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No. 1D14-4635

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA

JOYCE QUILLER,

Appellant,

v.

DUVAL COUNTY SCHOOL BOARD

Appellee.

ON APPEAL FROM A FINAL ADMINISTRATIVE ORDER
OF THE DUVAL COUNTY SCHOOL BOARD

**APPENDIX TO APPELLANT'S
INITIAL BRIEF**

REGINALD LUSTER, PA.

Attorney at Law

REGINALD LUSTER, ESQUIRE

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Attorney for Appellant Joyce Quiller

DIVISION OF
ADMINISTRATIVE HEARINGS

2014 DEC 29 PM 12: 20

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail and Electronic Mail on this 15th day of December, 2014 to:

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

State of Florida
Division of Administrative Hearings
Attn.: Claudia Llado, Clerk of the Division
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Brian K. McDuffie, Esquire
Executive Director, Policy and Compliance
Duval County School Board
1701 Prudential Drive, Room 651
Jacksonville, Florida 32207

Reginald Luster
Reginald Luster, Esquire

Appendix No. 1



Duval County Public Schools

HUMAN RESOURCE SERVICES
Equity and Inclusion/Professional Standards
1701 Prudential Drive
Jacksonville, FL 32207-8102
Phone: (904) 390-2054
www.duvalschools.org

February 26, 2014

Via Hand Delivery

Joyce Quiller, PN #4539
3616 Robena Rd.
Jacksonville, Florida, 32218

**RE: NOTICE OF TERMINATION OF EMPLOYMENT CONTRACT AND IMMEDIATE
SUSPENSION WITHOUT PAY**

Dear Ms. Quiller:

Pursuant to Florida Statute, it is my responsibility to advise you that you have breached your employment contract with the Duval County School Board ("Board") by engaging in certain conduct specified below. Your employment contract with the Board is hereby terminated based upon the conduct specified in the following charges which amount to cause:

PAST DISCIPLINARY ACTIONS

On December 1, 2001, you received Step II Progressive Discipline – Written Reprimand administered by Principal Lawrence Dennis. The allegations were you used profanity in the presence of students. You stated you were, "plissed" as a result of items being constantly rearranged on her desk.

On April 12, 2013, you received Step I Progressive Discipline – Verbal Reprimand administered by Principal Jackie Simmons. The allegations were you made an inappropriate comment to a student by stating "your mammy."

On October 28, 2013, you received Step II Progressive Discipline – Written Reprimand administered by Principal Pamela Davis. The allegations were you used profanity and derogatory language toward and in the presence of students. Students reported Ms. Quiller made statements consisting of "Sit you're a** down," "Get out my fu***** class," "Pull your d*** pants up." Further, Assistant Principal Micheau witnessed Ms. Quiller state to students things such as, "dirty a**," "Flunkies," "This is third grade work and you can't even do it," "You don't even know how to multiply, this is why you are here in this class, you are nothing but a bunch of hoodlums," and "Just stupid."

NATURE AND SPECIFICATION OF CURRENT CONDUCT

In January 2014, allegations surfaced regarding you using inappropriate communication toward and in the presence of students. Upon investigating the allegations, it was reported you made comments such as "Kids do not do sh**," "You all should know this sh** already" "Shut the fu** up" "Get out of my fu***** class," "You kids do not do your fu***** work," "You little nig***," and "You all are some lazy nig**** for coming to class late." It was further reported you called students stupid and ignorant.

EVERY SCHOOL. EVERY CLASSROOM. EVERY STUDENT. EVERY DAY

Specifically, the following portions of the Code of Ethics were violated:

6A-10.080(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.

6A-10.080(2) – The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

6A-10.080(3) – 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.

Additionally, your conduct violates the following Principles of Professional Conduct:

6A-10.081(3)(a) – Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

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

Further, this conduct also falls within the definition of "cause" as provided in Section 1012.33(1)(a) Florida Statutes. 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 Section 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under Section 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under Section 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.

SUSPENSION WITHOUT PAY

If you choose to have a hearing as described below, you will be suspended without pay as of March 5, 2014, pursuant to authority in Section 1012.33 Florida Statutes. This suspension shall be acted upon by the Duval County School Board at its regular meeting on March 4, 2014. The meeting begins at 6:00 p.m. at the Administration Building at 1701 Prudential Drive. If you or your representative desires to address the Board on this matter, you should complete a speaker's card prior to the beginning of the meeting.

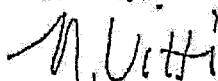
RIGHT TO A HEARING

Under the provisions of Section 1012.33(6)(a), Florida Statutes, you are entitled to a hearing to contest these charges. If you desire such a hearing, you must notify me in writing within 15 days of receipt of this letter. If you request a hearing, it will be conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of

Management Services within 60 days after receipt of your written request for a hearing. If you request a hearing, you will be notified of the date and location of the hearing once established. If you do not request a hearing in writing within 15 days from the receipt of this letter, you will be deemed to have waived your rights to a hearing and your discharge will be effective upon the expiration of the 15 day notification.

Inasmuch as the conduct set forth in the above-described charges constitutes a violation of the Principles of Professional Conduct of the Education Profession in Rules 6A-10.080 and 6A-10.081, F.A.C., as required by said principles, the Commissioner of Education is being advised of the charges by copy of this letter.

Sincerely,



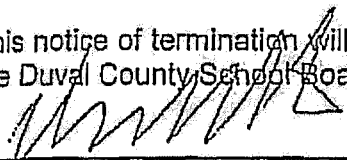
Nikolai P. Vitti, Ed.D.
Superintendent of Schools

Cc: Florida Department of Education Office of Professional Practices Services
Personnel File
Principal

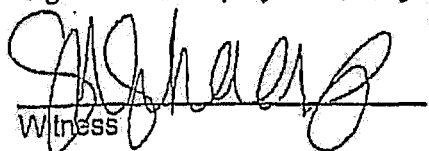
ACKNOWLEDGMENT OF RECEIPT

By my signature, I, Joyce Quiller, acknowledge receipt of this document only. It does not indicate that I agree with the contents.

This notice of termination will be placed in your personnel file within the Records Department of the Duval County School Board.


Signature of employee *to atty*

2/22/14
Date


Witness

2/26/14
Date

Appendix No. 2

State of Florida
Division of Administrative Hearings

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



David M. Maloney
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

July 16, 2014

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

Re: DUVAL COUNTY SCHOOL BOARD vs. JOYCE QUILLER,
DOAH Case No. 14-1341TTS

Dear Dr. Vitti:

Enclosed is my Recommended Order in the referenced case. Also enclosed is the two-volume Transcript, together with the Petitioner's Exhibits numbered 1-2, 4-10, and 13. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

R. BRUCE MCKIBBEN
Administrative Law Judge

RBM/rg

Enclosures

cc: Wendy Byndloss, Esquire
Stephanie M. Schaap, Esquire
Pam Stewart, Commissioner
Matthew Carson, General Counsel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-1341TTS

JOYCE QUILLER,

Respondent.

RECOMMENDED ORDER

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

APPEARANCES

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

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

STATEMENT OF THE ISSUE

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- "Kids do not do [sh--],"
- "You all should know this [sh--] already,"
- "Shut the [f---] up,"
- "Get out of my [f---ing] class,"
- "You do not do your [f---ing] work,"
- "You little [N---s]," and
- "You are all some lazy [N---s] for coming to class late."

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

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

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

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

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

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

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

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

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

with these students, described as the worst of the worst.

However, there is no acceptable rationale for using such language around students.

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted and found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

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

6A-10.080(1)--The educator values the work and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

6A-10.080(2)--The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

6A-10.080(3)--Award of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

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

6A-10.081(3)(a)--Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

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

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

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

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

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

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

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

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

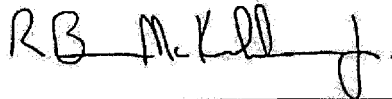
40. There is sufficient reason for sanctioning Quiller, but termination of her contract would neither be appropriate under the circumstance nor in the best interests of the School Board. There is no proof that the behavior at issue constitutes "severe acts of misconduct" as contemplated in the progressive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

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Duval County School Board, rescinding its termination of the employment of Joyce Quiller and, instead, suspending her for a period of time without pay and reassigning her to a less-challenging position.

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



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of July, 2014.

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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.

Appendix No. 3

STATE OF FLORIDA
DUVAL COUNTY SCHOOL BOARD

DUVAL COUNTY SCHOOL BOARD,

Employer/Petitioner,

DOAH Case No.: 14-1341TTS

vs.

JOYCE QUILLER,

Employee/Respondent.

FINAL ORDER OF DISMISSAL

On February 26, 2014, Dr. Nikolai P. Vitti, Superintendent of the School District of Duval County, Florida ("School District"), issued to Respondent a Notice of Termination of Employment Contract and Immediate Suspension without Pay ("Notice of Termination") based on charges that she used profanity and other inappropriate language toward and in the presence of students and called students derogatory names, in violation of Florida Code of Ethics Sections 6A-10.080(1), 6A-10.080(2) and 6A-10.080(3), Principles of Professional Conduct Sections 6A-10.081(3)(a) and 6A-10.081(3)(e), and Section 1012.33(1)(a) of the Florida Statutes.

Respondent challenged her termination and, at her request, the above-styled case was opened and a hearing was held by the Honorable R. Bruce McKibben, an Administrative Law Judge ("ALJ") assigned by the State of Florida's Division of Administrative Hearings ("DOAH").

In sum, the ALJ was charged with determining whether: (a) the charges in the Notice of Termination were supported by competent and substantial evidence; and (b) the termination complied with due process and other protections afforded to Respondent under the Duval County Teacher Tenure Act, Laws of Florida, Chapter 21197 (1941)

("Tenure Act"), Chapter 120 of the Florida Statutes, and the Collective Bargaining Agreement between the School District and Duval Teachers United.

The DOAH hearing took place on May 28 and 29, 2014, and both parties were represented by legal counsel. Throughout the hearing, the ALJ took evidence and heard the sworn testimony of several witnesses. In light of the testimonial and documentary evidence, the argument of counsel, and both parties' proposed recommended orders, the designated ALJ issued an Order on July 16, 2014, which recommended that:

a final order be entered by Petitioner, Duval County School Board, rescinding its termination of the employment of Joyce Quiller and, instead, suspending her for a period of time without pay and reassigning her to a less-challenging position. RO, p. 20.

Having filed no exceptions to the Recommended Order ("RO"), the parties thereafter appeared at a hearing before the School Board of Duval County, Florida ("Board") on September 8, 2014.

Upon an independent examination of the entire record in this matter, the Board hereby adopts the ALJ's Findings of Fact and Conclusions of Law, but rejects the recommendation to reduce Respondent's discipline from termination to suspension of employment without pay. In addition to those reasons discussed below, the Board's decision is grounded on the gravity of the *proven* charges against Respondent and the ALJ's failure to supply any meaningful reason for reducing the level of discipline in this matter.

As the ALJ found in his Recommended Order, Respondent's "demeanor and actions were inconsistent with professional behavior by a teacher," and Respondent "used inappropriate language in her classroom." RO, ¶¶ 10, 16. The ALJ determined that consistent with what Assistant Principal Nicole Micheau, other adults, and students had reported, Respondent used profanity toward or around students, including when

Respondent yelled at Ms. Micheau, "You [Micheau] need to talk to these damn kids!" RO, ¶¶ 9-10, 12, 16. The ALJ also found by the greater weight of evidence that Respondent referred to students as "hooligans" or "hoodlums" and told students the work they were being asked to do was "third grade," but they still could not perform it correctly. RO, ¶¶ 10-11. As reported by Ms. Micheau and another teacher, Lya Crowden-Richardson, Respondent told students "you are a bunch of flunkies and you need my class" and "your dirty ass can't come into my class." RO, ¶ 13. Significantly, the ALJ noted that even some of those who supported Respondent recognized that she sometimes used profanity. RO, ¶ 23.

In addition, four different students credibly testified regarding Respondent's use of profanity and other inappropriate language. RO, ¶ 14. The ALJ found their testimony to be "fairly consistent," not "rehearsed or planned," and "very direct and unwavering" that Respondent used profanity and other derogatory terms toward or around students. RO, ¶ 16. Notably, the ALJ recognized that the students' testimony was "very similar to contemporaneously written statements from them and other students." RO, ¶ 16. At the hearing, Respondent's students testified as follows:

1. T.C. testified that Respondent told students "You kids can't remember [sh--]," and "[N---s] always coming into my class and sleeping," and that "students were coming into her class when high on drugs." RO, ¶ 14.
2. C.F. testified that he heard Respondent state, "Y'all don't do [sh--]" and that students had been "smoking weed." RO, ¶ 14.
3. A.P. testified that Respondent told the class to, "Shut the [f--] up," told kids to get their "ass" out of the classroom, and referred to students as "[N---s]." RO, ¶ 14.
4. F.H. recalled Respondent telling a student to "Sit your ass down and come to class on time" and that she heard Respondent say, "[N--], please" or a similar comment. RO, ¶ 14.

In addition, the ALJ determined that there was "sufficient evidence" that Respondent had made some of the inappropriate statements listed in the Notice of Termination to students or in their presence, which included the following:

- "Kids do not do [sh--]"
- "You all should know this [sh--] already,"
- "Shut the [f--] up,"
- "Get out of my [f--ing] class,"
- "You do not do your [f---ing] work,"
- "You little [N---s]," and
- "You are all some lazy [N---s] for coming to class late."

RO, ¶¶ 17-18.

In sum, the ALJ found that Petitioner had proved by a preponderance of the evidence that Respondent had "used profanity around or directly to her students." RO, ¶¶ 22-23. Thus, the Board agrees with the ALJ's conclusion that Respondent's actions "were in violation of the standards of conduct to which she was bound." RO, ¶¶ 37. The Board specifically concurs with the ALJ's conclusion that "there is no acceptable rationale for using such language around students." RO, ¶ 24. Notably, the ALJ stated that although Respondent denied using profanity and other inappropriate statements, she "had been reprimanded in the past for using profanity in the presence of students" and had "received discipline on two separate occasions for her language." RO, ¶ 23, *see also* RO, ¶ 27.

The Board also agrees with the ALJ's conclusion that Respondent was "guilty of failing to provide good leadership and role modeling to her students" and as a result, "may have lost the respect and confidence of some of her colleagues, her students, and

parents." RO, ¶¶ 33, 36. As the ALJ stated, a teacher must refrain from using "language in front of a student that will negatively affect her effectiveness, professionalism, or confidence in the eyes of students and their families." RO, ¶ 37. Respondent was "expected to maintain her composure and professionalism" at all times. RO, ¶ 25. Instead of doing so, Respondent permitted her impatience with students to become evident, failed to maintain her decorum, and "walked out of her classroom" on more than one occasion when she "became too frustrated to teach." RO, ¶ 19. The ALJ also appropriately determined that although Respondent blamed her students for their low grades, the "students' subsequent success under a different teacher suggests otherwise." RO, ¶ 21.

Although the ALJ did not accord deference to the Board's judgment on the appropriate discipline, the ALJ did recognize that the Board has discretion when the ALJ recommends a lesser penalty than the Board's initial discipline of termination. An agency may increase the recommended penalty if it: (a) reviews the complete record, (b) states in its final order particular reasons for doing so, and (c) supports its reasoning via citations to the record. See §120.57(1)(1) Fla. Stat.; see also *Allen v. School Board of Dade County*, 571 So.2d 568, 569 (Fla. 3d DCA 1990) (upholding school board order which accepted ALJ's findings of fact and conclusions of law but increased the recommended penalty to termination). In *Department of Professional Regulation v. Bernal*, 531 So.2d 967, 968 (Fla. 1988), the Florida Supreme Court was mindful of the great discretion held by boards in determining appropriate discipline. The Court went on to state that "[r]eviewing courts cannot substitute their judgment for a board's determination if valid reasons for the board's order exist in the record and reference is made thereto." *Id.* at 968.

It was only after careful deliberation that this Board unanimously decided to terminate Respondent's employment at the outset of these proceedings. Thereafter, as a result of this administrative proceeding, the ALJ's recommended discipline appears to be based on his impression of what he considers to be fair due to the challenges Respondent alleges she faced teaching in the "Bridge to Success" (the "Bridge") program. RO, ¶¶ 6-7, 19-22, 25-26, 36-40. The ALJ's recommendation also appears to be based on his characterization of the profanity and derogatory language Respondent used toward and around students as "fairly innocuous and restrained in nature," and "understandable". RO, ¶¶ 23, 38.

But the Board finds no wisdom in the ALJ's unfounded determination that Respondent's use of profanity and derogatory language was "understandable" or "fairly innocuous and restrained in nature." RO, ¶¶ 22-23. Indeed, the Board does not believe that any parent, whose child has been subjected to Respondent's hard-core profanity or offensive statements, on even one occasion, would accept or underestimate the damaging, long-term effects such statements may have on a student. As the ALJ appropriately concluded, "there is never a valid reason to curse at students." RO, ¶ 22 (emphasis added). Regardless of the challenges a teacher may face, "it is still a prerequisite for teaching that the teacher act professionally and not do anything to disparage" her students. RO, ¶ 25.

The ALJ also correctly recognized that the students' testimony regarding Respondent's use of profanity was consistent with their own contemporaneous statements and that even Respondent's supporters conceded that she used profanity. RO, ¶¶ 17, 23. Therefore, rather than isolated or occasional incidents, Respondent repeatedly used profanity and other inappropriate language toward and around different students on multiple occasions, even after she had been recently disciplined for it. RO, ¶¶ 14, 17.

The Board notes that other administrators and teachers in the Bridge program, as well as in other challenging environments, have been able to maintain their professionalism and refrain from using profanity and other harmful language toward or around the students in their care. Therefore, the Board sees no reason why Respondent could not have done the same.

After careful deliberation before entering this Final Order for this administrative proceeding, the Board could not ignore its constitutional obligations and overarching duty to protect the welfare of the students in its care, particularly in light of the Board's adoption of the ALJ's Findings of Fact and Conclusions of Law, and the Board's findings set forth above. Therefore, in light of the foregoing, it is **ORDERED** that:

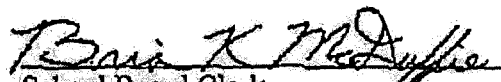
1. Administrative Law Judge R. Bruce McKibben's Findings of Fact and Conclusions of Law are hereby **ADOPTED**; however, based on the reasons set forth above, the Board rejects his recommendation to reduce Respondent's discipline from termination to suspension of employment without pay.

2. Respondent's employment with Duval County Public Schools is hereby **TERMINATED** for cause.

DONE and **ENTERED** this 23rd day of September, 2014.

THE SCHOOL BOARD OF DUVAL
COUNTY, FLORIDA


Becki Couch, Chairman


School Board Clerk

APPEAL OF FINAL ORDER

This Order may be appealed by filing two copies of a Notice of Appeal accompanied by a filing fee, as provided in §120.68, Florida Statutes and Fla.R.App.P 9.100(b) and (c) within 30 days of the rendition of this Final Order.

Copies to:

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State of Florida
Division of Administrative Hearings
Claudia Llado, Clerk of the Division
The DeSoto Building
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Tallahassee, Florida 32399-3060

Appendix No. 4

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

DUVAL TEACHERS UNITED

AND

DUVAL COUNTY SCHOOL BOARD

2011-2014

TEACHERS

ARTICLE V - TEACHERS' RIGHTS

A. Non-Discrimination

1. *The Employer will not discriminate against any applicant or employee in job assignment and employee/employer relations on the basis of age, sex, marital status, race, creed, color, national origin, handicap, or membership or participation in the normal activities of the DTU.*
2. *There will be no reprisal against any employee for processing a grievance or participating in the grievance process.*

B. Discipline and Discharge

In the event an employee is reduced in rank or compensation, has a written reprimand included in the assessment file, is disciplined, discharged, terminated, or otherwise separated, such employee shall be given the reasons therefore in writing. It is agreed that for the purpose of this paragraph a verbal warning shall not be considered a discipline.

Employees may be suspended with pay. Employees may be suspended without pay only for just cause and only by action of the School Board pursuant to Florida Statute 1012.335. A committee comprised of representatives of the DTU and Superintendent recommended procedures to implement this subparagraph and recommended measures to reduce the number of employees assigned to the disciplinary center. These criteria and guidelines may be found in Appendix E.

When it is necessary for administrative staff or the Duval County School Board Police Force to take immediate disciplinary action against an employee during the workday, every effort shall be made to ensure that the employee is removed by administrative staff or the Duval County School Board Police in a discrete manner so as not to expose the employee, students, and colleagues to unnecessary duress.

When an incident involving the discipline of a teacher comes before the Professional Standards Committee, the teacher may choose to have a representative make a presentation of no more than five minutes to the Committee on his/her behalf. The five-minute limit may be extended upon the agreement of the Committee. The teacher representative will not be present during the Committee's deliberation of the matter. It is understood that the teacher will not be present during the presentation or the deliberation of the disciplinary matter.

C. Progressive Discipline Policy

1. Administrators/supervisors shall not reprimand or criticize an employee in the presence of the employee's colleagues, students, or in the presence of parents of such students. When reprimand or criticism is deemed necessary, it shall be made

in a private conference, with discretion and out of public view and hearing. The following progressive steps must be followed in administering discipline, it being understood, however, that some more severe acts of misconduct may warrant circumventing the established procedure.

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

SIGNATURE PAGE

*AGREEMENT to the 2011-14 Bargaining Agreement between Duval Teachers United - Teacher Unit,
and the Duval County School Board.*

IN WITNESS WHEREOF, the parties hereto have set their hands this 20th day of September, 2012.

From the DTU Negotiating Team

James M. Buchanan
James M. Buchanan

For the School Board Negotiating Team

[Handwritten signature]

Julius Berg

Mirta Martinez
Mirta Martinez
Chief Negotiator

Sonita Young

Sonita Young
Chief Negotiator

DUVAL TEACHERS UNITED

Jennie Bradley
President

DUVAL COUNTY SCHOOL BOARD

Becki Couch
Chairman, Becki Couch

ATTEST:

Maheshwar Prasad

Nicholas Vitti
Superintendent of Schools
Ex-Officio Secretary to the Duval County
School Board

Form Approved:

B. L. W. D. R.

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