

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 vs.) Case No. 08-4126
)
 RENEE Y. MEYERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 9, 2008, by video teleconference, with the parties appearing in Miami, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Janeen L. Richard, Esquire
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For Respondent: Mark Herdman, Esquire
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STATEMENT OF THE ISSUE

Whether the Petitioner committed the violations alleged in the Notice of Specific Charges filed September 2, 2008, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In a letter dated August 5, 2008, the Miami-Dade County School Board ("School Board") notified Renee Y. Meyers that the School Board, at its August 4, 2008, meeting, had suspended her without pay for a period of 15 days. No reason for the suspension was included in the letter. Ms. Meyers timely requested an administrative hearing, and the School Board transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on December 9, 2008.

No reason was given for Ms. Meyers' suspension in the August 5, 2008, letter, but the School Board filed a Notice of Specific Charges with the Division of Administrative Hearings on September 2, 2008, in which it charged Ms. Meyers with misconduct in office and a violation of School Board Rules 6Gx13-4A-1.21, Responsibilities and Duties, and 6Gx13-4A-1.213, Code of Ethics. The School Board alleged as the factual basis for the charges that Ms. Meyers had "punched a student on her upper left arm."

At the final hearing, the School Board presented the testimony of S.J., Corey Brown, Valmarie Rhoden, and Joyce Castro; Petitioner's Exhibits 1 through 16 were offered and received into evidence. Ms. Meyers testified in her own behalf and presented the testimony of Gertha Whitehead, Valerie Johnson, and Harry Wayne Hoffman; Respondent's Exhibit 1 was offered and received into evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings on January 5, 2009, and the parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Miami-Dade County, Florida. Article IX, Florida Constitution; § 1001.32, Fla. Stat. (2008).¹ Specifically, the School Board has the authority to discipline employees. § 1012.22(1)(f), Fla. Stat.
2. Ms. Meyers has been a teacher and guidance counselor with the School Board for 18 years. At the times pertinent to

this proceeding, she was a guidance counselor at the William H. Turner Technical Arts High School. Ms. Meyers has had no prior disciplinary action taken against her.

3. At the times material to this proceeding, Ms. Meyers was a member of the United Teachers of Dade, which had entered into a Contract with the School Board, effective July 1, 2006, through June 30, 2009. Pertinent to this proceeding, Article V, Section 1 of the Contract provides that the School Board can terminate, suspend, or dismiss employees only for just cause. Article XXI, Section 1.a. of the Contract provides that the School Board can suspend or dismiss instructional employees during the school year if the charges against him or her are based on Florida Statutes. Article XXI, Section 2 of the Contract provides that suspensions are to be effectuated in accordance with the Florida Statutes, including Chapter 120, Florida Statutes. Finally, Article XXI, Section 1.A.1. provides: "The Board and Union recognize the principles of progressive discipline. The parties agree that disciplinary action may be consistent with the concept of progressive discipline when the Board deems it appropriate, and that the degree of discipline shall be reasonably related to the seriousness of the offense."

4. On the morning of February 29, 2008, S.J., the student body president at the time, was making announcements over the

school's audio system. S.J. routinely made the morning announcements in her role as student body president.

5. As S.J. was finishing the announcements, Ms. Meyers hurried into the room and gave S.J. a piece of paper which contained a hand-written announcement. Ms. Meyers had not followed the usual procedure for submitting announcements. Usually, an announcement was submitted a day or two in advance so it could be approved and so S.J. would have an opportunity to read over the announcement before taking the microphone.

6. Nonetheless, S.J. began reading the announcement, which appeared to be hastily written.² S.J. got stuck on the second word of the announcement because she could not read Ms. Meyers' handwriting. The word was "friendly," and Ms. Meyers "mouthed" the word several times.³ S.J. could not comprehend what Ms. Meyers was trying to convey to her, and she turned back to the microphone and said something to the effect of "Now, here is Ms. Meyers with an announcement."

7. As S.J. passed Ms. Meyers the microphone, Ms. Meyers became flustered and insisted that S.J. read the announcement, saying something to the effect of "No, no, wait, wait. You read the announcement." When S.J. continued to refuse to read the announcement, Ms. Meyers, who was standing close to S.J., punched her on the upper left arm. Ms. Meyers immediately apologized.

8. S.J. said Ms. Meyers's name into the microphone and gave Ms. Meyers the microphone. S.J. moved away, clutching her arm.

9. While Ms. Meyers read the announcement, S.J. began crying and told Mr. Brown that Ms. Meyers had hit her on the arm.⁴ S.J. was wearing her school uniform, which included a polo shirt. Because it was a cool day, S.J. wore a long-sleeved blouse under the polo shirt. Even so, Corey Brown, the school's activities advisor, who was about two feet away from S.J., heard the blow.⁵

10. When she finished reading her announcement, Ms. Meyers again apologized to S.J. When S.J. did not stop crying, Ms. Meyers asked S.J. if she wanted Ms. Meyers to write a letter of apology.

11. Mr. Brown took S.J. to the principal's office, and, at her request, they both wrote statements regarding the incident. After reviewing the statements, the principal called the school police, and an investigation was conducted.

12. In a letter dated July 24, 2008, Ms. Meyers was notified that a recommendation would be made to the School Board that she be suspended without pay for a period of 15 school workdays. The School Board accepted this recommendation and suspended Ms. Meyers without pay from August 4, 2008, through September 3, 2008.

13. The evidence presented by the School Board is sufficient to establish that Ms. Meyers failed to exercise the best professional judgment; that her actions posed a potential risk to the student's physical and mental health and safety; that Ms. Meyers exposed S.J. to embarrassment; and that her conduct was unseemly. Furthermore, Ms. Meyers' conduct in punching a student in the arm is sufficiently serious to support a reasonable inference that Ms. Meyers' effectiveness in the school system was impaired.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

15. Because this case is a proceeding to discipline Ms. Meyers and does not involve the loss of a license or certification, the School Board has the burden of proving the allegations in the Notice of Specific Charges by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

16. The School Board charged Ms. Meyers in Count I of the Notice of Specific Charges with violation of School Board

Rules 6Gx13-4A-1.21; in Count II with a violation of 6Gx13-4A-1.213; and in Count III with misconduct in office.

17. Section 1012.33, Florida Statutes, sets out the grounds on which instructional personnel on professional service contracts may be disciplined and provides 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: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

* * *

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4) [employees under continuing contracts], may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a). The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid. If the employee wishes to contest the charges, the employee must, within 15 days after receipt of the

written notice, submit a written request for a hearing.

18. The definitions of the categories of "just cause" identified in Section 1012.33(1)(a), Florida Statutes, are defined in Florida Administrative Code Rule 6B-4.009 and provide "[t]he basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes [now codified in Section 1012.33, Florida Statutes]." Before addressing the violations alleged against Ms. Meyers, however, it is necessary to conform the charges set out in the Notice of Specific Charges to the categories of "just cause" identified in Section 1012.33(1)(a), Florida Statutes.

19. Violations of School Board rules do not, of themselves, constitute just cause to discipline an employee pursuant to Section 1012.33(1)(a) and (6)(a), Florida Statutes. Section 1012.53(2), Florida Statutes, provides in pertinent part: "Members of the instructional staff of the public schools shall perform all duties prescribed by rules of the district school board. . . ." There is nothing in the Florida Statutes that indicates that School Board employees are subject to discipline for failing to adhere to this statutory directive unless the violation of School Board rules falls within one of the categories of "just cause" set forth in

Section 1012.33(1)(a) and (6)(a), Florida Statutes. In this case, the School Board rules that Ms. Meyers allegedly violated fall within the definition of "misconduct in office" found in Florida Administrative Code Rule 6B-4.009(3), and the charges against her will be treated as a charge of misconduct in office.

20. "Misconduct in office is defined 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." Fla. Admin. Code R. 6B-4.009(3).

21. Florida Administrative Code Rule 6B-1.001, the Code of Ethics of the Education Profession in Florida, provides in pertinent part:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

22. Florida Administrative Code Rule 6B-1.006, the Principles of Professional Conduct for the Education Profession in Florida, provides in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) 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.

* * *

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

(a) 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.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

23. School Board Rule 6Gx13-4A-1.21, which defines the responsibilities and duties of permanent School Board personnel, provides in pertinent part:

I. Employee Conduct

All persons employed by The School Board of Miami-Dade County, Florida are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves both in their employment and in the community in a manner that will reflect credit upon themselves and the school system.

24. School Board Rule 6Gx13-4A-1.213, which is the School Board's Code of Ethics, incorporates by reference and makes applicable to all of the School Board's employees the Code of Ethics of the Education Profession in Florida. Specifically, School Board Rule 6Gx13-4A-6Gx13-4A-1.213V. provides in pertinent part:

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.

* * *

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

25. Based on the findings of fact herein, the School Board has proven by a preponderance of the evidence that Ms. Meyers violated Florida Administrative Code Rule 6B-1.001(1) and (3) and Florida Administrative Code Rule 6B-1.006(3)(a) and (e); School Board Rule 6Gx13-4A-6Gx13-4A-1.21; and School Board Rule 6Gx13-4A-6Gx13-4A-1.213V.1. and 6.

26. Although the School Board has met its burden of proving that Ms. Meyers violated Florida Administrative Code Rules 6B-1.001(1) and (3) and 6B-1.006(3)(a) and (e), there are two elements to the charge of misconduct in office: In addition to the rule violations, it is necessary to establish that Ms. Meyers' conduct was "so serious as to impair [her] effectiveness in the school system" in order to find her guilty of misconduct in office. Fla. Admin. Code R. 4.009(3).

27. In order to establish that Ms. Meyers' effectiveness in the school system was impaired, the School Board must either prove by a preponderance of the evidence that her effectiveness was impaired, or the conduct must be so serious that it would be appropriate to infer from the conduct itself that her effectiveness was impaired. See Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000)(some conduct is so serious that, even without evidence of impaired effectiveness, it can appropriately be inferred that teacher's effectiveness in school system has been impaired).

28. The School Board did not offer any evidence to establish that Ms. Meyers' effectiveness in the school system was impaired. Ms. Meyers' conduct in striking a student is conduct so serious it is reasonable to infer that Ms. Meyers' effectiveness in the school system was impaired. The School Board has, therefore, proven by a preponderance of the evidence


that Ms. Meyers committed misconduct in office and has, consequently, established just cause to discipline Ms. Meyers.

29. Because Ms. Meyers has no prior disciplinary history, the penalty of 15 workdays' suspension without pay is appropriate under the principle of progressive discipline.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Miami-Dade County School Board enter a Final Order finding that Ms. Meyers committed misconduct in office and suspending Ms. Meyers without pay for a period of 15 workdays.

DONE AND ENTERED this 5th day of March, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2009.

ENDNOTES

- ^{1/} References herein to the Florida Statutes shall be to the 2008 edition unless otherwise indicated.
- ^{2/} See Petitioner's Exhibit 2.
- ^{3/} She did not say the word because she did not want to be heard over the microphone that S.J. was holding.
- ^{4/} The testimony presented by Ms. Meyers regarding an incident during the previous school year when S.J. seemed to react disproportionately to the remarks of another teacher is not sufficient to diminish her credibility regarding Ms. Meyers' action in hitting her arm.
- ^{5/} Ms. Meyers testified that she was gesturing with her arms and that her finger "brushed" against S.J.'s arm. See Transcript at page 49. Valerie Johnson, a secretary at the school, was sitting at her desk a few feet away from Ms. Meyers and S.J. Ms. Johnson testified that Ms. Meyers was tapping S.J. on the shoulder but was not gesturing with her arms. See Transcript at pages 62-63. Having considered the testimony of Ms. Meyers and Ms. Johnson and the testimony of S.J. and of Mr. Brown, it is determined that the testimony of S.J. and Mr. Brown is the more credible and persuasive. Mr. Brown was closer to S.J. and Ms. Meyers during the exchange, and S.J. had no discernible motive for falsely accusing Ms. Meyers of hitting her.

COPIES FURNISHED:

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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.