



Status: ORIGINAL

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

2024-01-23

Regular School Board Meeting

CATEGORY: C. Chief of Staff/Office of Superintendent

DEPARTMENT: Chief of Staff

Agenda Item Number: C-1.

Consent or Open Item: Consent

Special Order: NO

Time for Special Order:

TITLE:

Final Order on Broward County School Board vs. Wanda J. Collins

REQUESTED ACTION:

Approve the Final Order adopting the Recommended Order entered on November 7, 2023, by Cathy M. Sellers, Administrative Law Judge, in the matter of Broward County School Board vs. Wanda J. Collins, Case No. 22-0938TTS, before the State of Florida Division of Administrative Hearings. District 7.

RATIONALE:

See Supporting Docs for Executive Summary.

EXHIBITS:

Executive Summary

Proposed Final Order

FINANCIAL IMPACT:

There is not financial impact to the District.

STRATEGIC PLAN ALIGNMENT:

Student Focus Outcomes

N/A

OR • Business Operations

BOARD ACTION:

(For Official School Board Records Only)

FINAL ORDER

SOURCE OF ADDITIONAL INFORMATION

Name: Maya A. Moore

Phone: 754-321-2050

Name:

Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

Dr. Valerie Wanza, Deputy Superintendent, Chief of Staff

Signature

Dr. Valerie Wanza, Deputy Superintendent, Chief of Staff

Electronic Signature

Form \$4189 Revised 7/23

PBL/VSU

Approved in

Open Board

Meeting On:

January 23, 2024

By:

Louie Albaduff

School Board Chair -

2024 APR 22 AM 9:08
DEPT OF EDUCATION
TALLAHASSEE FLA

FILED AGENCY CLERK



For more information, please contact:

Maya A. Moore
Assistant General Counsel
754-321-2050

EXECUTIVE SUMMARY

Final Order on Broward County School Board vs. Wanda J. Collins

Board Meeting Date

January 23, 2024

Requested Action

Approve the Final Order adopting the Recommended Order entered on November 7, 2023, by Cathy M. Sellers, Administrative Law Judge, in the matter of Broward County School Board vs. Wanda J. Collins, Case No. 22-0938TTS, in the State of Florida Division of Administrative Hearings.

Background/History

This item requests Board approval of the Final Order adopting the Recommended Order upholding the Superintendent's recommendation to terminate Wanda J. Collins ("Collins"), a mathematics teacher at Crystal Lake Community Middle School ("Crystal Lake"). Collins earned four, consecutive, overall "Needs Improvement" evaluations, based on metrics that included an Instructional Practice Score and Student Performance Score. Under Section 1012.33(3), Florida Statutes, a professional service contract with instructional staff, supervisors, and school principals shall be renewed each year unless: the employee receives two consecutive annual performance evaluation ratings of unsatisfactory under Section 1012.34, Florida Statutes, two annual performance evaluation ratings of unsatisfactory within 3-year period under Section 1012.34, Florida Statutes, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under Section 1012.23, Florida Statutes.

The Administrative Complaint was served on Collins recommending her termination and she timely requested a hearing. The School Board approved the recommendation, and the matter was transferred to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge ("ALJ") to conduct the final hearing challenging the School Board's discipline. The DOAH hearing was held, and on November 7, 2023, the ALJ entered a Recommended Order in favor of the School Board upholding termination of Collin's employment as a teacher.

The Superintendent recommends that the School Board approve the Final Order adopting the Recommended Order. The School Board's decision is final.



Alignment to 2027 Goals and Guardrails

Business Operations.

Measurable Outcome(s)/Return on Investment

Not applicable.

Financial Impact

There is no financial impact to the district.

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

DOAH CASE No.: 22-0938TTS

vs.

RSBM Agenda: 01-23-24-C-1

WANDA J. COLLINS,

Respondent.

FINAL ORDER

THIS CAUSE came before THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereafter referred to as the "SCHOOL BOARD") at its meeting conducted on January 23, 2024, to consider adoption of the Recommended Order entered on November 7, 2023, by Cathy M. Sellers, Administrative Law Judge ("ALJ") of the State of Florida Division of Administrative Hearings.

IT IS THEREUPON ADJUDGED that:

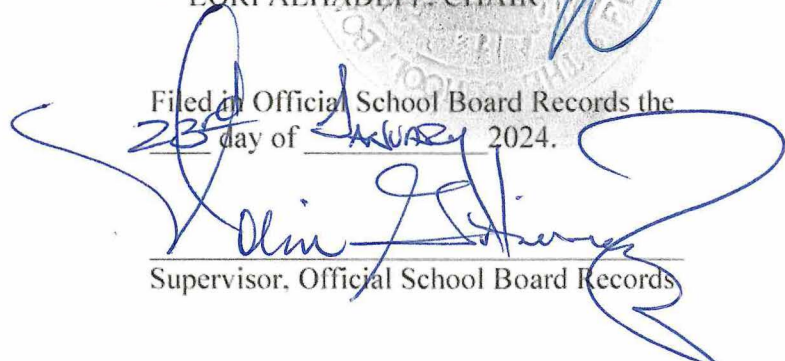
1. No party filed exceptions.
2. The SCHOOL BOARD adopts the Recommended Order in its entirety, which is incorporated herein by reference (see Recommended Order attached hereto as Exhibit "A").
3. THE SCHOOL BOARD hereby terminates Respondent, WANDA J. COLLINS as a teacher.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida, this 23rd day of January, 2024.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
LORI ALHADEFF, CHAIR

Filed in Official School Board Records the
23rd day of January 2024.


Supervisor, Official School Board Records

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STATE OF FLORIDA, DIVISION OF
ADMINISTRATIVE HEARINGS
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

APPEAL OF FINAL ORDER

Pursuant to Section 120.68, Florida Statutes, a party to this proceeding may seek judicial review of this Final Order in the appropriate district court of appeal by filing a notice of appeal with Noemi Gutierrez, Agency Clerk, Official School Board Records, The School Board of Broward County, Florida, 600 Southeast Third Avenue – 2nd Floor, Fort Lauderdale, Florida 33301, on or before thirty (30) days from the date of this Final Order. A copy of the notice and a copy of this Final Order, together with the appropriate filing fee, must also be filed with the Clerk, Fourth District Court of Appeal, 110 South Tamarind Avenue, West Palm Beach, Florida 33401. If you fail to file your notice of appeal within the time prescribed by laws and the rules of court, you will lose your right to appeal this Final Order.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 22-0938TTS

WANDA J. COLLINS,

Respondent.

RECOMMENDED ORDER

Pursuant to sections 120.569 and 120.57(1), Florida Statutes (2023), a hearing was held by Zoom conference on August 8 through 10, 2023, before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Denise Marie Heekin, Esquire
Ayla Arshad, Esquire
Bryant Miller Olive, P.A.
1 Southeast 3rd Avenue, Suite 2200
Miami, Florida 33131

For Respondent: Brittany M. Fox, Esquire
Robert F. McKee, Esquire
Robert F. McKee, P.A.
1401 East 22nd Avenue
Tampa, Florida 33605

STATEMENT OF THE ISSUE

Whether there is just cause, as charged in the Administrative Complaint, for Petitioner, Broward County School Board, to terminate the employment of Respondent, Wanda J. Collins, as a teacher with Broward County Public Schools.

Exhibit "A"

PRELIMINARY STATEMENT

On February 26, 2022, Petitioner, Broward County School Board (hereafter, "Petitioner" or "School Board"), notified Respondent, Wanda J. Collins (hereafter, "Respondent"), by agency action letter, that it intended to terminate her professional services contact with the School Board at its March 15, 2022, meeting. The Administrative Complaint, setting forth the alleged factual and legal bases for the School Board's action terminating Respondent, was served on February 28, 2022. Respondent timely requested an administrative hearing, and the matter was referred to DOAH on March 24, 2022, for assignment of an ALJ to conduct the hearing.

The parties waived the statutory time frame in section 1012.33(6), Florida Statutes (2021),¹ for conducting the administrative hearing, and the final hearing initially was set for September 27 and 28, 2022; however, pursuant to motion, the hearing was rescheduled for February 15 through 17, 2023, and, subsequently, for August 8 through 10, 2023.

The final hearing was held on August 8 through 10, 2023. At the final hearing, Petitioner presented the in-person testimony of Heather Parente, Marcia Fay, Gisela Cobo-Suarez, Sabine Phillips, Ben Reeves, Felice Winston-Davis, Tavures Williams, Diego DeRose, Nina McWhorter, Julie Franciosi Jackson, Earnest Toliver, and Vanessa Pelusso. Additionally, the deposition testimony of Tawanna Rowe, Arlene Colson, Annmarie Stramanak, and Sheryl Coram-Priest was admitted into evidence in lieu of in-person testimony at the final hearing. Additionally, Petitioner's Exhibits 1 through 19, 21 through 64, 66 through 81, 83, and 85 through 113 were

¹ The Administrative Complaint alleges statutory and rule violations for school years 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22. Because section 1012.33 was not amended over this time period, all references to this section are to the 2021 version, which was in effect at the time Petitioner took action to terminate Respondent from her employment.

admitted into evidence. Respondent testified on her own behalf, and Respondent's Exhibits 1 through 8 were admitted into evidence.

The three-volume, 785-page Transcript of the final hearing was filed at DOAH on August 24, 2023. The parties initially were given until September 5, 2023, to file their proposed recommended orders; however, that deadline subsequently was extended to September 25, 2023, and then to September 28, 2023. The parties timely filed their proposed recommended orders ("PROs"), and both PROs have been duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner is a duly-constituted school board charged with the duty to operate, control, and supervise free public schools within Broward County, Florida, pursuant to article IX, section 4(b) of the Florida Constitution and section 1012.33(1)(a).

2. Respondent is employed as a middle school classroom teacher, teaching mathematics, at Crystal Lake Community Middle School ("Crystal Lake"), and has been employed as a teacher with Broward County Public Schools (the "District") since 2006.

II. The Administrative Complaint

3. The Administrative Complaint charges Respondent with having three consecutive annual performance evaluations of unsatisfactory under section 1012.34.

4. Additionally, the Administrative Complaint charges Respondent with violations of specified provisions of Florida Administrative Code Rule 6A-5.056.

5. The Administrative Complaint also charges Respondent with having violated School Board Policy 4008, and, consequently, section 1012.53, which

imposes the requirement on instructional personnel to, among other things, comply with policies adopted by the district school board.

6. Each of these alleged violations, if proven, constitutes just cause for dismissal under section 1012.33.

III. Evidence Adduced at the Final Hearing

7. On February 28, 2022, Respondent was notified that the School Board would consider the Broward County Superintendent of Public Schools' recommendation to terminate her employment as a teacher with the District.

8. Respondent timely requested an administrative hearing under sections 120.569 and 120.57(1).

9. On March 15, 2022, the School Board took action to terminate Respondent's employment as a teacher with the District.

A. The District's Performance Evaluation Systems

10. Pursuant to section 1012.34, the School Board has implemented a personnel performance evaluation system to evaluate the performance of duties and responsibilities of instructional personnel, including classroom teachers.²

11. For District schools, the teacher performance evaluation system is named "Broward Instructional Development and Growth Evaluations System," or "BrIDGES."

12. Consistent with section 1012.34, each teacher in the District is evaluated at least once a year, and three criteria are evaluated: student performance, which constitutes at least one-third of the teacher's performance evaluation; instructional practice, which constitutes at least one-third of the teacher's performance evaluation; and "other indicators of performance," which constitutes the remainder of the teacher's performance evaluation, and may consist of peer reviews, surveys of students and parents

² The term "classroom teachers" is defined in section 1012.01(2)(a) as staff members who are assigned the professional activity of instructing students in classroom situations. The statute does not specifically define other types of teachers. Therefore, for brevity purposes, the term "teachers" is used in this Recommended Order to refer to classroom teachers.

regarding teaching practices, and other valid and reliable measures of instructional practice.

13. The teacher evaluation system must be designed to differentiate between four levels of performance: highly effective, effective, needs improvement, and unsatisfactory.

14. Every year, District teachers are informed, via an orientation presentation, about how evaluations will be performed. Respondent received this presentation for each school year relevant to this proceeding.

Student Performance Component

15. The Department of Education ("DOE") dictates the specific assessments which are used to gauge student performance.

16. Additionally, a value-added model ("VAM") using statistical regression analysis is applied to determine a student's expected score on a specified assessment. The VAM helps minimize the effect that some non-instructional variables, such as attendance, special needs, language, and age/grade correlation, may have on student performance scores.

Instructional Practice Component

17. The School Board, with the concurrence of the Broward Teachers Union ("BTU"), has adopted the research-based Marzano evaluation Model ("Marzano Model") to gauge a teacher's instructional practice performance. Under this model, the teacher's instructional practice score is based on an administrator's (i.e., a principal's or an assistant principal's) observations of the teacher in the classroom setting, as weighted under the Marzano Model.

18. In order to evaluate teachers, principals and assistant principals must be trained regarding the components of the particular evaluation model, must learn how to accurately and consistently apply the model to the teacher and student behaviors being observed, and must be credentialed in use of the particular evaluation model.

19. Under the Marzano Model, there are three types of teaching observations: formal, informal, and walk-through. Formal evaluations are

classroom teaching observations conducted by administrators, lasting at least 30 minutes each and entailing a pre- and post-observation conference with the teacher. Informal observations are seven- to 15-minute classroom teaching observations conducted by administrators. Walk-through observations are five- to seven-minute classroom teaching observations conducted by administrators.

20. The District uses an electronic system known as iObservation to record and maintain instructional performance observation data.

21. In the 2016-17 and 2017-18 school years, the District used the version of the Marzano Model known as the Marzano Legacy Model. This Model was comprised of 60 elements organized into a learning map having four domains. Domain 1 was titled "Classroom Strategies and Behaviors," and consisted of Elements 1 through 41. Domain 2 was titled "Planning and Preparing," and consisted of Elements 42 through 49. Domain 3 was titled "Reflecting on Teaching," and consisted of Elements 50 through 54. Domain 4 was titled "Collegiality and Professionalism," and consisted of Elements 55 through 60.

22. Succinctly stated, Domain 1 is focused on measuring in-classroom instruction, while the other three domains are focused on measuring other, non-classroom aspects of instruction.

23. Additionally, each element within each domain has a protocol. The protocol describes, and provides examples of, the teaching behavior in which the teacher should engage in order to achieve the best outcomes for that particular element.

24. For example, Element 1 of the Legacy Model, titled "Providing Rigorous Learning Goals and Performance Scales (Rubrics)," explains that "[t]he teacher provides rigorous learning goals and/or targets, both of which are embedded in a performance scale that includes application of knowledge." The examples of teacher behavior that are entailed in this protocol include such things as "[t]eacher has a learning goal and/or target [which is] posted for student reference"; "[t]eacher makes reference to the learning goal or

target throughout the lesson"; and "[t]eacher relates classroom activities to the scale throughout the lesson."

25. Additionally, the protocol describes student-centered evidence that the teaching goal is being accomplished. For example, for Element 1, the protocol states: "[s]tudents can explain the learning goal or target for the lesson"; "[s]tudents can explain how their current activities relate to the learning goal or target"; and "[s]tudent artifacts demonstrate students know the learning goal or target."

26. The administrator conducting the teacher performance evaluation observes and records whether (or not) the teacher and the students are exhibiting behavior that evidences that the purpose of the protocol is being achieved in the lesson being observed.

27. The extent to which such teacher and student behaviors are exhibited during an observation is ranked on a scale, which sets forth five different levels of teaching proficiency for that protocol: "Not Using," "Beginning," "Developing," "Applying," and "Innovating," with 1, 2, 2.5, 3, and 4 points, respectively, assigned to the observed behavior.

28. For purposes of calculating the teacher's overall instructional practice score, behavior described in each protocol is weighted depending on whether the protocol is within Domain 1, 2, 3, or 4. Domain 1, which focuses on measurement of in-classroom instruction, is assigned a weight of 68% of the instructional practice score, while Domains 2, 3, and 4 collectively are assigned a weight of 32% of the instructional practice score.

29. To calculate a teacher's instructional practice score, the administrator observing the teacher records a data mark each time a protocol behavior is observed, or is not observed,³ and assigns a point value (discussed above) to that behavior based on the proficiency level. The weighted average for each proficiency level is calculated by multiplying the total point value observed

³ A teacher's failure to exhibit a required or desired behavior identified in a protocol would result in a data mark of 1 point.

for that proficiency level by its relative percentage of the total data marks recorded in the observation. Each weighted average is then added to obtain the total score for the particular domain. The total score for each domain is then multiplied by its assigned weight—i.e., 68% for Domain 1, 32% for Domains 2, 3, and 4—and added together. This results in the teacher's final instructional practice score.

30. This weighted scoring method, described above, was applicable to all of the Marzano Model variations (discussed below) used by the District to evaluate teachers' instructional practice during the time frame relevant to this proceeding.

31. For the 2018-19 school year, the District used an updated Marzano teacher performance evaluation model, known as Florida Teacher Evaluation Model, or "FTEM," for evaluating teachers who taught sixth, seventh, and eighth grades. Under FTEM, Domains 1 through 4 in the Marzano Legacy Model were replaced with domains respectively titled "Standards-Based Planning," consisting of three elements; "Standards-Based Instruction," consisting of ten elements; "Conditions for Learning," consisting of seven elements; and "Professional Responsibilities," consisting of three elements, for a total of 23 elements evaluated. Additionally, the protocols were revised, and the protocol scale labels were changed to "needed," "emergent," "proficient," "accomplished," and "exemplary." The scoring system using weighted averages remained the same as that used in scoring under the Marzano Legacy Model.

32. Because the District applied FTEM on a pilot program basis in the 2018-19 school year, an additional middle school metric was added, and all teachers were given a "highly effective" rating for that metric as a percentage of their final evaluation score. Thus, the percentages assigned to the four evaluation components in deriving the final evaluation score were 45% for instructional practice, 35% for student performance, 15% for deliberate practice, and 5% for the middle school metric.

33. In the 2019-20 school year, the District continued to use FTEM, and expanded its use in evaluating teachers in pre-kindergarten through twelfth grades. Although DOE waived teacher performance evaluations for the 2019-20 school year due to the COVID-19 pandemic, the District did evaluate teachers on the instructional practice component through March 2020, after which District schools were closed for the rest of the school year.

34. For the 2020-21 school year, the School Board received permission from DOE to use a limited FTEM Model for teacher evaluation consisting of seven elements. Teachers taught virtually beginning in August 2020, until January 2021, when all teachers returned to in-person classroom teaching. Because some students continued to attend school by virtual platform, teachers were evaluated only for the planning and professional responsibilities elements.

35. For the 2021-22 school year, the District used the regular 23-element FTEM Model, and added a new protocol titled "Equity, Access, SEL," with the acronym standing for "Social Emotional Learning." The purpose of this new protocol was to encourage teachers to consider students' different needs and learning styles in planning and delivering instruction.

36. The District offers supportive services for teachers who are struggling with deficient performance. Specifically, the annual teacher evaluation orientation, described above, addresses performance intervention for teachers who score a certain number of "not using" or "beginning" data marks in the previous year's evaluation. For teachers who earn a certain number of such data marks, administrators have an "informal conversation" regarding performance improvement measures. Additionally, a performance development plan ("PDP") may be developed for teachers who earn a specified number of such data marks and also earn an instructional practice score that equates to an "unsatisfactory" or "needs improvement" rating.

37. The District's Evaluations Department monitors the teacher evaluation ratings of teachers, and offers performance assistance by peer

reviewers for teachers who have deficient performance ratings. Peer reviewers coach, model effective teaching practices, and provide instructional practice feedback to the teacher.

38. Additionally, school-based assistance provided by subject area-specific instructional coaches also is available to teachers who have deficient performance ratings.

Other Indicators of Performance Component

39. Pursuant to section 1012.34, the third component of teacher evaluations is the "other indicators of performance" criterion. This component affords school districts flexibility to identify and evaluate other specific components that a school district determines are useful indicators of teacher performance.

40. The District uses a deliberate practice measure as the third component of its teacher evaluation system. For this component, the teacher uses iObservation to develop an annual growth plan, and the teacher completes a self-assessment on teaching strategies set forth in the Marzano Model. If the teacher completes the self-assessment by a specified deadline, the teacher receives a "highly effective" rating for the "other indicators of performance" component.

Calculating the Teacher Evaluation Score for a School Year

41. By the end of the school year, teachers will have been informed of their final instructional practice score for that school year.

42. The final student performance score for a school year is not available until the fall semester of the following school year.

43. The scores for each of the three components comprising the teacher evaluation system—student performance, instructional practice, and deliberate practice—are calculated separately, then a weighted average of these three scores is calculated to derive the teacher's overall performance evaluation score for the school year.

B. Respondent's Performance and Conduct in the 2016-17 through 2021-22 School Years

44. As previously noted, Respondent was evaluated for the 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22 school years, using the evaluation systems discussed above.

45. The competent substantial evidence establishes that for each of these school years, Respondent's performance was deficient—that is, her rating was either "needs improvement" or "unsatisfactory."

46. Additionally, the competent substantial evidence establishes that Respondent had significant issues in managing her classroom, and her lack of management negatively affected her students' learning environment.

The 2016-17 School Year

47. For the 2016-17 school year, the relative weights assigned to the three teacher performance evaluation components were: student performance, 35%; instructional practice, 60%; and deliberate practice, 5%.

48. For the 2016-17 school year, the final teacher evaluation score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

49. For this school year, Respondent earned an overall performance evaluation score of 2.364, which constituted a "needs improvement" rating.

50. She received a score of 2.167 on the student performance component, which constituted a "needs improvement" rating. Twenty-seven of her 94 math students (i.e., 29%) achieved their expected scores on the applicable assessments, placing her in the sixth percentile among the 414 middle school math teachers in the District for the 2016-17 school year.

51. For the 2016-17 school year, the instructional practice score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.500 and 3.399 constituted "effective"; between 2.0 and 2.499

constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

52. Respondent earned a score of 2.342 for the instructional practice component of the evaluation, which constituted a "needs improvement" rating. This was the third-lowest instructional practice score of the 2,812 middle school teachers in the District, and the lowest of the 414 middle school math teachers in the District, for the 2016-17 school year.

53. To determine Respondent's instructional practice score in the 2016-17 school year, Respondent was evaluated by Sabine Phillips, principal at Crystal Lake, and assistant principals Shante Collins and Ben Reeves. All three were trained and credentialed in administering the District's teacher evaluation system.

54. Phillips credibly testified that during the classroom teaching observations of Respondent that she conducted, Respondent failed to correctly state the learning goal for the day's lesson, and Respondent's instructional delivery was disorganized. Additionally, her students were not engaged in the lesson and failed to comply with her requests, and Respondent failed to take action to redirect them.

55. Upon being informed of Phillips's observations, Respondent did not approach Phillips to discuss her observations, nor did Respondent dispute any of Phillips's observations.

56. Reeves's observations of Respondent were consistent with Phillips's observations. Specifically, Respondent's statement of the day's learning goal was vague, and no summary of the topic taught was provided at the end of the lesson. Many students were not engaged in the lesson and, instead, were talking among themselves and using cell phones; one student was sweeping the classroom floor; and another student was sitting on top of a desk. Respondent's efforts to redirect the students to engage in the lesson were minimal and unsuccessful.

57. Respondent was offered the assistance of a peer reviewer toward the end of the 2016-17 school year, but refused that assistance.

58. Respondent earned a 4.0 deliberate practice score for the 2016-17 school year, which constituted a "highly effective" rating.

The 2017-18 School Year

59. For the 2017-18 school year, the relative weights assigned to the teacher performance evaluation components were: student performance, 35%; instructional practice, 60%; and deliberate practice, 5%.

60. For the 2017-18 school year, the final teacher evaluation score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

61. For this school year, Respondent earned an overall performance evaluation score of 2.207, which constituted a "needs improvement" rating.

62. Respondent's student performance score for the 2017-18 school year was a 1.833, which constituted an "unsatisfactory" rating. Twenty of her 93 math students (i.e., 22%) achieved their expected assessment scores, placing her in the fourth percentile among 398 middle school math teachers in the District for the 2017-18 school year.

63. For the 2017-18 school year, the instructional practice score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

64. Respondent earned a score of 2.276 for the instructional practice component of the evaluation, a "needs improvement" rating. This was the second-lowest instructional practice score of the 2,953 middle school teachers in the District, and the lowest of the 398 middle school math teachers in the District, for the 2017-18 school year.

65. To determine Respondent's instructional practice score for this school year, Respondent was evaluated by Phillips, and assistant principals Reeves, Felice Winston-Davis, and Julie Franciosi Jackson. All were trained and credentialed in administering the District's teacher evaluation system.

66. Although Respondent did receive some "applying" data marks during some observations, these administrators' classroom teaching observations showed that, overall, Respondent continued to have significant instructional performance problems. Specific classroom instructional practice behavior that the administrators observed included Respondent's failure to adequately explain the relationship of the learning goal for the lesson and its relationship to the work students were assigned; lack of student engagement in the lesson and Respondent's failure to successfully redirect them to engage in the lesson; Respondent's failure to correct student misbehavior in the classroom; lack of classroom student conduct rules and lack of consequences for inappropriate classroom conduct; failing to provide verbal direction to students while teaching the lesson; and allowing students to engage in off-task behavior, such as listening to music.

67. Additionally, Respondent continue to engage in conduct about which she previously received directives from the Crystal Lake administration. Specifically, she continued to issue hall passes to students after being directed not to do so, and she failed to escort students to and from the cafeteria after being directed to do so.

68. Respondent earned a 4.0 deliberate practice score for the 2017-18 school year, which constituted a "highly effective" rating.

The 2018-2019 School Year

69. As noted above, for the 2018-19 school year, a new evaluation component, the "middle school metric," was added,⁴ so that the relative weights assigned to the teacher performance evaluation components were as

⁴ The middle school metric was used only in the 2018-19 school year.

follows: student performance, 35%; instructional practice, 45%; deliberate practice, 15%; and middle school metric, 5%.

70. For the 2018-19 school year, the final teacher evaluation score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.500 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

71. For this school year, Respondent earned an overall performance evaluation score of 2.291, which constituted a "needs improvement" rating.

72. Respondent's student performance score for the 2018-19 school year was a 2.0, which constituted a "needs improvement" rating. Thirty of her 111 math students (i.e., 27%) achieved their expected assessment scores, placing her in the eighth percentile among 386 middle school math teachers in the District for the 2018-19 school year.

73. For the 2018-19 school year, the instructional practice score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.000 and 1.999 constituted "unsatisfactory."

74. That year, Respondent earned a score of 1.757 for the instructional practice component of her evaluation, an "unsatisfactory" rating. This was the lowest instructional practice score of the 2,913 middle school teachers in the District, and the lowest of the 386 middle school math teachers in the District, for the 2018-19 school year.

75. To determine Respondent's instructional practice score for the 2018-19 school year, Respondent was evaluated by Phillips and assistant principals Franciosi Jackson and Tavures Williams. All three were trained and credentialed in administering the District's teacher evaluation system.

76. Phillips conducted one classroom observation of Respondent, in which she rated Respondent as "proficient" for two instructional elements.

77. Franciosi Jackson conducted one classroom observation of Respondent for the Professional Responsibilities Domain of the FTEM Model, and rated her as "accomplished."

78. Williams, an assistant principal at Crystal Lake, also was the head of the school's mathematics department. He was Respondent's direct supervisor and conducted six observations of Respondent's classroom teaching, two of which were formal observations, during the 2018-19 school year.

79. Williams credibly testified that, generally, Respondent struggled with classroom management, and did not teach the applicable curriculum, notwithstanding that professional learning meetings were conducted to discuss the curriculum and instructional strategies to successfully teach it. Further to this point, Williams testified that the statewide math curriculum—which identifies the standards and content that students are to learn for purposes of the statewide assessments, and also provides prepared lesson plans for teachers to use in delivering that content—is readily available for all teachers to access and use in their teaching; nonetheless, Respondent did not avail herself of this key resource.

80. Among Respondent's instructional practices that Williams observed were that although Respondent outlined strategies or resources she would use in her planning, she did not implement them in her instruction; she did not develop or implement plans to address specific learner needs; and although she posted applicable state learning standards and goals on the classroom board, she did not align teaching content to the standards and goals. Additionally, although she attempted to use some innovative teaching content, she had not previewed it or determined how to use it in implementing her lesson plans.

81. Williams observed the following student behaviors during his observations of Respondent's teaching: a relatively small proportion of the students in her class were able to identify the content that was the subject of the lesson; many students were not engaged; students often moved around

the classroom and were not required to stay seated and attend to their work; there was no redirection or encouragement to students to participate in the lesson; and Respondent made no attempt to engage or redirect their attention to the lesson.

82. Following each of his formal observations of Respondent's teaching, Williams met with Respondent, and provided her a memorandum summarizing his observations and identifying deficiencies regarding her instructional practice.

83. Specifically, on February 8, 2019, Williams identified deficiencies in Respondent's classroom instruction in two areas, Standards-Based Instruction and Conditions of Learning.

84. With respect to Standards-Based Instruction, Respondent was rated as "needed" with respect to reviewing content with the students, helping students examine their reasoning, and helping students revise their knowledge. She was rated as "emergent" with respect to identifying critical context from the standards.

85. With respect to Conditions of Learning, Respondent was rated as "needed" for using formative assessments to track student progress, organizing students to interact with content, establishing and acknowledging adherence to rules and procedures, and communicating high expectations for each student to close the achievement gap. She was rated as "emergent" for using engagement strategies.

86. On May 13, 2019, Williams again met with Respondent and provided her a memorandum summarizing his observations and identifying deficiencies regarding her instructional practice. In this observation, Williams found Respondent's instruction deficient in three areas: Standards-Based Planning, Standards-Based Instruction, and Conditions of Learning.

87. With respect to Standards-Based Planning, Williams rated Respondent's instruction as "needed" with respect to planning Standards-Based lessons or units, aligning resources to the standards, and planning to

close the achievement gap using data. Specific examples regarding these deficiencies that Williams identified were Respondent's failure to use established content standards or plan rigorous units with learning targets that demonstrate progression of learning; failure to plan for the use of, or attempt to use, traditional or digital resources in Standards-Based lessons; and failure to use data to meet the needs of each student in closing the achievement gap.

88. With respect to Standards-Based Instruction, Respondent was again rated as "needed" with respect to reviewing the content with the students, helping students examine their reasoning, and helping students revise their knowledge. She was again rated as "emergent" with respect to identifying critical context from the standards. Specific examples regarding these deficiencies that Williams identified were that the learning goal posted on the classroom board did not coincide with the material being taught, and the standard and lesson objective were not aligned with each other.

89. With respect to Conditions of Learning, Respondent was again rated as "needed" with respect to using formative assessment to track student progress, organizing students to interact with content, and establishing and acknowledging adherence to rules and procedures. She was rated as "emergent" for using engagement strategies. Specific instructional deficiencies that Williams identified included lack of posted classroom rules and expectations; no seating chart, which led to students moving about the classroom; lack of established classroom routines and procedures; and teacher tolerance of inappropriate student conduct.

90. Williams testified that, in addition to her instructional practice performance deficiencies, Respondent also engaged in conduct that violated school policy by failing to keep her classroom door locked.

91. Additionally, during one of Williams's classroom observations of Respondent, he saw her embarrass a female student by first refusing to allow her to use the restroom, and then making an extremely personal remark

about the student that caused the other students in the room to gasp. As a result of Respondent's conduct, which violated the School Board's policy prohibiting teachers from exposing students to unnecessary embarrassment or disparagement, Williams issued a meeting summary, the District's least serious form of corrective action, to Respondent.

92. An instructional coach and a peer reviewer were assigned to assist Respondent in the 2018-19 school year.

93. Sheryl Coram-Priest was Respondent's math instructional coach for the 2018-19 school year. As a math coach, her role was to provide support to the math teachers with lesson planning, the provision of resources to foster student engagement, and working directly with students to help them in understanding the math content being taught. Instructional coaches do not evaluate teacher performance.

94. Coram-Priest testified that during the time she worked with Respondent, she often observed Respondent seated at her desk rather than interacting with her class, presenting a lesson, or working with the students. As she put it, "there was very little teaching and learning."

95. Arlene Colson serves as a peer reviewer for the District schools. As a peer reviewer, her role is to support teachers who are identified as needing additional support. As with instructional coaches, peer reviewers do not have a role in teacher performance evaluation.

96. Colson provided support to Respondent as a peer reviewer for part of the 2018-19 school year.

97. According to Colson, Respondent failed to monitor student learning while she was teaching. In one instance, she played a video for the students, and did not stop the video at points to ask if the students understood the concepts being covered in the video. Another time, when she used a computer game to teach a certain skill, she failed to monitor student understanding and progress regarding the skill being taught, and did not correct her students' mistakes. Colson also testified that Respondent awarded work

credit even when they did not complete the assigned work, so that there was no monitoring and follow-up to ensure that a student understood a concept before moving on to other content. According to Colson, Respondent also did not give her students tests, so had no way of determining whether students were learning the content.

98. Annmarie Stramanak took over as Respondent's peer reviewer in February 2019. Stramanak testified that, while Respondent appeared receptive to receiving support, she was unwilling to change her instructional practices. She further testified that Respondent failed to take the time necessary to understand how to communicate with, and teach her students, and that as a result, she was unable to identify and address her students' strengths and weaknesses.

99. Respondent earned a 4.0 deliberate practice score for the 2018-19 school year, which constituted a "highly effective" rating.

100. Additionally, she earned a 4.0 middle school metric rating.

The 2019-20 School Year

101. As found above, DOE waived final teacher performance evaluations for the 2019-20 school year, due to the COVID-19 pandemic.

102. Accordingly, student performance scores were not considered in determining overall teacher performance evaluation scores for that school year. The District also did not consider deliberate practice scores in determining overall teacher performance evaluation scores for that school year.

103. However, as noted above, the District did evaluate teachers on the instructional practice component of the teacher performance evaluation system for that school year.

104. For the 2019-20 school year, the instructional practice score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499

constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

105. As of the end of the 2019-20 school year, Respondent had earned an instructional practice score of 1.588, which was an "unsatisfactory" rating.

106. Earnest Toliver was the principal at Crystal Lake in the 2019-20 school year.

107. Williams and Nina McWhorter, another assistant principal, evaluated Respondent's instructional practice for the 2019-20 school year. Both were trained and credentialed in administering the teacher evaluation system.

108. McWhorter conducted one informal evaluation of Respondent that school year. She observed that Respondent did not appropriately group students for a cooperative learning exercise; did not ensure that students had the necessary equipment, such as laptops, to complete an assignment; did not utilize data for closing the achievement gap; and did not attempt to reengage students who were off-task, using their cell phones, sleeping, and talking to each other, rather than working on the assignment.

109. McWhorter also testified that some students asked to be moved to a different math class because they were not learning in Respondent's class due to the noise and other students' disruptive conduct.

110. On October 22, 2019, Respondent received a meeting summary from McWhorter for issuing restroom passes to students, without discretion, resulting in her students engaging in disruptive conduct, such as vandalizing restrooms, engaging in unruly behavior and horseplay, and entering other classrooms at the school without permission. Respondent was directed to use discretion in issuing such passes, or contact security to escort students to the restroom.

111. Williams conducted six classroom observations of Respondent in the 2019-20 school year—two formal, and the other four informal. Additionally,

Williams conducted two non-classroom observations of Respondent, consisting of meetings/feedback sessions.

112. Of the 37 data marks that Williams recorded while observing Respondent's instructional practice, 24 of the observed behaviors, or 64.8%, were rated as "needed"; 11 of the observed behaviors, or 29.73%, were rated as "emergent"; one of the observed behaviors, or 2.7%, was rated as "proficient"; and one of the observed behaviors, or 2.7%, was rated as "exemplary."

113. During Williams's four informal classroom observations, he observed the same or similar classroom management deficiencies that Respondent had exhibited in the previous school year. Specifically, Respondent failed to provide classroom conduct rules, and most of the students were off-task, either talking about topics unrelated to the lesson in which they were supposed to be engaged, or using their cell phones.

114. Respondent also failed to timely submit lesson plans. When they were submitted, the content did not correspond with that being taught in the classroom that day.

115. Respondent did earn an exemplary data mark for participating in an initiative, "Teachers Opening Doors."

116. Williams conducted a formal observation of Respondent's classroom instruction on October 23, 2019, and prepared a post-observation summary, which was given to Respondent on November 1, 2019.

117. In the observation, Williams again found Respondent's instruction deficient in three areas: Standards-Based Planning, Standards-Based Instruction, and Conditions of Learning.

118. With respect to Standards-Based Planning, Williams rated Respondent's instruction as "emergent" with respect to aligning resources to the standards, and planning to close the achievement gap using data. Specific examples regarding these deficiencies that Williams identified were Respondent's failure to identify traditional, digital, or human resources in

her lesson plans; failure to implement formative assessments, as set forth in her lesson plans; and failure to use data to support her lesson plan activities to close the achievement gap.

119. With respect to Standards-Based Instruction, Respondent was again rated as "needed" with respect to reviewing the content with the students, helping students examine their reasoning, and using questions to help students elaborate on the content. Specific examples regarding these deficiencies that Williams identified were that the content displayed on the board did not reflect the applicable learning standard; Respondent failed to ask complex questions to require students to critically think; and Respondent missed opportunities to review concepts with students.

120. With respect to Conditions of Learning, Respondent was rated as "needed" with respect to establishing and acknowledging adherence to rules and procedures, using student engagement strategies; establishing and maintaining effective relationships in a student-centered classroom; and communicating high expectations for each student to close the achievement gap. She was rated as "emergent" for organizing students to interact with content. Specific instructional deficiencies that Williams identified included the lack of posted rules in the classroom; no clear procedures for students to follow in organizing into groups; and Respondent ordering students who approached her for assistance to "get away."

121. Williams also identified other continuing concerns about Respondent's job performance. These included her apparent lack of progress in completing the required standards for the math curriculum; her lack of classroom control and management, as evidenced by students not being engaged in any lesson, being out of their seats in the classroom, fighting and otherwise being extremely noisy and disruptive; allowing students to skip her class; failing to take attendance on multiple days; failing to have a seating chart for her classes; failing to return parents' calls or otherwise communicate with them regarding their child's progress; and frequently

using her personal laptop while seated at her desk, rather than being engaged in teaching a lesson.

122. When Williams expressed his concerns to Respondent, she denied that her class was loud or disruptive, stated that she was taking professional development courses, and claimed that she was being targeted and harassed.

123. On November 13, 2019, Toliver met with Respondent and Williams to discuss his and Williams's ongoing concerns regarding Respondent's classroom management and other issues. Among the issues of concern regarding Respondent's performance addressed at that meeting, and memorialized in a meeting summary memorandum, were: allowing students to hold a "block party" in her classroom at the end of the 2018-19 school year, that entailed loud music of inappropriate content and tables of food; daily issuance of restroom and hall passes to her students, without discretion, resulting in disruptive and destructive behavior by those students; failure to manage her classroom, resulting in issuance of 15 office referrals for her students over a seven-day period in October 2019, and school security being called to her classroom numerous times to establish control and address disruptive student behavior; failure to address and resolve parent complaints, which resulted in students being transferred from her class; failure to submit lesson plans; failure to prevent students from ripping pages from math workbooks, which affected other students' ability to complete their assignments; and her failure to timely arrive at work on at least 16 days in September and October 2019.

124. In the meeting summary, Toliver stated his expectations that Respondent would use instructional time to present instruction in math to her students; state the reason for issuing a hall pass to a student when doing so; adequately supervise her students; improve her communications with parents; submit lesson plans and correctly utilize classroom workbooks; arrive to work on time; and notify the school if she was going to be tardy.

125. Respondent continued to have significant classroom management difficulties. On November 19, 2019, McWhorter was summoned to Respondent's classroom to remove ten disruptive students. Later in the same class period, Respondent summoned school security to remove the remaining students from her classroom.

126. Respondent also exhibited significant lack of attention to matters concerning her class. For example, several times, she failed to charge the assigned computer cart, which interfered with her students' ability to complete assessments.

127. On December 17, 2019, Respondent received another meeting summary for failing to attend a scheduled conference; failing to complete a planning form assigned on iObservation; and failing to submit a lesson plan in advance of a formal observation, which was scheduled for December 16, 2019. Respondent also was absent from school on December 16, 2019.

128. Williams conducted a formal observation of Respondent on January 8, 2020, and met with her on January 16, 2020, to discuss the observation.

129. Williams again found Respondent's instruction deficient in Standards-Based Planning, Standards-Based Instruction, and Conditions of Learning.

130. With respect to Standards-Based Planning, Williams rated Respondent's instruction as "needed" with respect to planning Standards-Based lessons, aligning resources to standards, and planning to close the achievement gap using data. This rating was due to Respondent's failure to submit lesson plans.

131. With respect to Standards-Based Instruction, Respondent was again rated as "needed" with respect to helping students examine their reasoning, and "emergent" with respect to identifying critical content from the standards and reviewing the content with the students. Williams noted that Respondent attempted to identify critical content during the lesson, but the formative

data showed that the students were unable to distinguish between critical and unimportant content as it related to the learning target. Additionally, Respondent attempted to engage students in a review of content; however, the formative data demonstrated that the students did not understand the content.

132. With respect to Conditions of Learning, Respondent was rated as "needed" with respect to establishing and acknowledging adherence to rules and procedures, using student engagement strategies, and using formative assessments to track student progress. She was rated as "emergent" for organizing students to interact with content. Specific instructional deficiencies identified were the lack of posted rules or procedures in the classroom; lack of use of engagement strategies, resulting in none of the students being engaged in the lesson, but, instead, using their cell phones or walking around the classroom; failure to use formative assessments to determine student progress on the learning target, so that many students were not clear regarding the learning goal for the day; and failure to successfully organize students into groups to facilitate the learning of the content.

133. Coram-Priest served as Respondent's math coach, and Marcia Fay served as Respondent's peer reviewer, for the 2019-20 school year.

134. Coram-Priest testified, credibly, that she did not often observe Respondent actively engaged in teaching, and that when she did, Respondent made no effort to engage the students in the lesson. She also testified, credibly, that the students who misbehaved in Respondent's class were better-behaved in other teachers' classes.

135. In Fay's view, Respondent's classroom management skills needed improvement. Upon entering Respondent's classroom, she frequently observed that students were not seated, were using their cell phones, and were not engaged in the lesson. She noted that the few times when

Respondent did attempt to gain control of her classroom, the students did not respect her authority.

136. On February 10, 2020, Toliver placed Respondent on performance probation for a 90-day period. At that time, Respondent's instructional practice score was a 1.532, which was "unsatisfactory." Toliver advised Respondent that during the 90-day period, he would be conducting formal evaluations using the District's BrIDGES teacher evaluation system, and would write and administer a PDP for Respondent. Toliver advised Respondent that at the end of the 90-day period, he would determine whether Respondent's performance deficiencies had been corrected, and would forward a recommendation to the Superintendent regarding whether Respondent's employment contract should be continued or terminated.

137. Respondent's PDP identified the Standards-Based Planning, Standards-Based Instruction, and Conditions for Learning domains as those in which she was deficient. The PDP also identified specific strategies for improving her instruction and correcting her instructional practice deficiencies for each domain. She was given until May 20, 2020, to correct her instructional practice performance deficiencies.

138. During the implementation of her PDP, Respondent received formal assistance, support, and feedback, the purpose of which was to help improve her instructional practice performance.

139. On March 6, 2020, Respondent received another meeting summary for completing self-observations during classroom instructional time. Williams reminded her that she was required to use classroom instructional time to instruct the students, rather than doing work on her computer.

140. On March 13, 2020, District school sites closed for the rest of the school year, due to the pandemic. By letter dated May 19, 2020, Toliver notified Respondent that her PDP had 58 remaining days, and that it would be resumed when District school sites were reopened.

The 2020-21 School Year

141. Due to the pandemic, District classes were conducted virtually for the first two months of the 2020-21 school year. Thereafter, some students returned in person to school sites, while others continued to receive virtual instruction.

142. For the 2020-21 school year, the relative weights assigned to the teacher performance evaluation components were: student performance, 35%; instructional practice, 50%; and deliberate practice, 15%.

143. During the 2020-21 school year, the District conducted teacher performance evaluations using a modified FTEM Model which had fewer elements on which teacher instructional performance would be evaluated.

144. For the 2020-21 school year, Respondent earned an overall performance evaluation score of 2.436, which constituted a "needs improvement" rating.

145. Respondent's student performance score for the 2020-21 school year was a 2.333, which constituted a "needs improvement" rating. Twenty-three of her 68 math students (34%) achieved their expected assessment scores, placing her in the eighth percentile among 348 middle school math teachers in the District for the 2020-21 school year.

146. Due to the unusual teaching and learning circumstances and environment, Respondent's PDP remained on hold during the 2020-21 school year. This effectively tolled the 90-day probation period.

147. For the 2020-21 school year, the instructional practice score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

148. Respondent earned a score of 2.038 for the instructional practice component of her evaluation, a "needs improvement rating." This was the second-lowest instructional practice score of the 2,786 middle school teachers

in the District, and the lowest of the 348 middle school math teachers in the District, for the 2020-21 school year.

149. Williams evaluated Respondent's instructional practice score in the 2020-21 school year. As previously noted, Williams was trained and credentialed in administering the District's teacher evaluation system.

150. Based on his observations, Williams rated Respondent as "needed" for four data marks, "emergent" for five data marks, "proficient" for three data marks, and "accomplished" for one data mark. He observed the following deficiencies in Respondent's classroom instruction: failure to accurately follow her lesson plans, failure to use data to close the achievement gap, and failure to use clear examples to help students understand the concepts she attempted to teach.

151. Gisela Cobo-Suarez, a professional development specialist and former math teacher, was Respondent's peer reviewer for the 2020-21 school year, and they worked together by virtual platform due to the in-person meeting restrictions in place during the pandemic. Cobo-Suarez testified, credibly, that Respondent missed several scheduled meetings and generally was not receptive to assistance, as evidenced by her failure to attend meetings and respond to Cobo-Suarez's emails regarding instructional assistance. Respondent also declined Cobo-Suarez's offer to assist her by co-teaching some of the lessons.

152. Respondent received a 4.0 deliberate practice score for the 2020-21 school year, which constituted a "highly effective" rating.

153. In addition to her instructional practice deficiencies, Respondent also continued to have issues with attendance and tardiness to work in the 2020-21 school year. Specifically, Respondent was absent from her online classes on September 2, 3, 8, 15, 17, and 18, 2020, and was tardy for classes between August 31 and September 18, 2020.

154. As a result of her absenteeism, tardiness, and failure to provide classroom coverage when she was absent or tardy, on October 12, 2020,

Respondent received a verbal reprimand, which is a form of discipline under the District's corrective action policy.

155. On June 1, 2021, Williams and Toliver met with Respondent to address their concerns about her failure to follow District or school policies, including using instructional time for non-instructional matters, repeated absence and tardiness to meetings, failure to follow the District's on-campus mask requirement, failure to work the required number of hours pursuant to her employment contract, and failure to prevent her students from being disruptive during administration of the Florida standardized assessments.

156. During this meeting, Toliver informed Respondent regarding his expectations for her instructional and non-instructional performance for the 2021-22 school year, and further informed her that her PDP, which had 58 remaining days, would be reactivated in the 2021-22 school year, and that she would have a peer reviewer assigned to assist in improving her performance.

The 2021-22 School Year

157. The District used the regular 23-element FTEM teacher performance evaluation system for the 2021-22 school year.

158. For the 2021-22 school year, the final teacher evaluation score scale was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement"; and between 1.0 and 1.999 constituted "unsatisfactory."

159. Because Respondent was suspended and terminated⁵ in February 2022, before the end of the school year, as discussed below, her student performance, deliberate practice, and final teacher performance evaluation scores were not calculated.

⁵ Pursuant to sections 1012.33 and 120.57(1), Respondent's suspension and termination were subject to the outcome of this de novo administrative challenge to the School Board's agency action.

160. However, because her instructional practice performance was being evaluated pursuant to her PDP, an instructional practice score was calculated for her.

161. As with previous school years, the instructional practice score scale for the 2021-22 school year was as follows: between 3.4 and 4.0 constituted a "highly effective" rating; between 2.5 and 3.399 constituted "effective"; between 2.0 and 2.499 constituted "needs improvement;" and between 1.0 and 1.999 constituted "unsatisfactory."

162. For the 2021-22 year, Respondent earned an instructional practice score of 2.056, which constituted a "needs improvement" rating.

163. Toliver, Williams, and McWhorter evaluated Respondent's instructional practice for the school year. As found above, all were trained and credentialed in administering the District's teacher evaluation system.

164. On September 27, 2021, Williams conducted an informal evaluation of Respondent's teaching. He observed some of the same performance deficiencies that he previously had observed with respect to Respondent—specifically, that a significant number of the students were not engaged in the lesson, and, instead, were engaged in other activities; and that there was no evidence that Respondent had used data to determine the proficiency level of her students, so that she was unable to teach to their level in order to meet their instructional needs.

165. On September 30, 2021, Toliver notified Respondent that he remained concerned regarding her instructional performance. At that time, her instructional performance score, which had been carried over from the 2020-21 school year, was 2.038, which constituted a "needs improvement" rating.

166. Toliver informed Respondent that even though she had 58 days remaining on the PDP on which she had been placed in the 2019-20 school year, he was restarting her 90-day probationary period, and she would be given a full 90 days, starting on September 30, 2021, in which to meet the

standards and requirements established in a newly-drafted PDP ("2021-22 PDP"). Thus, rather than having only 58 remaining days to improve her instructional practice, she was given a new 90-day period to do so—effectively giving her a net of 32 additional days to improve her instructional practice.

167. Respondent's 2021-22 PDP was very similar to her previous PDP. The domains in which Respondent was identified as deficient were Standards-Based Planning, Standards-Based Instruction, and Conditions for Learning. The strategies identified in the 2021-22 PDP for improvement, corrections, and assistance were updated to reflect that Colson would again serve as her peer reviewer; and that Tawanna Rowe, the math department head, would serve as her instructional coach.

168. Respondent did not agree that she should be placed back on probation and another PDP put in place to monitor her instructional practice; however, she participated in the development of the 2021-22 PDP.

169. Respondent was evaluated several times during the 90-day probationary period.

170. On October 18, 2021, Williams conducted a formal evaluation of Respondent's teaching. Respondent continued to be deficient in the three domains identified in the 2021-22 PDP.

171. With respect to the Standards-Based Planning domain, Williams rated Respondent as "needed" for planning to close the achievement gap, and "emergent" for planning Standards-Based lessons/units. Specific observations included Respondent's failure to align an identified learning target to the grade-level adopted standards, and failure to provide or articulate any data used to close the performance gap and meet the needs of each student.

172. With respect to the Standards-Based Instruction domain, Williams rated Respondent as "emergent" for identifying critical content based on the standards; helping students practice skills, strategies, and processes; and reviewing content. Specific observations included Respondent's failure to identify a learning goal that was aligned to grade-level standards, failure to

use a progression of Standards-Based learning targets to accurately identify and convey critical content during the lesson, failure to effectively engage students in cumulative review of the content, and failure to provide opportunities for students to practice the content being taught.

173. With respect to the Conditions for Learning domain, Williams rated Respondent as "needed" for using formative assessments to track student progress, and establishing and adhering to rules and procedures. She was rated as "emergent" for organizing students to interact with content. Specific observations included Respondent's failure to have a process to facilitate the tracking of student progress on learning targets, lack of organization in establishing student groups for instruction, and failure to post classroom rules and procedures to facilitate learning.

174. On November 17, 2021, Toliver conducted a PDP mid-point meeting with Respondent, Williams, and the District's evaluation coordinator, Vanessa Pelusso. At that point in the implementation of Respondent's 2021-22 PDP, her instructional practice score was 1.959, an "unsatisfactory" rating.

175. Respondent disagreed with the data marks on which her instructional practice score was based. She was reminded of the procedure set forth in the Broward Teachers Union Educational Professionals Contract to challenge observation scores with which she disagreed. Specifically, the teacher may provide evidence that he or she deserves a higher data mark, and if such evidence is persuasive, the administrator is authorized to change the data mark. If the administrator refuses to change the data mark, and the teacher maintains that he or she deserves a higher data mark, the teacher may appeal to the District's Evaluations Department and/or to the BTU. Respondent did not challenge these data marks pursuant to this procedure.

176. Toliver conducted an informal observation of Respondent on December 7, 2021, and met with her on December 16, 2021, to discuss his

continuing concerns regarding her deficient performance in the three domains addressed in her 2021-22 PDP.

177. With respect to the Standards-Based Planning domain, Toliver rated Respondent as "emergent" for planning to close the achievement gap. He noted that during the lesson he observed, Respondent attempted to use data from a quiz ostensibly given to the students, but failed to provide any evidence that such a quiz was actually ever administered, or how the data generated from the quiz was used to meet the needs of individual students, in order to close the achievement gap.

178. With respect to the Standards-Based Instruction domain, Toliver rated Respondent as "needed" for reviewing content and helping students examine their reasoning. He rated her as "emergent" for identifying critical content based on the standards, and using questions to help students elaborate on content. Specific observations included Respondent's failure to review content during the lesson to help the students understand the content being taught, ineffective use of questioning to help students understand or elaborate on the content being taught, failure to identify critical content using a progression of Standards-Based learning targets, and failure to assist students with their logic and reasoning in the lesson being taught.

179. With respect to the Conditions for Learning domain, Toliver rated Respondent as "emergent" for using engagement strategies and establishing and acknowledging adherence to rules and procedures. Specific observations included lack of engagement by the students, lack of clear direction by Respondent to help students complete the activity, and failure to establish classroom rules and procedures in order to facilitate students' cooperative work on the lesson.

180. On January 13, 2022, Toliver met with Respondent to review her progress on her 2021-22 PDP. At that time, her instructional practice score was a 2.036, a "needs improvement" rating. Toliver reviewed the PDP with

Respondent, Williams, Pelusso, and others in attendance, including the BTU field representative. No changes were made to the PDP.

181. At that time, Respondent was informed that if she finished the PDP with a "less than effective"—i.e., an "unsatisfactory" or "needs improvement"—instructional practice rating, the administration may recommend to the Superintendent that she be terminated from her employment. She also would be given the option to resign instead of being terminated.

182. On January 19, 2022, McWhorter conducted a formal observation of Respondent and once again found her deficient in the three domains that were the subject of her 2021-22 PDP.

183. With respect to the Standards-Based Planning domain, McWhorter rated Respondent as "emergent" for planning to close the achievement gap. McWhorter noted that during the lesson she observed, Respondent failed to use data to identify and plan to meet the needs of each student.

184. With respect to the Standards-Based Instruction domain, McWhorter rated Respondent as "emergent" for using questions to help students elaborate on content, reviewing content, and helping students examine their reasoning. Specific observations included Respondent's failure to use increasingly complex questioning to help students examine their reasoning; failure to highlight the cumulative nature of the content being reviewed; and failure to afford the students the opportunity to elaborate on, and demonstrate their understanding of, the content being taught.

185. With respect to the Conditions for Learning domain, McWhorter rated Respondent as "needed" for organizing students to interact with content and using engagement strategies. She rated Respondent as "emergent" for using formative assessments to track progress, establishing and acknowledging adherence to rules and procedures, and communicating high expectations for each student to close the achievement gap. Specific observations included the ineffective use of formative assessments to

facilitate tracking student progress; failure to relate content learned to one or more learning targets; failure to use conversation, help, activity, movement, and participation (so-called "CHAMPS") strategies to engage students in the lesson; failure to redirect students who were off-task; and failure to exhibit high expectations for all students to achieve academic success.

186. As previously noted, Rowe was the math department head at Crystal Lake in the 2021-22 school year. She served as Respondent's instructional coach for that year. Rowe testified, credibly, that Respondent had significant difficulty in managing her classroom, and that her students frequently left the classroom and entered other classrooms, including hers, while they were supposed to be in Respondent's classroom. She also testified, credibly, that she suggested a range of teaching strategies to Respondent, but that Respondent did not implement them.

187. Colson served as Respondent's peer reviewer for the 2021-22 school year. Colson testified, credibly, that Respondent often failed to attend performance assistance meetings that they had scheduled, and that when she (Colson) suggested teaching strategies to Respondent, her response was that she already was implementing those strategies.

C. Termination of Respondent's Employment

188. On February 2, 2022, Toliver met with Respondent and others, including the BTU field representative, to conclude Respondent's 2021-22 PDP.

189. At that time, Respondent was informed that she had earned an instructional practice score of 2.056, which was a "needs improvement" rating. Toliver informed Respondent that he was recommending to the Superintendent that she be terminated from her employment as a teacher.

190. At the final hearing, Toliver testified that he decided to terminate Respondent because she was not meeting the needs of her students and had not done so since the 2016-17 school year. She had been given extensive assistance, but her teaching skills and performance did not improve.

191. Williams, who was her direct supervisor for four years, testified that Respondent was not a successful teacher because she had poor classroom management skills, which deprived her students of the opportunity to learn in her class.

192. On February 14, 2022, the Superintendent was notified regarding Toliver's recommendation that Respondent be terminated from her employment as a teacher.

193. The Superintendent concurred in this recommendation and notified Respondent, by letter dated February 26, 2022, that she would recommend to the School Board that Respondent's employment as a teacher with the District be terminated.

194. The School Board took action on March 15, 2022, to terminate Respondent's employment as a teacher with the District.

D. Respondent's Defense

195. Respondent testified that she was always open to assistance and receptive to new ideas and strategies, and that she did employ the instructional strategies that were suggested by her instructional coaches and peer reviewers.

196. She contended that the data marks she received in the observations conducted in the 2016-17 through 2021-22 school years did not accurately reflect her instructional practice proficiency.

197. She also contended that, notwithstanding her efforts to improve her instructional performance, the administrators in charge of evaluating her had preconceived notions about her ability to teach and improve, so that the outcome of her 90-day probation and final instructional practice score for her 2021-22 PDP had already been determined.

198. The competent, substantial, and persuasive evidence does not support Respondent's contentions that her evaluation scores were not accurate, or that the Crystal Lake administrators did not fairly evaluate her instructional practice because they wanted to terminate her.

199. To the contrary, the instructional practice data marks and corresponding written observations regarding Respondent's instructional practice, earned over the nearly six-year period of evaluations at issue in this proceeding, were made by different administrators, and were remarkably consistent from school year to school year.

200. Additionally, had Crystal Lake administrators already determined that they wanted to terminate her employment, they could have placed her on 90-day probation and a PDP at or near the beginning of the 2020-21 school year, immediately after she had earned three consecutive years of "needs improvement" ratings for the 2016-17, 2017-18, and 2018-19 school years. However, they did not do so, and, instead, gave her an additional few months—with additional observations—before determining that her instructional practice was not improving, despite ongoing assistance from instructional coaches, peer reviewers, and the administrators themselves.

201. Further, in the 2021-22 school year, Toliver could simply have resumed Respondent's PDP from the 2019-20 school year, which would have given her only 58 remaining days in which to improve her instructional practice performance. However, to give Respondent additional opportunity to improve, Toliver restarted the 90-day probationary period and prepared a new PDP for her—which, as discussed above, effectively gave her a new set of observations, with corresponding data marks, toward her instructional practice score, and an additional 32 days in which to improve her instructional practice skills.

202. For these reasons, Respondent's contentions are not persuasive.

IV. Findings of Ultimate Fact

203. Whether an offense constitutes a violation of applicable statutes, rules, and policies is a question of ultimate fact to be determined by the trier of fact in the context of each violation. *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995)(whether particular conduct violates a statute, rule, or policy is a factual question); *Langston v. Jamerson*, 653 So. 2d 489, 491

(Fla. 1st DCA 1995)(whether the conduct, as found, constitutes a violation of statutes, rules, or policies is a question of ultimate fact); *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985)(whether there was a deviation from a standard of conduct is not a conclusion of law, but is instead an ultimate fact).

204. Here, the competent, substantial, and persuasive evidence establishes that, pursuant to the District's instructional employee evaluation system—which was developed and adopted pursuant to section 1012.34 and Florida Administrative Code Rule 6A-5.030—Respondent earned three consecutive annual performance evaluation ratings of "needs improvement." As specifically found above, Respondent earned annual performance evaluation ratings of "needs improvement" in the 2016-17, 2017-18, and 2018-19 school years; an "unsatisfactory" instructional performance rating in the 2019-20 school year; a "needs improvement" rating for the 2020-21 school year; and a "needs improvement" instructional practice rating for the 2021-22 school year. These ratings constitute a basis, under section 1012.33(1)(a), to terminate Respondent's employment.

205. Additionally, the competent substantial evidence establishes that Respondent engaged in conduct that violated rule 6A-5.056, which defines and describes conduct that constitutes just cause for termination of employment.

206. Specifically, Respondent engaged in conduct that constitutes misconduct in office, pursuant to rule 6A-5.056(2).

207. Respondent violated the Principals of Professional Conduct for the Education Profession in Florida, codified at Florida Administrative Code rule 6A-10.081, by failing to adequately and effectively manage her classroom. As such, she failed to make a reasonable effort to protect her students from conditions harmful to their physical and mental health and/or safety, in violation of rules 6A-10.081(2)(a)1. and 6A-5.056(2)(b).

208. Additionally, in making a derogatory personal remark to a female student who had asked for permission to go to the restroom, she exposed that student to unnecessary embarrassment, in violation of rules 6A-10.081(2)(a)5. and 6A-5.056(2)(b).

209. By failing to adequately manage her classroom and her students' behavior, Respondent engaged in conduct that resulted in classroom conditions that disrupted her students' learning environment, in violation of rule 6A-5.056(2)(d).

210. By failing to adequately plan and effectively present instruction to her students, Respondent engaged in behavior that reduced her ability to effectively perform her teaching duties, in violation of rule 6A-5.056(2)(e).

211. Additionally, due to Respondent's failure to adequately manage her classroom, her students frequently were noisy and disruptive to other classes. As such, Respondent's conduct reduced the ability of her colleagues to effectively perform their teaching duties, in violation of rule 6A-5.056(2)(e).

212. Respondent also failed to effectively discharge her teaching duties, in violation of rule 6A-5.056(3). Additionally, she often failed to appropriately communicate with her students' parents, in violation of rule 6A-5.056(3)(a)1. and 3.

213. Additionally, due to her inadequate classroom management skills, her classroom was disorganized to such an extent that the welfare of her students was diminished, in violation of rule 6A-5.056(3)(a)4.

214. Respondent also was frequently, and excessively, absent from, or tardy to, school, in violation of rule 6A-5.056(3)(a)5.

215. Respondent's conduct in failing to adequately and timely plan, and prepare lesson plans, for effective delivery of instruction to her students constituted an intentional failure to carry out her required duties, in violation of rule 6A-5.056(5).

216. As a result of having violated rules 6A-5.056 and 6A-10.081, Respondent also violated School Board Policy 4008, which requires

instructional personnel to comply with the Principles of Professional Conduct of the Education Profession in Florida and conform to all rules prescribed by the State Board of Education.

CONCLUSIONS OF LAW

I. Jurisdiction, Burden of Proof, and Standard of Proof

217. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding, pursuant to sections 120.569 and 120.57(1).

218. Because Petitioner seeks to take penal action against Respondent by terminating her employment, it bears the ultimate burden of proof to establish that Respondent committed the conduct alleged in the Administrative Complaint; that the alleged conduct violates the statutes, rules, and policies cited in the Administrative Complaint; and that the violation of these statutes, rules, and policies constitutes just cause to suspend Respondent and terminate her employment with the District. *Dileo v. Sch. Bd. of Dade Cnty.*, 569 So. 2d 883 (Fla. 3d DCA 1990). *See Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977)(unless provided otherwise by statute, the burden of proof is on the party asserting the affirmative of the issue).

219. The standard of proof applicable to this proceeding is the preponderance, or greater weight, of the evidence. *McNeill v. Pinellas Cnty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Dileo*, 569 So. 2d at 884.

II. Applicable Statutes, Rules, and School Board Policies

220. Section 1012.33 states, in pertinent part:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for

dismissal during the term of the contract only for just cause. 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.

* * *

(3) A professional service contract shall be renewed each year unless:

(a) The district school superintendent, after receiving the recommendations required by s. 1012.34, charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 1012.34; or

(b) The employee receives 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, or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34.

221. Section 1012.34⁶ requires school districts to establish instructional personnel evaluation systems, and identifies the specific matters, including

⁶ In the time period from 2016 to 2021, section 1012.34 was amended once, in 2017; however, that amendment did not affect the provisions of that statute pertinent to this proceeding. Accordingly, the 2021 version of the statute is cited as the applicable version in this case.

procedures and performance evaluation criteria, which must be addressed by those evaluation systems.

222. Section 1012.34(4) sets forth the procedure regarding placing an instructional employee on a 90-day performance probation and providing assistance to the employee to help them correct their performance deficiencies within the probationary period. That statute also sets forth the process for terminating an employee who fails to correct performance deficiencies within the probationary period.

223. Section 1012.53 states:

(1) 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. This duty applies to instructional personnel whether they teach or function in a support role.

(2) Members of the instructional staff of the public schools shall perform duties prescribed by rules of the district school board. The rules shall include, but are not limited to, rules relating to a teacher's duty to help students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully, using prescribed materials and methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released from the contract by the district school board.

224. Pursuant to section 1012.34(8), the State Board of Education has adopted rules, codified at rule 6A-5.030, to implement the instructional personnel evaluation system requirements identified in section 1012.34. Among other things, this rule chapter establishes the specific evaluation system requirements, criteria, and procedures. Pursuant to section 1012.34 and rule 6A-5.030, the District adopted an instructional personnel evaluation system, and it was applied to evaluate Respondent's teaching performance.

225. Additionally, the State Board of Education has adopted rule 6A-5.056, defining conduct that affords just cause for dismissal from employment. The rule states, in pertinent part:

"Just cause" means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:

* * *

(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.;⁷

(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.

(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;

⁷ In 2016, this rule was repealed, and its provisions were transferred to rule 6A-10.081.

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.

* * *

(5) "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

226. Rule 6A-10.081, the Principles of Professional Conduct for the Education Profession in Florida, states, in pertinent part:

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

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

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

227. School Board Policy 4008, in pertinent part, states the following:

B. DUTIES OF INSTRUCTIONAL PERSONNEL

The 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.

* * *

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

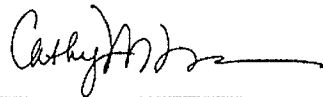
III. Conclusions Regarding Just Cause

228. Based on the foregoing Findings of Fact, including the Findings of Ultimate Fact, and pursuant to the applicable statutes and rules set forth above, it is concluded that just cause exists, pursuant to section 1012.33(1) and (3) and rule 6A-5.065(2), (3), and (5) to terminate Respondent's employment as a teacher with the District.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Broward County School Board enter a final order terminating Respondent's employment as a teacher.

DONE AND ENTERED this 7th day of November, 2023, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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Filed with the Clerk of the
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this 7th day of November, 2023.

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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.