STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-2038
	)	
ARTHUR WILLIAMS,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on September 21, 2006, by video-teleconference with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ana I. Segura, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

Carol R. Buxton, Esquire
Florida Education Association
140 South University Drive, Suite A
Plantation, Florida 33324

STATEMENT OF THE ISSUE

Whether the Respondent, Arthur Williams, committed the violations alleged in the Amended Notice of Specific Charges and,

if so, whether such violations are just cause for his suspension without pay for thirty days.

PRELIMINARY STATEMENT

This case began on May 31, 2006, when the Petitioner, School Board of Miami-Dade County, Florida (Petitioner or School Board), issued a letter to the Respondent, Arthur Williams (Respondent), to announce its intention to take action to suspend the Respondent without pay for thirty work days. The proposed action alleged there was "just cause" for the disciplinary action based upon the Respondent's deficient job performance, conduct unbecoming a school board employee, and violations of cited School Board rules. The Respondent timely contested the allegations and sought an administrative proceeding in connection with the allegations. The School Board referred the case to the Division of Administrative Hearings for formal proceedings on June 12, 2006. At its meeting of June 14, 2006, the Petitioner accepted the recommendation of the school superintendent and approved the Respondent's suspension. The Respondent served the suspension, without pay, prior to the hearing in this cause.

In order to fully outline the allegations against the Respondent, on June 14, 2006, the undersigned issued an order directing the School Board to file a Notice of Specific Charges no later than June 27, 2006. The School Board's notice alleged that the Respondent had inappropriately touched a student resulting in an injury. Substantially, the School Board claimed

that the Respondent had placed his hands on a student, spun him around, and shoved him toward his seat. The student allegedly sustained an injury to his ankle as a result of the foregoing activity. The Petitioner argued that the conduct was a violation of School Board rules and constituted misconduct. Afterwards, the School Board amended its claims to include a charge that the conduct also constituted a violation of the Petitioner's rule on corporal punishment.

The hearing was scheduled for September 21, 2006. Prior to the hearing, the Respondent moved to strike the testimony of student witnesses in this cause and maintained that their identities had not been promptly disclosed to the Respondent. The motion to strike was denied. All of the students who testified in this cause were enrolled in the Respondent's sixth period class at the time of the incident, were identified by initials to the Respondent, and were disclosed to the Respondent after notice of this proceeding was provided to their parents. Additionally, the Respondent's claim that the amendment to the notice of charges to include a violation of the Petitioner's rule on corporal punishment violated the Respondent's due process interests has also been rejected.

At the hearing, the Petitioner presented testimony from C. M. (the alleged victim); two other students; C. M.'s mother; DanySu Pritchett, the School Board's regional administrative director; Derrick Gordon, a detective employed with the School

Board's police unit; Gretchen Williams, an employee in the School Board's Office of Professional Standards; and the Respondent. The testimony of Cheryl Nelson, the school principal, was late-filed after the hearing. The Petitioner's Exhibits 1-3, and 5-21 were admitted into evidence. The transcript of the proceeding was filed on January 24, 2007. An unopposed motion to extend the time to submit proposed recommended orders was filed on February 2, 2007. By order entered February 5, 2007, the parties were granted leave until February 20, 2007, to file their proposed orders. Both parties timely filed Proposed Recommended Orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is a duly constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Miami-Dade County Public School District. As such, it has the authority to regulate all personnel matters for the school district.

2. At all times material to the allegations of this case, the Respondent, Arthur Williams, was an employee of School Board and was subject to the disciplinary rules and regulations pertinent to employees of the school district.

3. At all times material to this case, the Respondent was employed pursuant to a professional service contract and was assigned to teach beginning band at Norland Middle School.

4. The sole incident complained of in this case occurred on or about January 24, 2006, in the Respondent's sixth period band class.

5. The Respondent's band class was located in a large classroom with three riser sections formed into a semi-circle. Students assigned seats in the higher section would step up the risers using the railed "hallways" leading to the upper sections.

6. On or about January 24, 2006, C. M. was a student in the Respondent's sixth period class. C. M. had an assigned seat in an upper riser section. For reasons known only to C. M., the student left his seat and walked down the riser hallway to pick up a piece of paper and throw it into a trash can located on or near the floor. Presumably, the trash can was at the lowest section (compared to the student's seat).

7. When the Respondent observed the student, C. M., out of his seat, he approached the student, put his hands on the student's shoulders, turned him around (to then face his seat), and told him to return to his seat. In connection with the verbal direction to return to his seat, the Respondent gave the student a slight shove to direct him in the proper direction.

8. The student, C. M., was out of his seat without permission, was unprepared for class, and was not responsible for throwing trash away (presumably an act he felt justified his behavior). The slight shove was so imperceptible that it did not offend any student who observed the action.

9. C. M. did not show any sign of injury at the time of the incident described above. None of the students alleged that the Respondent had acted in anger in redirecting the student to his seat. None of the students perceived the act of redirecting the student as an act of corporal punishment or physical aggression against the student.

10. Some six days after the incident complained of, the mother of the alleged victim took the student to the hospital. The mother claimed the student was diagnosed with a sprained ankle. There is no evidence to support a finding that the Respondent caused the alleged victim's alleged sprained ankle.

11. None of the other student witnesses verified that C. M. was injured or seen limping on or about the date of the incident.

12. The Respondent continued teaching at the school through the conclusion of the 2005-2006 school year. The Respondent did not endanger the student, C. M., at any time.

13. After the incident complained of herein, the student's mother decided to move the student from the Respondent's class.

14. When the Respondent went to a conference with the office of professional standards there was no allegation that the Respondent had failed to comply with the corporal punishment guidelines. The act of redirecting the student to his seat was not an attempt at corporal punishment.

15. The Respondent did not make physical contact with the student, C. M., to maintain discipline. It is undisputed that

the Respondent was merely attempting to get the student to return to his seat.

16. The Respondent's conduct did not disparage the student.

17. The Respondent's conduct did not embarrass the student.

18. The Respondent did not push C. M. down.

19. On or near the date of the incident, the Respondent called C. M.'s parent to address the student's poor class performance. The incident complained of herein was not addressed during the call. In fact, prior to the call, C. M. had not complained regarding the incident described above. When faced with an allegation of poor class performance, C. M. told his parent about the incident described above and claimed he had been injured in the process. The alleged injury prompted the removal of the student from the Respondent's class.

20. Thereafter, the parent contacted the Petitioner's region office to file a complaint against the Respondent. That complaint resulted in the instant action. Ms. Pritchett maintained that the Respondent's effectiveness as a teacher has been adversely impaired as a result of the parent's complaint regarding the incident.

21. The record lacks any information regarding the Respondent's past school performance. No prior disciplinary issues or actions were noted.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has

jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2006).

23. The Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that the Respondent committed the violations alleged. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

24. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942). As reviewed in this matter, the Petitioner has failed to establish by a preponderance of the evidence that the Respondent violated the rules and policies of the School Board to support "just cause" for an unpaid thirty day suspension.

25. Section 1012.33, Florida Statutes (2006), provides, in pertinent part:

> . . . 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: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

26. In this case "misconduct in office" and a violation of the corporal punishment guidelines are the underlying claims against this Respondent.

27. Florida Administrative Code Rule 6B-4.009 defines misconduct in office as:

> . . . a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

28. Section 1003.01(7), Florida Statutes (2006), provides:

> (7) "Corporal punishment" means the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule. However, the term "corporal punishment" does not include the use of such reasonable force by a teacher or principal as may be necessary for self-protection or to protect other students from disruptive students.

29. In this case, the Respondent undoubtedly "touched" the student, C. M. Common sense, however, must prevail. The redirection of the student was not for disciplinary purposes, did not subject the student to the ridicule of his peers, or result in impairing the Respondent's effectiveness as a teacher. It was a single act of redirecting a student who was out of his seat. No more, no less. None of the eyewitnesses to the incident were offended by the Respondent's conduct. The weight of the credible evidence does not support a conclusion that the Respondent injured the student. Many times the benefit of hindsight affords a better method to return a student to his seat. In this case, a verbal direction to the student might have succeeded.

30. The alleged victim did not complain about the incident until the Respondent contacted his mother regarding the student's poor class performance. From that time forward accounts of the incident escalated.

31. All of the students who testified were in the Respondent's sixth period class and had adequate opportunity to see the incident. The three students gave consistent, clear testimony. The Respondent was merely redirecting the student back to his seat. This does not constitute "misconduct in office" or a violation of the corporal punishment guidelines. Teachers must be afforded an opportunity to conduct class within reasonable parameters. Middle school students are not allowed to leave their seats for any reason, even to throw trash away.

32. The allegations of this case spread because the parent filed a complaint due to her son's alleged injury. There is no evidence that the students who actually saw the incident spread accounts of it at the time it occurred. How likely is it that a forceful shove or harsh handling of a student would have gone without comment from students in the class? There is no evidence that the Respondent's conduct was fodder for the students' school grapevine. More important, there is no evidence that other students sought to be removed from the Respondent's class or that the principal felt the conduct so heinous as to require the removal of the teacher.

33. In this state educators are held to a high standard of

ethical behavior. It is concluded that the Respondent's behavior did not violate that standard. The Respondent did not attempt to inflict bodily pain or discomfort on the student. The Respondent's contact with the student was insignificant, his intent was merely to redirect the student to his seat.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a Final Order concluding the Respondent's behavior does not warrant a 30-day suspension.

DONE AND ENTERED this 2nd day of April, 2007, in Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of April, 2007.

COPIES FURNISHED:

Dr. Rudolph F. Crew
Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, No. 912
Miami, Florida 33132-1394

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Ana I. Segura, Esquire
School Board of Miami-Dade County
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

Carol Buxton, Esquire
Florida Education Association
140 South University Drive, Suite A
Plantation, Florida 33324

Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

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.