by the teacher while on the Improvement Plan, termination of the teacher's employment will be recommended by the Superintendent to the school board." Ms. Joy was fully on notice as to the serious nature of having an improvement plan in place.

9. The first meeting of the VSET support team was held on October 19, 2017. All members of the team, as well as Ms. Joy and Brandy Hogue, were in attendance. The minutes of that meeting note that the team's role is to support, not evaluate, Ms. Joy. The minutes also noted that the Improvement Plan would

be up for review on or after November 21, 2017. At the meeting, Ms. Joy shared a little of her background, wherein she said that she had had some personal and professional "situations" during the past year. She welcomed the support team and expressed a desire to improve her teaching skills. Four suggestions were made as means of pursuing that improvement: 1) use of the "Algebra Nation" concept and attendance at Professional Learning Community ("PLC") meetings; 2) work with the math coach on one or both of two math schemes entitled CHAMPS and ACHIEVE; 3) observation of Ms. Joy's classroom and feedback on what was observed; and, 4) having Ms. Joy shadow a teacher in a similar teaching position.

10. From the date of that first meeting until the next meeting on November 6, 2017, Ms. Joy attempted to utilize "Algebra Nation" and made efforts to attend PLC meetings. She also indicated her intent to attend a "Mama's Math" class in the future. The math coach, along with Ms. Burton and Ms. Tweedy, assisted Ms. Joy in setting up the CHAMPS and ACHIEVE materials in her classroom. Several district staff members conducted observations of Ms. Joy's classroom and provided feedback. Ms. Joy could not find another teacher to shadow, but said she was still working on doing so. The goals set at this second meeting were very similar to those of the prior meeting.

11. The final VSET support team meeting was held on December 4, 2017. The first point of discussion at that meeting was the classroom observation Ms. Joy had undergone concerning her teaching improvements. Ms. Joy admitted that it had not gone well, that she had "choked" and done poorly. As to the improvement tools, Ms. Joy was continuing to use Algebra Nation and had attended all but one of the PLC meetings. She was using the ACHIEVE, CHAMP, and Anchor Charts in her classroom, but inexplicably failed to utilize them during the classroom observation. She did shadow one teacher, but felt the experience was not beneficial. The proposed interaction with the math coach did not pan out as expected, mostly due to Ms. Joy being unable to free up time on her schedule to meet with Ms. Lastowski. The group then suggested that Ms. Joy continue to work with the math coach and support team, that she implement "stations" in the classroom, and that she increase her pacing, i.e., move along with her improvements.

12. Despite the team's admonishment to Ms. Joy to continue improving, two weeks later Principal Carbonell made a determination that (based on the findings from the last team meeting) Ms. Joy had "failed to show sufficient improvement" and that termination of her employment would be recommended to the Board. The decision was presented to Ms. Joy on December 19,

2017. Ms. Joy signed a form acknowledging Principal Carbonell's intended recommendation.

13. One of Principal Carbonell's concerns about Ms. Joy had been that Ms. Joy was involved in extracurricular activities which interfered with her teaching. Specifically, Ms. Joy, who had always been a runner until hampered by injuries, was coaching the girls' cross country team. Although Principal Carbonell had advised Ms. Joy at the time she was hired not to be involved in extracurricular activities, Ms. Joy had approached the athletic director and was named to coach the team. Principal Carbonell reluctantly agreed to allow Ms. Joy to coach since she had already cleared it with the athletic director, but still believed it to be contrary to Ms. Joy's best interests. Obviously, Ms. Joy would have been better served to have spent the time improving her teaching skills.

14. Ms. Joy presented no evidence at final hearing to refute the findings of the support team or those of Principal Carbonell. Instead, she raised several issues concerning things that restricted her progress. For example, she had undergone a severe injury involving torn tendons and muscles at the beginning of her tenure at the School. This injury not only made it difficult to maneuver around a classroom, but it prevented her from her passion, running, resulting in some depression and anxiety, as well as ongoing physical pain and

stress. Ms. Joy alluded to some technological issues in her classroom that stymied some of her efforts, but did not demonstrate exactly what the problems were or that they were significant. She complained about the absence of a permanent teacher in her area for support, claiming that the use of interim teachers created more work for her. She provided no other evidence and little explanation concerning this complaint. She complained that she received little written feedback from her support team, but did not address all of the verbal feedback that had occurred. Ms. Joy stated that she had had no prior problems at her previous places of employment and that she was well-respected by the superintendent of schools and by many school principals. None of those persons testified at final hearing, so Ms. Joy's representations, consisting of nothing more than unsubstantiated hearsay, are rejected.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over this matter pursuant to sections 120.569 and 120.57(1), Florida Statutes, and pursuant to a contract between DOAH and the Board.

16. The Board has the burden of proof in this matter as it is the party asserting the affirmative of the issue. See Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

17. The standard of proof is preponderance of the evidence. See McNeil v. Pinellas Co. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

18. A teacher may be terminated "for just cause pursuant to section 1012.33, Florida Statutes, or based upon uncorrected performance proficiencies pursuant to section 1012.34, Florida Statutes." Gabriele v. Sch. Bd. of Manatee Co., 114 So. 2d 477, 480 (Fla. 2d DCA 2013).

19. Section 1012.34(4)(b)2., discusses a teacher's failure to timely correct deficiencies. That statutory provision gives a teacher the right to contest termination of employment by way of a hearing at DOAH. Ms. Joy availed herself of that option, resulting in the instant case.

20. In this case, the Board was required to prove that just cause exists for termination of Ms. Joy's employment. The evidence is clear that, despite the School's best efforts, there was no marked improvement of Ms. Joy's teaching skills during the period of her VSET improvement plan. Ms. Joy's performance as a teacher continued to be deficient, thus justifying the termination of her employment by the Board.

21. Ms. Joy did not rebut the Board's evidence as to its findings about her substandard performance. Instead, she raised unsubstantiated claims that the Board somehow abused the process as it related to her case. Absent any competent evidence to

support her claims, they will not be addressed in this Recommended Order.

22. In accordance with section 1012.34(4)(b)2.b., the following recommendation is made to the Board.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Volusia County School Board, upholding the recommendation to terminate the employment of Respondent, Susan L. Joy.

DONE AND ENTERED this 18th day of May, 2018, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
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Filed with the Clerk of the
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this 18th day of May, 2018.

COPIES FURNISHED:

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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.