

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner,

v.

DEMETRA BURLESON-LIBURD,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, Robert W. Runcie, Superintendent of Schools of Broward County, Florida ("Petitioner"), through his undersigned counsel, files this Administrative Complaint against Respondent, Demetra Burleson-Liburud ("BURLESON-LIBURD"). The Petitioner seeks a three (3) day suspension of Respondent's employment with the Broward County School Board ("School Board") pursuant to Chapter 120 and Sections 1001.51, 1012.27(5), and 1012.33 Florida Statutes and Rule 6A-5.056 of the Florida Administrative Code. The Petitioner alleges the following:

I. JURISDICTIONAL BASIS

1. The agency is the Broward County School Board, Florida, located at 600 Southeast Third Avenue, Fort Lauderdale, Broward County, Florida 33301.
2. The Petitioner is Robert W. Runcie, who is the Superintendent of Schools of Broward County, Florida.
3. The Petitioner is statutorily obligated to recommend the

placement of school personnel and to require compliance and observance with all laws, rules, and regulations. Petitioner is authorized to report and enforce any violation thereof, together with recommending the appropriate disciplinary action against any instructional personnel employed by the School Board, inclusive of BURLESON-LIBURD.

4. BURLESON-LIBURD is an employee of the Broward County School Board and is currently employed as a teacher pursuant to a Professional Services Contract, issued in accordance with Section 1012.33(3)(a), Florida Statutes (2017).
5. The last known address of BURLESON-LIBURD is 11575 N.W. 51st Place, Coral Springs, Florida 33076.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct occurring during the 2016-2017 school year.
7. BURLESON-LIBURD is a fifth grade teacher who, at all materials times, was employed at Meadowbrook Elementary School (hereinafter "Meadowbrook").
8. BURLESON-LIBURD was hired by the School Board on February 14, 2006, as a teacher.
9. During the 2017-2018 school year, BURLESON-LIBURD administered the Spring 2017 Florida Standards Assessment ("FSA") 5th grade English Language Arts ("ELA") Reading

(hereinafter "Spring 2017 ELA" Reading) to her fifth grade students.

10. On or about June 22, 2017, an investigation was conducted by the Florida Department of Education, Office of Inspector General ("OIG") pursuant to a referral by the Division of Accountability, Research, and Measurement ("ARM") relating to an unusually high similarity index score on the Spring 2017 ELA Reading at Meadowbrook.
11. The high similarity index score is a potential indicator of answer copying, test coaching, proxy test taking, or some other form of collusion. On or about June 29, 2017, the OIG notified the School Board that Meadowbrook was identified for investigation and required the School Board to conduct an internal investigation regarding the high number of similarities.
12. The OIG determined that of the 104 students that took the 5th grade ELA Reading Assessment at Meadowbrook on April 1, 2017 and April 2, 2017, 38 students met the statistical threshold for having an abnormal amount of tests with similar answer patterns.
13. Further, of those 38 students identified, 36 passed, and it was determined that BURLESON-LIBURD administered the test to 36 of the 38 students identified as having the abnormal testing patterns.

14. Additionally, all but one of the 36 students for whom BURLESON-LIBURD proctored the test passed.
15. On or about September 27, 2017, the School Board's district test coordinator asked the OIG to investigate an allegation of fraud regarding the administration of the Spring 2017 ELA Reading at Meadowbrook.
16. On or about October 12, 2017, the OIG visited Meadowbrook and interviewed the test administrator and staff responsible for the administration of the Spring 2017 ELA Reading.
17. On or about October 12, 2017, Marina Frankovitz, Meadowbrook Counselor and Testing Coordinator in her sworn statement to the OIG testified that proctors or testing administrators are trained to respond to any questions from students about the test material by saying, "[s]orry, we can't help you, this is your test."
18. Ms. Frankovitz also testified that proctors and test administrators are "absolutely not" allowed to go back and look over the test with the student once they have finished.
19. On or about October 12, 2017, Teacher Assistant/Proctor, Gregory Smith, in his interview with the OIG stated that they are not allowed to give any assistance to students during the test and that they have meetings prior to testing to go over "What they (teachers) should and shouldn't do during the FCAT."

20. During that visit, the OIG, along with the School Board Student Assessment and Research Department, interviewed thirty (30) students from Meadowbrook that took the Spring 2017 FSA 5th Grade ELA Reading Assessment.
21. Thirteen (13) of thirty (30) students interviewed indicated that they received some type of assistance from BURLESON-LIBURD.
22. Eleven (11) students stated BURLESON-LIBURD pointed to specific questions and stated, "Go over it again" or look at that answer again" or changed facial expressions or tone when speaking to students to indicate that their responses were incorrect.
23. According to the students interviewed on or about October 12, 2017, BURLESON-LIBURD and Teacher Assistant and Proctor, Gregory Smith, administered the test, helped with any login or computer issues and walked around the classroom to ensure that no student was cheating.
24. Student, D.A., stated that BURLESON-LIBURD's facial expression would change if an answer was wrong.
25. Student, A.M., stated that BURLESON-LIBURD told her to hit submit so BURLESON-LIBURD could look at the score to determine how many were right and wrong.
26. Student S.CO stated that "Ms. Liburd told me to change some of my answers."

27. Student S.CU. stated that she changed 2-3 answers that were pointed out by BURLESON-LIBURD after she went through the review screen and told S.CU. to check if answers were right or wrong telling S.CU. "maybe you need to look at answers again."
28. Student L.I. stated that BURLESON-LIBURD went back and looked at all of her questions and told her to change the answer if it was wrong.
29. Student A.R. stated that BURLESON-LIBURD reworded questions for her as well as other students.
30. Student K.C. stated that BURLESON-LIBURD helped her with questions, changed an answer, and finished the test for her by answering the questions K.C. left blank at the end of the test.
31. Student G.P. stated that BURLESON-LIBURD told him to go back and check specific questions, such as "Check 15, 7, 1."
32. Student J.V. stated that BURLESON-LIBURD was good at explaining things during the test and that she told J.V. to "go back and look at this one" and that BURLESON-LIBURD explained questions such as the main idea question "look at 1st and last sentence in paragraph."
33. Student A.M. stated that BURLESON-LIBURD told her to click submit and she looked at A.M.'s score to see how many answers were wrong and right.

34. Student Y.N. stated that BURLESON-LIBURD helped her to understand the question and told her to "look at this one again."

III. ADMINISTRATIVE CHARGES

35. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above.

36. Just cause exists for the requested relief pursuant to Fla. Stat. § 1012.33(1)(a), Section 6A-5.056 F.A.C., the Respondent's employment contract, School Board rules and regulations, the Code of Ethics of the Education Profession, and the Employee Disciplinary Guidelines promulgated by the School Board.

37. "Just cause" means cause that is legally sufficient. "Just cause" includes, but is not limited to:

* * *

B. "Misconduct in Office" means one or more of the following:

1. A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.¹;
2. A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.;
3. A violation of the adopted school board rules;
4. Behavior that disrupts the student's learning environment; or
5. Behavior that reduces the teacher's ability or his or his colleagues' ability to effectively perform duties.

¹ Repealed 3-23-16.

- C. "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.
1. "Inefficiency" means one or more of the following:
 - a. Failure to perform duties prescribed by law;
 - b. Failure to communicate appropriately with and relate to students;
 - c. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
 - d. Disorganization of his or his classroom to such an extent that the health, safety or welfare of the students is diminished; or
 - e. Excessive absences or tardiness.
 2. "Incapacity" means one or more of the following:
 - a. Lack of emotional stability;
 - b. Lack of adequate physical ability;
 - c. Lack of general educational background; or
 - d. Lack of adequate command of his or his area of specialization.
- D. "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.
- E. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

* * *

IV. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

38. Based on the aforementioned allegations, Respondent's actions constitute just cause to suspend her for three (3) days.

B. MISCONDUCT IN OFFICE

39. Respondent's actions constitute misconduct in office. The Respondent through her above-described conduct, has violated Rules 6A-5.056(2)(a) through (e) of the Florida Administrative Code, which defines "misconduct".

C. INCOMPETENCY

40. Respondent's "[f]ailure to perform duties prescribed by law" as evidenced by Respondent's failure to properly administer standardized testing by assisting students in answering test questions.

D. GROSS INSUBORDINATION

41. Respondent's actions constitute gross insubordination. "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

42. Respondent's actions constitute an intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority, in that the teachers/proctors were instructed not to help students on the test.

E. WILLFUL NEGLECT OF DUTY

43. Respondent's actions constitute willful neglect of duty. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

44. Respondent failed to perform her duties as an educator and instructor by failing to properly administer standardized testing.
45. Respondent failed to perform her duties as an educator and instructor by assisting students in answering test questions during standardized testing.

F. RULE 6A-10.042 F.A.C.

46. Test Administration and Security.

- (1) Tests implemented in accordance with the requirements of Sections 1004.93, 1008.22, 1008.30, 1012.55 and 1012.56, F.S., shall be maintained and administered in a secure manner such that the integrity of the tests shall be preserved.

- (c) Examinees shall not be assisted in answering test questions by any means by persons administering or proctoring the administration of any test.
- (d) Examinees' answers to questions shall not be interfered with in any way by persons administering, proctoring, or scoring the examinations.

- (f) Persons who are involved in administering or proctoring the tests or persons who teach or

otherwise prepare examinees for the tests shall not participate in, direct, aid, counsel, assist in, or encourage any activity which could result in the inaccurate measurement or reporting of the examinees' achievement.

- (4) Violations of test security provisions shall be subject to penalties provided in statute and State Board Rules

G. Florida Statute §1008.24.

47. Test Administration and Security.

- (1) A person may not knowingly and willfully violate test security rules adopted by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to s. 1008.22, or, with respect to any such test, knowingly and willfully to:

* * *

- (c) Coach examinees during testing or alter or interfere with examinees' responses in any way;

* * *

- (f) Fail to follow test administration directions specified in the test administration manuals; or

(g) Participate in, direct, aid, counsel, assist in, or encourage any of the acts prohibited in this section.

2) A person who violates this section commits **a misdemeanor of the first degree**², punishable as provided in §775.082 or 775.083.

H. SCHOOL BOARD POLICY 4008

(c) Respondent is in violation of School Board Policy 4008, which requires all employees who have been issued contracts to comply with the provisions of the Florida School Code, State Board Regulations and regulations and policies of the Board.

(d) Furthermore, School Board Policy 4008(B) requires that "members of instructional staff shall perform the following functions:"

1. Comply with the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

* * *

3. Infuse in the classroom, the District's adopted Character Education Traits of Respect, Honesty, Kindness, Self-control, Tolerance, Cooperation, Responsibility and Citizenship.

* * *

8. Conform to all rules and regulations that may be prescribed by the State Board and by the School Board.

² Emphasis added.

I. SCHOOL BOARD POLICY 4.9

(e) Pursuant to School Board Policy 4.9, "the District expects each employee, instructional and non-instructional, to be in conformance, both in and out of the work place, with all laws, whether federal, state or local, State Board Rules, and all School Board policies, rules, and regulations."

(f) Respondent is also in violation of various Category B Offenses which prohibit the following:

* * *

(b) Committing a criminal act - misdemeanor.

(m) Any violation of The Code of Ethics of the Education Professional in the State of Florida-State Board of Education Administrative Rule 6A-10.081.

* * *

(p) Insubordination, which is defined as a continuing or intentional failure to obey a direct order, reasonable in nature and given by and with proper authority.

* * *

(r) Failure to comply with School Board policy, State law, or appropriate contractual agreement.

DEMAND FOR RELIEF

WHEREFORE, based upon the foregoing, Petitioner, Robert W. Runcie, Superintendent of Schools, recommends that the School Board suspend the Respondent, Demetra Burleson-Liburd, for three (3) days based upon the foregoing facts and legal authority.

EXECUTED this 18th day of September, 2018.



ROBERT W. RUNCIE,
Superintendent of Schools,
Broward County

Respectfully submitted:
Tria Lawton-Russell, Esq.
Administrative Counsel

NOTICE

If you wish to contest the charges, you must, within 15 calendar days after receipt of the written notice, submit a written request for a hearing to Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL, 33301. If timely requested, such hearing shall be 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, Florida Statutes.

FAILURE TO TIMELY REQUEST A HEARING WILL RESULT IN A WAIVER OF THE RIGHT TO CONTEST THE CHARGES.

IF YOU WANT TO HIRE AN ATTORNEY, YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY IN THIS MATTER.