

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-3011TTS

CHRISTOPHER MARSHALL,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on September 9 and 10, 2015, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
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For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUES

The main issues in this case are whether, as the district school board alleges, a teacher has given the district just cause to terminate his employment contract for incompetency, and, alternatively, whether the teacher failed to correct

performance deficiencies during a 90-day probationary period, which would constitute separate grounds for dismissal if proven true.

PRELIMINARY STATEMENT

At its regular meeting on June 24, 2014, Petitioner Broward County School Board voted to approve the superintendent's recommendation that Respondent Christopher Marshall be immediately suspended without pay pending termination of his employment as a teacher. The reasons for this action were spelled out in an Administrative Complaint that had been issued on June 6, 2014, in which Mr. Marshall was accused of incompetency and failure to correct performance deficiencies, among other offenses.

Mr. Marshall timely requested a formal administrative hearing to contest Petitioner's action. On June 26, 2014, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings.

At the final hearing, which took place on September 9 and 10, 2015, Petitioner called the following witnesses: Joyce Ferguson, Sharon Shaulis, Julio Gonzalez, Shawn Aycok, Jessica Beckford, Tona Price Kirk, Justin A. Jackson, Mark Howard, Mary Geus, Khandia Pinkney, Diego De Rose, Todd LaPace, and Arnita Williams. Petitioner's Exhibits 1 through 8 and 10 through 23 were received in evidence. Mr. Marshall testified on his own

behalf and called Julie Viancardi as an additional witness. Respondent's Exhibits 1, 5, and 6 were admitted into evidence.

The four-volume final hearing transcript was filed on December 15, 2015. Each party timely filed a Proposed Recommended Order on the deadline, which had been extended to January 22, 2016, at Respondent's request.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2015, except that all references to statutes or rules defining disciplinable offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

FINDINGS OF FACT

1. The Broward County School Board ("School Board"), Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Broward County Public School System.

2. At all relevant times, Respondent Christopher Marshall ("Marshall") was employed as a math teacher in the Broward County school district, a position which he had held for some 15 years before this proceeding began. During that period, Marshall taught at a few different schools, the latest being McArthur High, where he worked for several years up to and including the 2013-14 school year.

3. Marshall's teaching career, sad to say, has been mediocre. The greater weight of the evidence establishes that, at least as early as 2002, Marshall was identified by administrators and colleagues as a teacher of marginal ability. More than once over the years Marshall was placed on performance probation due to concerns about his unsatisfactory performance. Rather than terminate Marshall's employment, however, the district transferred Marshall from school to school, and somehow he managed to muddle through, doing enough to be rated "satisfactory" and avoid getting the sack.

4. One of Marshall's defining characteristics has been the remarkably high percentages of Fs and Ds that his students consistently have earned, year in and year out. Frequently more than half of his students took home final grades lower than a C—and sometimes quite a bit more than 50 percent fell into this category. This was true across grade levels (Marshall taught grades nine through 12) and without regard to degrees of subject-matter difficulty (Marshall taught advanced as well as basic classes; he was not assigned only struggling students). It was not uncommon for Marshall to fail between one-quarter and one-third of his students.

5. In the 2013-14 school year, for example, 31 percent of Marshall's Liberal Arts Math 2 students received a failing grade; 25 percent of his Math College Readiness students failed;

and ten percent of his Algebra 2 students got Fs. This was consistent with a decade-long pattern.

6. Needless to say, a teacher whose students in large numbers routinely get Ds or worse in his classes attracts attention from students, colleagues, parents, and administrators. In Marshall's case, students complained to other teachers—and to their parents. Parents, of course, complained to administrators and demanded that their children be placed in other classes. Often, to placate angry parents, Marshall's students were transferred, with the result that Marshall's classes were small, and other math teachers had to squeeze in additional students. Teachers complained about this.

7. It must be acknowledged that poor grades are not necessarily a reflection of the teacher's ability or lack thereof. Certainly, as a general rule, each student bears substantial responsibility for his or her own grade, and no one should expect a teacher simply to hand out high marks that are unmerited and unearned. Sometimes, to be sure, an F or a D is as richly deserved as an A or a B.

8. That said, the sheer *persistence* of Marshall's grade distribution under different conditions and through changing student populations implies that *something* other than resistance or indifference to learning, poor study habits, or lack of intellectual ability must be at work. The undersigned has

combed the record for an explanation of his students' poor grades that might exonerate Marshall but can find none. There is no persuasive evidence, for example, that Marshall is a demanding teacher who sets the bar high for his students, administering tough but fair tests that are difficult for the unmotivated or unprepared to pass. To the contrary, Marshall had his students spend time on rote exercises, such as copying definitions and formulas from the textbook, which have little educational value. Nor did Marshall's students tend to excel in their next math classes. Rather, after being taught by Marshall, his students often had difficulty in their subsequent courses because they had not learned the prerequisite material.

9. For years, administrators have tried to cajole or compel Marshall to reduce the number of students receiving Fs and Ds in his classes, not by the expedient of grade inflation, but by implementing different pedagogical techniques and strategies. Marshall, however, has ignored these importunings and directives, and nothing has changed.

10. Marshall's apparent imperviousness to criticism has been an ongoing source of frustration to his colleagues and administrators. Marshall considers himself to be an "awesome" teacher, and therefore he concludes that anyone who has a different opinion—which unfortunately seems to be nearly everyone with whom he has worked—is either mistaken, lying, or

treating him unfairly. This has led Marshall to file numerous grievances and complaints against his supervisors, none of which has been successful. He is not, however, confrontational, discourteous, or abusive in his workplace relationships. Rather, Marshall engages in passive-aggressive behavior. Faced with a demand or a directive, Marshall does not argue (although he might politely disagree); he simply does not comply.

11. The greater weight of the evidence persuades the undersigned to find that the bad grades Marshall's students consistently have received are a symptom of Marshall's inability to teach. Although he knows his subject, Marshall lacks the skills necessary to impart his knowledge to his students, who consequently do not learn math in his classes. It is not that Marshall is deliberately trying not to succeed. He is not being insubordinate in this regard. He is simply not suited to the job of teaching high school math.

12. In 2011, following a legislative directive then recently enacted, the school district adopted a teacher evaluation system known as the Broward Instructional Development and Growth Evaluation System ("BrIDGES"), which is based on Dr. Robert J. Marzano's strategies for educational effectiveness. When rating a teacher's classroom performance using BrIDGES, an evaluator inputs his or her observations into a database by filling out an electronic "iObservation" form.

13. The iObservation tool contains 60 "elements," each of which represents a discrete strategy, action, or skill that a teacher might employ as appropriate: e.g., "Using Academic Games," "Identifying Critical Information," and "Displaying Objectivity and Control." The elements are organized under four separate "domains" as follows:

Domain 1: Classroom Strategies and Behaviors
(Elements 1-41)

Domain 2: Planning and Preparing
(Elements 42-49)

Domain 3: Reflecting on Teaching
(Elements 50-54)

Domain 4: Collegiality and Professionalism
(Elements 55-60).

The 41 elements of Domain 1 are further subdivided into nine Design Questions, DQ1 through DQ9.

14. On October 8, 2013, the school district and the Broward Teachers Union entered into a Memorandum of Understanding ("MOU") setting forth their agreements regarding the use of BrIDGES to evaluate teachers for 2013-14. Pursuant to the MOU, each classroom teacher was to receive at least three observations, including one formal (30 or more minutes), one informal (15-25 minutes), and one snapshot or walkthrough (3-10 minutes) observation. During an observation, the subject teacher receives a "datamark" (prescribed number of points) for

each element that the evaluator chooses to rate. For 2013-14, the datamarks were as follows: Innovating (Highly Effective), 4 points; Applying (Effective), 3 points; Developing (Effective), 2.5 points; Beginning (Needs Improvement), 2 points; and Not Using (Unsatisfactory), 1 point.

15. Each teacher was to receive at least 45 datamarks, comprising at least 25 datamarks in Domain 1 and 10 within Domains 2, 3, and/or 4. A weighted average of the datamarks assigned to a teacher's performance as recorded on the iObservation forms became the teacher's Instructional Practice Score ("IPS"). The IPS was equal to $0.68X$ plus $0.32Y$, where X was the average of the teacher's Domain 1 datamarks and Y was the average of the teacher's datamarks for Domains 2, 3, and 4 combined.

16. The IPS was reported as a number having three decimal digits, to the thousandths place. This created a false precision, for the calculated result could not possibly have been more precise than the number having the *least* number of significant figures in the equation, which would always be a one-digit integer (unless the teacher happened to receive strait 2.5s—possible, but unlikely, and not the case here). In other words, the numbers to the right of the decimal point in the teacher's IPS were mathematically insignificant, spurious digits, because the original data could not support a

measurement beyond the precision of one significant figure. The IPS should have been (but was not) rounded to a single-digit integer to avoid reporting insignificant digits.

17. For 2013-14, the BrIDGES Overall Evaluation Score equaled the sum of the teacher's IPS (weighted as 49%), Deliberate Practice score (weighted as 1.0%), and Student Growth score (weighted as 50%). Teachers at McArthur High (including Marshall) for whom no individual student data were available automatically received a Student Growth score of 3.0 for that school year, and all teachers (including Marshall) who completed a self-assessment received a Deliberate Practice score of 3.0.

18. The Overall Evaluation Scale for 2013-14 was Highly Effective (3.450-4.000), Effective (2.500-3.449), Needs Improvement (2.000-2.499), and Unsatisfactory (1.000-1.999).

19. As of February 4, 2014, Marshall had received eight observations: three formals, three informals, and two walkthroughs. He had received 56 datamarks in Domain 1 and five datamarks in Domains 2, 3, and 4. His weighted IPS, to that date, was 2.145 (but this computed score was precise to no more than one significant figure and therefore should be understood as a 2 after rounding off the spurious digits), or Needs Improvement.

20. Pursuant to the MOU, once a teacher receives an average IPS of Needs Improvement or Unsatisfactory among other

conditions that Marshall had met as of February 4, 2014, a Performance Development Plan ("PDP") may be written for that teacher. Accordingly, in early February 2014, a PDP was written for Marshall. As well, on February 12, 2014, the principal of McArthur High placed Marshall on performance probation for 90 calendar days, delivering to Marshall a notice of "less than effective performance" ostensibly pursuant to section 1012.34(4), Florida Statutes. The statute, however, authorizes 90-day performance probation only for a teacher whose performance is *unsatisfactory*, and Marshall's performance was *not* unsatisfactory; it was Needs Improvement. Needs Improvement is, to be sure, *less than* Effective performance, but it is *better than* Unsatisfactory. Indeed, none of the levels of performance besides Unsatisfactory denotes unsatisfactory performance and thus, logically, all teachers rated Highly Effective, Effective, or Needs Improvement fall within the range of *satisfactory* performance.

21. In any event, between February 28 and May 7, 2014, Marshall received 12 more observations, which added 75 datamarks to his total in Domain 1 (making 131 in all) and six additional datamarks in Domains 2, 3, and 4 (for a grand total of 11). The iObservation forms for Marshall's last six observations, incidentally, are not in evidence.

22. As of May 7, 2014, Marshall's IPS was 1.963. This number, by itself, would be Unsatisfactory on the Overall Evaluation Scale. Given, however, that the initial numerical data was captured (mostly) in single-digit integers, together with a handful of 2.5s, the decimal places are spurious in this result; there is no meaningful distinction between "1.963" (which is a textbook example of false precision) and "2" (which is what 1.963 should be rounded up to, to avoid the fallacy of overprecision). Thus, if the insignificant figures are ignored, Marshall's IPS, by itself, is actually Needs Improvement.

23. But more important, Marshall's IPS was not his Overall Evaluation Score, and therefore it is improper and unfair to deem his performance Unsatisfactory on the Overall Performance Scale based on an IPS of 1.963 as the School Board wants to do. Marshall's Overall Evaluation Score, as calculated by the School Board, was 2.492 – Needs Improvement.^{1/} Again, Needs Improvement is less than Effective and clearly not ideal, but it is *not* Unsatisfactory. To the contrary, Needs Improvement is one of the levels of *satisfactory* performance.

24. Going a step farther, if Marshall's IPS were rounded to 2, as it should be to eliminate the false precision, and his Overall Evaluation Score recalculated absent the spurious decimals, then his final score would be 2.51, which in turn should be rounded to 3 to avoid overprecision, but which equals

Effective performance regardless. The point is, based on a final score of 2.492, Marshall's overall performance can as correctly be deemed Effective as Needs Improvement, for there is no real difference between 2.492 and 3 based on the original data used to make these calculations.^{2/} (To repeat for emphasis, computations cannot make the original data more precise.^{3/})

Determinations of Ultimate Fact

25. The greater weight of the evidence fails to establish that Marshall is guilty of the offense of misconduct in office, which is defined in Florida Administrative Code Rule 6A-5.056(2).^{4/}

26. The greater weight of the evidence establishes that Marshall is guilty of incompetency,^{5/} which is just cause for dismissal from employment.

27. A preponderance of the evidence establishes that Marshall's performance as measured in accordance with the BrIDGES evaluation system was not Unsatisfactory during the 2013-14 school year. Therefore, the evidence does not support the termination of Marshall's employment contract pursuant to section 1012.34(4).

28. The evidence does not support a determination that Marshall independently violated section 1012.53, apart from his incompetency, which affords a sufficient basis (as "just cause") for dismissal.

29. The evidence does not support a determination that Marshall independently violated School Board Rule 4008(B), apart from his incompetency, which affords a sufficient basis (as "just cause") for dismissal.

CONCLUSIONS OF LAW

30. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6)(a)2., 1012.34(4)(b)2.b., 120.569, and 120.57(1), Florida Statutes.

31. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983) (Jorgenson, J. concurring).

32. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Luskin v. Ag. for Health Care Admin., 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of

Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Dep't of Prof'l Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

33. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); MacMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

34. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

35. In its Administrative Complaint, the School Board advanced four theories for dismissing Marshall: Misconduct in Office (Counts 1 and 2); Incompetency (Count 3); Failure to Correct Performance Deficiencies (Count 4); Violation of Section 1012.53 (Counts 5 and 6); and Violation of School Board Rule 4008(B) (Count 6). The gravamens of the complaint,

however, are the charges of incompetency and persistent unsatisfactory performance.

36. Section 1012.33(6) (a) provides that a member of the instructional staff "may be suspended or dismissed at any time during the term of [his or her] contract for just cause." The term "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.

§ 1012.33(1) (a), Fla. Stat.

37. Rule 6A-5.056 defines the charge of incompetency as follows:

(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.

38. Section 1012.53(1) provides that the "primary duty of instructional personnel is to work diligently and faithfully to help students meet or exceed annual learning goals, to meet state and local achievement requirements, and to master the skills required to graduate from high school prepared for postsecondary education and work."

39. Although Marshall's diligence, per se, has not been questioned, the greater weight of the evidence establishes that he is unable to help students meet learning goals due to inefficiency in the form of his chronic failures to communicate appropriately with and relate to students, colleagues, and administrators. Thus, the undersigned has determined that Marshall is guilty of incompetency, as charged.

40. Regarding unsatisfactory performance, section 1012.34 provides as follows:

(4) NOTIFICATION OF UNSATISFACTORY PERFORMANCE.—If an employee who holds a professional service contract as provided in s. 1012.33 is not performing his or her duties in a satisfactory manner, the evaluator shall notify the employee in writing of such determination. The notice must describe such unsatisfactory performance and include notice of the following procedural requirements:

(a) Upon delivery of a notice of unsatisfactory performance, the evaluator must confer with the employee who holds a professional service contract, make recommendations with respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.

(b)1. The employee who holds a professional service contract shall be placed on performance probation and governed by the provisions of this section for 90 calendar days following the receipt of the notice of unsatisfactory performance to demonstrate corrective action. School holidays and school vacation periods are not counted when calculating the 90-calendar-day period. During the 90 calendar days, the employee who holds a professional service contract must be evaluated periodically and apprised of progress achieved and must be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. At any time during the 90 calendar days, the employee who holds a professional service contract may request a transfer to another appropriate position with a different supervising administrator; however, if a transfer is granted pursuant to ss. 1012.27(1) and 1012.28(6), it does not extend the period for correcting performance deficiencies.

2. Within 14 days after the close of the 90 calendar days, the evaluator must evaluate whether the performance deficiencies have been corrected and forward a recommendation to the district school superintendent. Within 14 days after receiving the evaluator's recommendation, the district school superintendent must notify the employee who holds a professional service contract in writing whether the performance deficiencies have been satisfactorily corrected and whether the district school superintendent will recommend that the district school board continue or terminate his or her employment contract. If the employee wishes to contest the district school superintendent's recommendation, the employee must, within 15 days after receipt of the district school superintendent's recommendation, submit a written request for a hearing. The hearing shall be conducted at the district school board's election in accordance with one of the following procedures:

a. A direct hearing conducted by the district school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the district school board shall be required to sustain the district school superintendent's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the district school board. A majority vote

of the membership of the district school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the district school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

41. It is debatable whether the notice that Marshall was given on February 12, 2014, was effective to initiate a performance probation leading potentially to termination under section 1012.34(4) because Marshall's performance, according to his BrIDGES IPS, was not Unsatisfactory at that time, but Needs Improvement, which is within the range of satisfactory performance. Marshall has not raised this objection, however, and the issue is academic anyway because in the end his Overall Evaluation Score was 2.492 as computed by the School Board. Thus, Marshall's final rating was not Unsatisfactory. The charge of unsatisfactory performance was not proved.

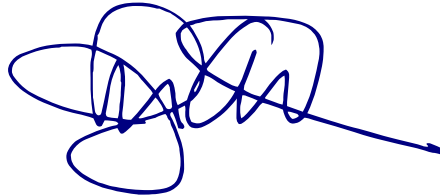
42. The remaining alleged offenses are merely cumulative and add nothing substantial to the charges discussed. There is no independent basis, besides incompetency, for terminating Marshall's employment contract.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order dismissing Marshall from his employment as a teacher in the

Broward County Public Schools for the just cause of incompetency as a result of inefficiency.

DONE AND ENTERED this 24th day of March, 2016, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of March, 2016.

ENDNOTES

^{1/} The School Board argues that Marshall did not "earn" a Student Growth score of 3.0 and thus contends that the final score of 2.492 should be rejected as it does not "reflect an accurate depiction" of Marshall's performance. In truth, the score of 2.492 is inaccurate, but not because of the Student Growth score; rather, the final score is misleading because it contains several insignificant figures and hence suffers from false precision. The School Board, needless to say, does not advocate the rejection of the final score on the basis of overprecision. As for the Student Growth score, Marshall "earned" his rating the same way other similarly situated teachers at McArthur High earned their respective 3.0s—by fiat. He is no less entitled to the benefit of that Effective mark than every other teacher at the school who was allowed to use the "school score" in lieu of individual student data.

^{2/} Just to be clear, problem of false precision is not outcome determinative in this case because even at 2.492 Marshall's performance was satisfactory. The undersigned draws attention to the issue for informational purposes, and to avoid lending credence to a number that pretends to a degree of differentiation far beyond that which the original data supports. That said, if the district and the union voluntarily agree to base employment decisions on distinctions as fine as, literally, thousandths of a point notwithstanding that datamarks are rendered (mostly) in single-digit whole numbers, they are probably free to do so. See, e.g., Sanislo v. Give Kids the World, Inc., 157 So. 3d 256, 270 n.12 (Fla. 2015) (freedom of contract, while not absolute, generally includes freedom to make a bad bargain, which will be enforceable despite apparent hardships).

^{3/} A simple example illustrates this point. Suppose you used a tape measure to determine the height of six individuals to the nearest inch, and obtained the following results: 67", 74", 72", 70", 69" and 63". Adding these numbers and dividing by 6 would yield an average, which could be carried out to the thousandths decimal place as 69.167. It would not be accurate to say that the average height of these individuals is 69.167", however, because they were not measured to the thousandths of an inch. To report the average as 69.167" would suggest, misleadingly, a degree of precision that the original data did not possess. The mathematical operations of addition and division do not make the original measurements more precise.

^{4/} The rule provides as follows:

(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.

^{5/} Rule 6A-5.056(3) defines "incompetency" as "the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity."

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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.