

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-5791TTS

LATUNYA GIBBS,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy live in Fort Lauderdale on June 20 and September 12, 2019, and by video teleconference with locations in Lauderdale Lakes and Tallahassee, Florida, on November 26, 2019.

APPEARANCES

For Petitioner: Denise Marie Heekin, Esquire  
Ranjiv Sondhi, Esquire  
Bryant Miller Olive, P.A.  
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For Respondent: Robert F. McKee, Esquire  
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STATEMENT OF THE ISSUES

Whether Respondent, Latunya Gibbs ("Respondent" or "Gibbs"), committed the violations as alleged in the Administrative Complaint; and, if so, what is the appropriate penalty.

## PRELIMINARY STATEMENT

On October 2, 2018, at its scheduled meeting, the Broward County School Board ("BCSB" or "Board") took action to suspend and terminate Gibbs from her teaching position at Mirror Lake Elementary School ("MLE"). Gibbs timely requested an administrative hearing. The matter was referred to the Division of Administrative Hearings ("DOAH") on November 1, 2018, to assign an administrative law judge to conduct the final hearing. The final hearing was held in Fort Lauderdale, Florida, on June 20, 2019. The hearing was reconvened in Fort Lauderdale, Florida, on September 12, 2019. The hearing was concluded on November 26, 2019, by video teleconference.

BCSB presented the testimony of the following witnesses: Marlen Veliz, Hend Hafez, Mildred Grimaldo, Gigi McIntire, Osvaldo Hernandez, and Marjorie Fletcher. School Board Exhibits 1 through 16, 18 through 23, 26 through 28, 30 (the last page only), 31 through 38, 40 through 46, 49 through 76, and 78 were admitted into evidence.

Gibbs testified on her own behalf. Respondent's Exhibits 1 and 2 were admitted into evidence.

Prior to the hearing, the parties filed a Joint Pre-hearing Stipulation, which contained certain stipulated facts. Those stipulated facts have been incorporated herein to the extent they were deemed relevant.

The final hearing Transcript was filed on December 12, 2019. The parties requested several extensions of the time within which to file proposed recommended orders, which were granted. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to be versions in effect at the time of the alleged violations.

## FINDINGS OF FACT

1. Petitioner, BCSB, is located at 600 Southeast Third Avenue, Fort Lauderdale, Florida. BCSB is in charge of the Broward County School District ("the District").

2. Robert W. Runcie is the Superintendent of BCSB. The Superintendent is statutorily obligated to recommend the placement of school personnel and to require observance with all laws, rules, and regulations. He is authorized to report and enforce any violation thereof, together with recommending the appropriate disciplinary action against instructional personnel employed by the Board.

3. Gibbs is employed by BCSB as a teacher pursuant to a Professional Services Contract, issued in accordance with section 1012.33(3)(a), Florida Statutes. She was first hired by BCSB on August 24, 1993.

4. Gibbs holds a Florida Educator's Certificate in Elementary Education.

5. The Superintendent recommended that Gibbs be terminated from her employment with BCSB. On October 2, 2018, the Board adopted the Superintendent's recommendation. BCSB provided all notice and process that was due as it pertains to the investigation and procedural requirements through the Board's adoption of the Superintendent's recommendation for termination.

6. Gibbs was assigned as a teacher at MLE for school years 2015-16, 2016-17, and 2017-18. In 2015-16, Gibbs was assigned to teach second grade. On September 2, 2015, she was placed on administrative reassignment due to a personnel investigation. She remained on administrative reassignment for the remainder of the school year.

7. During the 2016-17 school year, Gibbs was assigned to teach third grade at MLE. Gibbs had 18 students in her class.

8. On May 24, 2017, Gibbs received notice of an investigation into an allegation that she falsified records pertaining to student evaluations and

achievements for promotion to the fourth grade. These records included student assessments for the Benchmark Assessment System and third grade Portfolios. On June 19, 2017, Gibbs received notice that the investigation was expanded to include an allegation that she submitted falsified documents to utilize FMLA leave and that she falsified a training certificate.

#### Fabricated BAS Assessments

9. The District uses the Fountas & Pinnell Benchmark Assessment Systems ("BAS"). It is used to determine a student's independent, instructional, and frustration reading levels. BAS assessments are conducted one-on-one by the teacher. In part 1 of the assessment, the student reads aloud and talks about the system's leveled fiction and nonfiction books, while the teacher observes and notes the reader's behaviors on constructed forms. In part 2, the teacher conducts a Comprehension Conversation. There is an optional part 3, which uses a reading prompt to elicit student response to the text.

10. BAS assessments are done for all students in grade levels Kindergarten through 3, and for those students in grades 4 and 5 who score a one or two on the Florida Standards Assessment ("FSA").

11. For BAS, there are three assessment periods each school year. The District deadline for the third assessment period was May 26, 2017. MLE set an earlier internal deadline for its teachers of May 19, 2017, to insure that the District deadline would be met.

12. On May 11, 2017, Gibbs was provided with a substitute so she could have the opportunity to complete BAS assessments.

13. After school on Friday, May 12, 2017, there was a Response to Intervention ("RTI") meeting at MLE. Gibbs told Marlen Veliz ("Veliz"), MLE's Principal, that she had completed the BAS assessments for two of her 18 students. Gibbs stated that she was confident that she would be able to complete all student assessments by the May 19 deadline, and that she did not need a substitute for an additional day.

14. Gibbs was at school on Monday, May 15, 2017, but then was absent for an extended period. She was absent on May 16 through 19, and 22 through 24. Principal Velez asked Ms. Shamequia Wright ("Wright"), a third grade teacher and union steward, and Ms. Hend Hafez ("Hafez"), an MLE Literacy Coach, to help assess Gibbs' students.

15. On Thursday, May 18, 2017, Wright and Mr. Lawrence Hennequin ("Hennequin"), third grade team lead, entered Gibbs' classroom to look for the students' BAS folders. They could not find the BAS folders, and only found blank scoring sheets. They held up a BAS folder and asked the students where they could find the folders. The students informed Hennequin and Wright that they had never seen the folders. Hennequin and Wright left Gibbs' classroom to get their own materials so they could start assessing students. Wright proceeded to assess Gibbs' students on May 19 and May 22., 2017

16. On May 23, 2017, Hafez was asked to gather the BAS assessments that Wright had completed. Wright told Hafez that the assessments were on the round table in Gibbs' classroom. Hafez collected the BAS materials from the round table in Gibbs' classroom and provided them to the office.

17. Upon trying to enter the BAS scores into the BASIS system, it was discovered that Gibbs had entered all of the students' scores on May 15, 2017. In order to have done this, Gibbs would have had to complete assessments for 16 students on that day. Principal Veliz knew this was an impossible task and, therefore, questioned the validity of the scores. Principal Veliz asked the District for a review.

18. By May 26, 2017, the office had received all of the protocols--the student BAS folders containing the data for all three of the assessment periods--from all of the third grade teachers with the exception of Gibbs. The Assistant Principal, Joan Rosa ("Rosa"), made an announcement over the P.A. reminding all of the teachers who had not submitted their protocols to do

so prior to 3:00 p.m. Gibbs never brought any of the protocols for any of the three assessment periods to the office.

19. On May 26, 2017, Mildred Grimaldo ("Grimaldo"), Director of Literacy from the District, went to MLE to conduct a review and reassess Gibbs' students. The team conducted a reassessment of five students. Hafez reassessed the remaining students. It was found that the scores entered in BASIS on May 15, 2017, by Gibbs did not align with the reassessments completed by Grimaldo's team or Hafez.

20. Of the 18 students in Gibbs' class, only six scored a three or above on the FSA. Six students scored a two and five students scored a one. One student was absent.

21. Gibbs was scheduled for mandatory BAS training on January 13, 2017, but she did not attend. Gibbs received a verbal reprimand for missing the training. Gibbs received training as part of a calibration conversation that took place on April 4, 2017. The Literacy Coach also had previously shared (November 2016) a link to a Brainshark presentation, which included suggested best practices from Fountas & Pinnell and those implemented in the District. Gibbs did not review the Brainshark presentation.

#### Incomplete Portfolios and Falsified Promotion Testing

22. Section 1008.25(5)(b), Florida Statutes, and Board Policy 6000.1 indicate that any student in third grade who does not meet the reading promotion criteria, which is a two or higher on the FSA, can be promoted to fourth grade based on good cause promotion criteria. The good cause promotion criteria consists of the completion and passing of a third grade Portfolio as an alternative to a passing FSA score.

23. All third grade teachers are required to have their students complete the third grade Portfolio. Student Portfolios are based on work completed by the students in connection with what they are being taught by the teacher. The teachers are to teach the State standards. The Portfolios gauge students'

mastery of the reading information standards, reading literature standards, and language standards.

24. There are eight cycles that were put together by the District to help teachers teach the reading information standards, reading literature standards, and language standards. Each cycle has certain tasks that students must complete. The tasks are to be graded by the teachers and kept as part of the Portfolios. The grade is based on a four point system, with one being the worst and four being the best.

25. If a student does not score a three out of four on a particular standard, the student is then given an additional passage and multiple choice test. The student must receive at least a 70% on the multiple choice test to show proficiency in the standard.

26. Scores for the Portfolio tasks as well as the multiple choice test, if necessary, are recorded on a form entitled Third Grade Assessment Portfolio: Cumulative Student Record Form ("Portfolio Record Form").

27. MLE had an in-house deadline of May 1, 2017, to submit all Portfolios along with the summary sheets. The District's deadline was May 5, 2017.

28. On May 1, 2017, Gibbs emailed Hafez asking for assistance finishing the last tasks for the Portfolios.

29. Principal Veliz received Gibbs' Portfolio Record Form and Portfolios on or about May 4, 2017. Veliz must sign each Portfolio Record Form. She also reviews the Portfolios. Veliz noticed that Gibbs' Portfolio Record Form indicated a perfect score, four out of four, for every one of her 18 students. Additionally, even though every student allegedly received a perfect score, Gibbs also had a score for the multiple choice test for every standard for every student. Had a student actually received a perfect score on the tasks, the multiple choice test would have been unnecessary. This raised a red flag for Veliz.

30. Based on the concerns, Veliz asked Hafez and Rosa to bring her Gibbs' box of Portfolios. The box was sealed, almost completely, with duct tape. As a

team, Veliz, Hafez, and Rosa opened Gibbs' Portfolio box. They spot checked a few of the students' work and noticed significant discrepancies in what Gibbs recorded and the student product. Hafez and Rosa were asked to review all of Gibbs' students' Portfolios. It took a week to review all of the Portfolios. The team found errors that included, but were not limited to: incorrect grading; the sample answer was provided (i.e., the teacher answer key); missing tasks; missing test items; task given multiple times despite mastery of the task; blank or incomplete tasks; discrepancy in time frame of dates; items done as homework as opposed to class work; missing multiple choice sheets; and the inclusion of non-summative task items.

31. Veliz reached out to Ms. Nicole Mancini, Director of Elementary Learning, to have someone from the District rescore the Portfolios. Dr. Teri Acquavita and Ms. Shellie Gory ("Gory"), supervisors for the District, conducted a District review. There were discrepancies between the District review and Gibbs' grading.

32. On May 9, 2017, Veliz emailed Gibbs requesting her monthly data along with the alternative portfolio multiple-choice assessments. Gibbs submitted the monthly data. Gibbs did not submit the multiple-choice alternative data, and has never submitted the multiple-choice data. However, on that same day, Gibbs sent two of her students to Hafez asking for copies of the multiple-choice tests.

33. Gibbs told all of the parents that their students would be promoted. Unfortunately, five of Gibbs' students scored a one on the FSA. The Portfolios should have been used as good cause promotion criteria for those students, but they were too deficient. The students were promoted and placed into intervention programs the following year.

#### Falsified Test Administrator Certificate

34. School year 2016-17 was the first year that the FSA was to be given to students via computer. All MLE teachers were directed by Veliz to complete a

Test Administrators' ("TA") Certification Course from American Institutes for Research ("AIR"). The FSA was given on April 27 and 28, 2017.

35. On February 7, 2017, the school was scheduled to take an infrastructure practice test to make sure the school's system had the capacity to handle the testing by computers. On February 6, 2017, Gibbs received assistance from School Counselor, Ms. Gigi McIntire ("McIntire"), and the Micro-Tech, Mr. Osvaldo Hernandez ("Hernandez"), to create her password and receive a link for the infrastructure practice test. Gibbs' class did not take the infrastructure test.

36. On February 8, 2017, Veliz met with Gibbs to discuss the fact that her class had not completed the infrastructure test and the importance of practicing with her students prior to the FSA. During the meeting, Gibbs claimed that she had not been given the link and she had not received the password until the very end because Hernandez had helped all other teachers and left her for last. This was not true, however, because Gibbs received her password and the link on February 6, 2017.

37. Gibbs submitted a TA Certificate on March 13, 2017, which had her name handwritten on it and which did not state a date of completion of the course. The certificate looked as though it was a screen shot from the computer. The certificates that were submitted by all other teachers looked different. They had their names typed on the certificate and the date that the course was completed.

38. Gibbs was supposed to have her students practice taking the test on a computer. The expectation was that students would have done this multiple times before having to take the FSA.

39. On April 24, 2017, Veliz approached some third grade students and asked them how their computer practice test was going. Several students from Gibbs' class stated that they had not practiced yet because their teacher did not know how to log in. Students from other classes stated that they had practiced several times.

40. This alarmed Veliz. Veliz asked McIntire to provide copies of all the TA Certificates. Veliz saw that the only certificate with a name handwritten in was that of Gibbs. Veliz contacted the AIR Help Desk. Mr. Anthony Nembhard ("Nembhard") confirmed that Gibbs had only used her password to log in on February 6, 2017, and had not logged in at any other time. Nembhard provided Veliz with Case No. 545991, and showed Veliz how to print a report indicating that Gibbs had not completed the course.

41. It was uncovered that a teacher could scroll through the course without actually taking it and get to a "Congratulations!" page that looked like what Gibbs had submitted as her certificate. A screen shot of this page could be printed out.

42. On April 25, 2017, Veliz went into Gibbs' classroom with Hernandez to assist students in practicing prior to the test. None of the students had any idea how to log in, did not know which browser to use, and every single one of them indicated that it was their first time accessing this practice test. The students were confused and did not know how to log in. This student confusion took place in the presence of Gibbs, Hernandez, and Veliz. When Gibbs was asked if she had her students do the practice test, Gibbs indicated she had done everything she needed to do.

43. Gibbs' defense, that her printer was not functioning properly to print a complete TA Certificate, is not credible. Gibbs apparently printed a TA Certificate in which everything printed perfectly, except her name, which she handwrote. She offered no explanation for failing to provide instruction to her students on how to utilize the computer so they would be ready to take the FSA.

#### Falsified FMLA Certification of Healthcare Provider

44. Gibbs sought and was granted Family Medical Leave Act ("FMLA") intermittent leave in 2012. Gibbs reapplied for FMLA intermittent leave every year thereafter from 2013 to 2015, and was approved by Ms. Marjorie Fletcher ("Fletcher") of the BCSB Leaves Department on each instance.

45. Gibbs submitted a FMLA certificate of healthcare provider form from ARNP Princy Bhat-Bhardwaj ("ARNP Princy"), certifying Gibbs' need for another FMLA leave for the period of November 15, 2015, to November 15, 2016. ARNP Princy is employed by Metcare, Gibbs' primary medical care provider. The frequency and duration section of the form on paragraph 11 were left blank. In order to process Gibbs' leave request, Fletcher faxed this form back to Metcare to request that it fill in the frequency and duration section of the form.

46. The form was faxed back to Fletcher with the frequency and duration section of the form filled in. However, Fletcher noticed that the beginning and ending dates of the certification on paragraph nine, as well as the date of the signature on the bottom of the form, were whited out and written over. Fletcher called Metcare to verify their fax number which was fax-stamped at the top of the form. A person at Metcare could not verify the phone number listed on the top of the form.

47. ARNP Princy confirmed to Fletcher that the handwritten portion of the date of the signature was not her handwriting. ARNP Princy also confirmed that the beginning and ending dates of the certification on paragraph nine of the form was not her handwriting. ARNP Princy testified that if she signs a form, it is her practice to date the form at the same time. According to ARNP Princy, Metcare's procedure for filling out and executing FMLA certifications is directed by the patient. In some instances, they fill out and execute FMLA certifications and directly send it to a patient's employer. In other instances, the form is handed back to the patient to submit to their employer.

48. Gibbs submitted another FMLA certificate of healthcare provider from ARNP Princy, certifying Gibbs' need for another FMLA leave for January 29, 2016, to June 10, 2016. On May 23, 2017, legal counsel for Metcare, confirmed to the Leaves Department that it had not completed a FMLA certificate for Gibbs since January 2015.

49. It is evident that one or more FMLA forms submitted on behalf of Gibbs were falsified. However, no evidence was presented that the documents were altered by Gibbs or that they were ever in her possession prior to their submission by someone to the Leaves Department. Although no one other than Gibbs would seemingly have a motive to modify these forms, Gibbs denied falsifying them. While Fletcher certainly had a legitimate basis to question the validity of these forms, there was insufficient evidence to demonstrate that Gibbs knowingly submitted false information to secure ongoing intermittent leave.

#### Prior Discipline

50. Gibbs has prior disciplinary actions consisting of two verbal reprimands and several corrective actions (i.e., summary memoranda).

51. She received a verbal reprimand on January 27, 2017, for failing to attend the scheduled Professional Learning Community on BAS at McNab Elementary on January 13, 2017. She received another verbal reprimand on December 11, 2017, for intentionally exposing a student to unnecessary embarrassment or disparagement.

52. Gibbs received received summary memos concerning: the need to attend all scheduled afternoon meetings; the need to promote positive interactions with students; the need to be punctual; the need to follow procedures and protocols for drills; the need to instruct for an entire period; the need to closely monitor and track student progress; the need to adhere to timelines and complete school-wide assessments in a timely manner; the need to understand standards; for sending a grammatically incorrect letter to a parent; for lack of intervention with behavior issues in the classroom; for intentionally exposing students to embarrassment with references to boyfriends and girlfriends; the need the adhere to timelines and complete school-wide assessments in a timely manner; and the need to use guided reading during the reading block.

53. On September 2, 2015, Gibbs was placed on administrative reassignment due to a personnel investigation. She remained on administrative reassignment for the remainder of the school year.

54. The personnel investigation involved two issues. One issue was about conduct that occurred during the 2014-15 school year when she was assigned to Walker Elementary as a VPK teacher. The alleged conduct was that she charged parents a fee if their child was picked up late from VPK and that she planned on charging a fee for the end of school graduation ceremony. The other issue was for conduct that occurred during the 2015-16 school year. It was alleged that on August 26, 2015, she pushed a student out of the classroom and pinched his back.

55. Based on these two incidents, the Education Practices Commission issued a letter of reprimand to Gibbs, which is part of her BCSB personnel file.

#### Ultimate Findings of Fact

56. The evidentiary record overwhelmingly reveals a pattern by Gibbs of misconduct, gross insubordination, incompetence, willful neglect of duty, and violation of school board policies. The evidentiary record amply supports suspension without pay and termination of her employment for just cause.

#### CONCLUSIONS OF LAW

57. DOAH has jurisdiction over the parties to and the subject matter of these proceedings pursuant to sections 120.569 and 120.57(1), Florida Statutes.

58. Because BCSB, acting through the Superintendent, seeks to terminate Gibbs' employment without pay, which does not involve the loss of a license or certification, BCSB has the burden of proving the allegations in its Administrative Complaint by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. *See McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476 (Fla. 2d DCA 1996); *Allen v. Sch. Bd. of*

*Dade Cty.*, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990).

59. Section 1012.33(1)(a) includes the following definition of just cause to terminate a teacher's professional services contract:

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 or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

60. The Administrative Complaint alleges the following: Gibbs committed misconduct in office; incompetency; gross insubordination; willful neglect of duty; violation of School Board Policy 4008; violation of School Board Policy 6000.1; and violation of School Board Policy 4.9.<sup>1</sup>

61. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

62. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

#### Misconduct in Office

63. Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code Rule 6A-5.056(2), which reads in pertinent part as follows:

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<sup>1</sup> Although the Administrative Complaint charges Gibbs with violating policy 4.9, policy 4.9 does not set forth standards of conduct which can be violated. Rather, it contains BCSB's progressive discipline system which provides recommended punishments for different possible offenses. Accordingly, these Conclusions of Law contain an analysis of the application of Rule 4.9 to Gibb's conduct rather than an assessment of whether the rule was violated.

(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 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B1.006, 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.

64. BCSB met its burden of demonstrating by a preponderance of the evidence that Gibbs' conduct constituted misconduct in office because it met subsections (a) through (e) of the definition of misconduct.

65. The ethical principles previously contained in Florida Administrative Code Rule 6A-10.080, Code of Ethics of the Education Profession in Florida, are now contained in subsection (1) of rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida. Rule 6A-10.081(2) states that a violation of any of the following disciplinary principles "shall" subject the individual to revocation, suspension, or other penalties:

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

1. Shall make reasonable effort to protect the student from conditions harmful to learning

\* \* \*

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

\* \* \*

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

66. Gibbs engaged in misconduct in office by failing to protect her students from conditions harmful to learning, by failing to correctly complete BAS assessments of her students. BAS assessments are a running record of a student's reading ability. By failing to assess a student's reading ability, a student's progress cannot be recorded properly and the level of instruction required of a particular student will be misapplied by that student's future teachers.

67. Despite Gibbs' claims of not knowing how to conduct the BAS assessments, Gibbs failed to avail herself of any of the numerous resources provided by the District and MLE. This includes failing to attend any District BAS assessment training sessions despite the numerous sessions that were offered, failing to access the BAS training materials offered by the publishers of the system, failing to access any of the online materials provided by the District, and failing to seek help from those on her team or the Literacy Coach at MLE. As a direct result, this put her students at a disadvantage and caused harm to the conditions of their learning.

68. Gibbs engaged in misconduct in office by failing to maintain honesty in representing completion of her students' BAS assessments and submitting fraudulent grading of her students' BAS assessments. Gibbs represented to Veliz that she would complete her students' BAS assessments by the deadline imposed by Veliz at MLE. She failed to adhere to the deadline and failed to assess all of her students despite being offered a substitute teacher so that she could solely focus her time on BAS assessments. Only blank BAS scoring sheets were found in her classroom when Gibbs was absent for an extended

period of time. Gibbs' students informed Hennequin and Wright that they had never seen the folders when they came to search for them.

69. Gibbs then represented that she had completed the BAS assessment of her students by inputting scores into the computer system that were false. Upon reassessment of Gibbs' students, it was found that the scores entered on May 15, 2017, by Gibbs did not align with the reassessments completed by Grimaldo or Hafez. There were significant discrepancies between Gibbs' scores and the scores computed by Hafez or Grimaldo that are not rationally attributable to subjectivity in scoring. For some of the students, there were discrepancies of two entire grade levels.

70. Generally, there is a high degree of correlation between the BAS scores and the FSA scores. However, Gibbs graded a student at a fourth grade level, but the student received a score of one on the FSA. When reassessed by Grimaldo, the student read at a second grade level, which is consistent with a FSA score of one. Whether the deficiencies in the BAS assessments were due to intention or incompetence on the part of Gibbs, it is without doubt that the assessments were incorrect.

71. Similarly, Gibbs engaged in misconduct in office by failing to protect her students from conditions harmful to learning by failing to complete the Portfolios of her students. Fla. Admin. Code R. 6A-10.081(2)(a)(1.).

72. Gibbs' Portfolio Record Form indicated a perfect score, four out of four, for every one of her 18 students. Additionally, even though every student allegedly received a perfect score, Gibbs also had a score for the multiple choice test for every standard for every student. Had a student actually received a perfect score on the tasks, the multiple choice test would have been

unnecessary. Moreover, the scores in the multiple choice tests were mathematically impossible.<sup>2</sup> Once again, regardless of whether Gibbs intentionally falsified the scores or did it out of incompetence, there is no question that the Portfolio scores were false.

73. Gibbs' explanation for Portfolio deficiencies, that she was not adequately trained as a former kindergarten teacher to compile the third grade Portfolios, lacks credibility. Gibbs admittedly never reviewed any of the Brainshark tutorials to teach herself how to properly administer student Portfolios. She also never used the Adobe connect sessions or contacted Gory to request assistance in administering student Portfolios. Gibbs did not even avail herself of help from her team or the Literacy Coach at MLE for direction as to how to complete the Portfolios. As a direct result, this put her students at a disadvantage and caused harm to the conditions of their learning.

74. Gibbs also engaged in misconduct in office by failing to protect her students from conditions harmful to learning by failing to complete the TA Certification Course. All MLE teachers were directed by Veliz to complete the TA Certification Course from AIR in order to proctor the FSA test for students. Gibbs failed to complete this course. AIR confirmed that Gibbs had only used her password to log in on February 6, 2017, the day her password was created for her by McIntire, and had not logged in at any other time. As a direct result, this put her students at a disadvantage and caused harm to the conditions of their learning because she would not be able to effectively guide them during the FSA test.

75. Gibbs engaged in misconduct in office by failing to maintain honesty in representing completion of a TA Certification Course. As described above,

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<sup>2</sup> The percentages listed for the multiple choice test on Gibbs' Portfolio Record Forms did not mathematically equate with the number of questions in the passages. Every single multiple choice test in all 19 passages contain exactly seven multiple choice questions that are to be scored. Gibbs gave scores that varied from 70%, 75%, and 80% for all 19 passages. The scores given by Gibbs on each passage for each student are mathematically impossible.

Gibbs never took the TA Certification Course. Yet, she represented she had completed the course by submitting a false completion certificate.

76. Gibbs engaged in misconduct in office by failing to protect her students from conditions harmful to learning by failing to practice with her students on their assigned computers for the FSA test. As a direct result, this put her students at a disadvantage and caused harm to the conditions of their learning because they would not be prepared to take the state mandated FSA test on their computers.

#### Incompetency

77. Rule 6A-5.056 defines incompetency and provides in pertinent part:

(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.

78. Gibbs' failure to complete BAS assessments, maintain student Portfolios, acquire her TA Certification to administer the FSA, and her failure to train her students how to use the computer for the FSA all fall within the definition of inefficiency and therefore, incompetence. Gibbs clearly failed to perform her duties required by law. These same actions demonstrate "incapacity" because she lacked command of her area of specialization.

79. Gibbs' job performance was substandard and she lacked the ability and skills to proficiently conduct duties such as: evaluating student reading levels and recording the same; following the curriculum guidelines and recording student progress through their Portfolios; and providing training to her students on how to use the computer to take the FSA. Gibbs failed to avail herself of any of the numerous opportunities for training or assistance with any of these skills. Accordingly, Gibbs' inefficiency and incapacity constitute violations of rule 6A-5.056(3)(a) and (b).

Gross Insubordination

80. Rule 6A-5.056(4) defines "gross insubordination" as "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."

81. BCSB demonstrated, by a preponderance of the evidence, that Gibbs' conduct constitutes gross insubordination in relation to her failure to adhere to the deadlines to complete BAS assessments, the Portfolios, and her repeated failure to attend trainings.

82. The District deadline for the third BAS assessment period was May 26, 2017. MLE set a deadline of May 19, 2017, to insure that the District deadline would be met. Gibbs was provided with a substitute teacher so that she could focus her time on completing the BAS assessments. She did not use

that time to complete BAS assessments. Just one week before the MLE deadline, Gibbs stated that she had only completed a BAS assessment for two of her 18 students. She was at MLE for one more day, then absent for seven days and did not complete the third BAS assessment period for her remaining 16 students. Instead, Hafez and Wright, had to assess Gibbs' students.

83. By May 26, 2017, the office had received all of the protocols--the student BAS folders containing the data for all three of the assessment periods--from all of the third grade teachers with the exception of Gibbs. Rosa made an announcement over the P.A. reminding all of the teachers who had not submitted their protocols to do so prior to 3:00 p.m. Gibbs never brought any of the protocols for any of the three assessment periods to the office, in defiance of an order by MLE administration to do so. Gibbs failure to adhere to the timeline to complete the BAS assessments and failure to provide the student BAS folders constitutes gross insubordination.

84. MLE had an in-house deadline of May 1, 2017, to submit all Portfolios along with the Portfolio Record Forms. The District's deadline was May 5, 2017. Gibbs never submitted the multiple-choice assessments, and has never submitted the multiple-choice data.

85. Gibbs' repeated conduct in failing to attend any BAS training session also constitutes gross insubordination. Gibbs was scheduled for mandatory BAS training on January 13, 2017, but she did not attend. She received a verbal reprimand for missing the training. Hafez shared a link to a Brainshark presentation which included suggested best practices from Fountas & Pinnell and those implemented in the District. Gibbs did not review the Brainshark presentation. Gibbs also failed to take advantage of any other BAS training including signing up for a BAS training class on My Learning Plan. Calibration conversation was also provided by the District to schools as a follow-up support to assist in administering BAS. Gibbs did not

attend the calibration conversation or the BAS training that took place at MLE.

86. As Gibbs admits, she did not attend any BAS trainings. She admits that although three to four different classes were given every week on BAS training by the District, she did not sign up for any of the sessions. She also admits that she missed the BAS training session at McNab Elementary and did not sign up for another workshop by logging onto My Learning Plan. She also admits that she never logged onto training sessions with the access code provided by the publishers of the BAS system.

Willful Neglect of Duty

87. "'Willful neglect of duty' means intentional or reckless failure to carry out required duties." Fla. Admin. Code R. 6A-5.056(5).

88. As described above, Gibbs either intentionally or recklessly failed to adhere to timelines to complete school-wide assessments, the deadlines for BAS assessments, the deadline for Portfolios, failed to practice the FSA on the computer with her students, failed to complete the TA Certificate Course, and intentionally or recklessly failed to attend trainings related to BAS assessments. BCSB has shown by a preponderance of the evidence that Gibbs' behavior constituted willful neglect of duty, as defined in Rule 6A-5.056(5)

Violation of School Board Rules

89. School Board Policy 4008(B) sets forth the duties of instructional personnel. These duties state that instructional personnel shall:

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

\* \* \*

7. Accurately maintain all student records and documentation and prepare and submit such reports as they may be required by regulations of the state board or the District. No teacher shall be

entitled to receive any salary unless all such records and reports have been properly maintained and submitted according to requests.

\* \* \*

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

90. Gibbs' conduct in failing to complete BAS assessments of her students, submitting false BAS assessments, failing to document her students' completion of Portfolio work, submitting false student Portfolio scores, failing to allow her students practice for the FSA on their assigned computers, failing to successfully complete the TA Certificate Course, and submitting a false TA Certificate, violate School Board Policy 4008(B). As established above, her conduct was not in compliance with the Code of Ethics or the Principles of Professional Conduct. She did not maintain accurate student records. As such, Gibbs' conduct did not conform to the rules of the State Board or BCSB.

91. School Board Policy 6000.1 contains the Student Progression Plan of the District. It establishes the standards for instruction, curriculum to be taught, mandated assessments, reporting progress, and criteria for promotion, among other things.

92. Criteria for promotion in the third grade is based upon evaluation of each student's progress through classroom work, teacher observations, District approved assessments, and statewide formative and summative assessments. Additionally, students in the third grade are subject to stricter, State-mandated promotion criteria, which is the FSA.

93. Gibbs failed to assess her students' reading levels and then falsified BAS scores. She also falsified Portfolio scores by giving her students perfect scores and mathematically impossible scores on the multiple choice tests. Upon review, a significant amount of student work was missing from student

Portfolios. Gibbs' conduct in falsifying student BAS assessments and Portfolio scores violated Policy 6000.1.

Application of School Board Policy 4.9

94. Under the foregoing Findings of Facts, BCSB has met its burden and established by a preponderance of the evidence that, other than the alleged falsification of FMLA certification, Gibbs committed each of the violations charged. What discipline is appropriate is determined by an application of the progressive discipline structure described in School Board Policy 4.9.

95. Pursuant to Policy 4.9, section I(d), the level of corrective action in a given case will be determined by the severity of misconduct and the considerations listed in section III(c). "A more severe corrective measure will be used when there is evidence that students, employees, or the community we serve was negatively impacted."

96. Policy 4.9, section III, titled "Other Considerations," subsection (c), sets forth circumstances that are "illustrative and not meant to be exhaustive and may be considered when determining the appropriate penalty within a penalty (II Category B) range." The factors relevant here include:

1. The severity of the offense
2. Degree of student involvement
3. Impact on students, educational process and/or community
4. The number of repetitions of the offenses and length of time between offenses
6. Employment history
8. The deterrent effect of the discipline imposed
10. The actual knowledge of the employee pertaining to the misconduct
11. Attempts by the employee to correct or stop the misconduct

12. Related misconduct by the employee in other employment including findings of guilt or innocence, discipline imposed and discipline served

13. Actual negligence of the employee pertaining to any misconduct

18. Any relevant mitigating or aggravating factors under the circumstance.

97. It is undisputed that Gibbs was previously disciplined for failing to: attend a training session; failing to be punctual; failing to follow procedures and protocols; failing to instruct for an entire period; failing to closely monitor and track student progress; failing to understand standards; and failing to adhere to timelines and complete school-wide assessments in a timely manner. Here, the factors warranting a dismissal include: the severity and number of the offenses; the impact of Gibbs' conduct on students; the educational process and/or community; Gibbs' prior discipline; Gibbs' knowledge pertaining to her misconduct; the need for a sufficient deterrent effect; and, Gibbs' failure to take adequate steps to correct her prior misconduct.

98. Therefore, BCSB has proven Gibbs committed acts as alleged in the Administrative Complaint that constitute just cause to suspend Gibbs without pay and terminate her employment.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Broward County School Board, enter a final order upholding Respondent's suspension without pay and termination for just cause.

DONE AND ENTERED this 6th day of March, 2020, in Tallahassee, Leon  
County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of March, 2020.

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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.