STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 12-2755TTS
	)	
ELLEN WOODCOCK,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on October 10, 2012, in Ft. Pierce, Florida, and on November 9, 2012, by video teleconference at sites in Tallahassee and Port St. Lucie, Florida, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES[1/]

For Petitioner: Elizabeth Coke, Esquire
Leslie Jennings Beuttell, Esquire
Richeson and Coke, P.A.
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Fort Pierce, Florida 34948

For Respondent: Jeffrey S. Sirmons, Esquire
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether just cause exists to terminate Respondent's employment with the St. Lucie County School Board.

PRELIMINARY STATEMENT

On or about July 18, 2012, Petitioner St. Lucie County School Board ("Petitioner" or "School Board") provided written notification to Respondent that it intended to initiate proceedings to terminate her employment. Thereafter, on August 15, 2012, Petitioner executed a "Statement of Charges and Petition for Termination" ("Petition"), which alleged that on March 14, 2012, Respondent struck one of her pre-kindergarten students on the back of the head, and that she was therefore in violation of multiple rules of the St. Lucie County School Board.

Respondent timely requested a formal administrative hearing to contest Petitioner's action, and, on August 16, 2012, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings.

As noted above, the final hearing was held on October 10 and November 9, 2012, during which Petitioner called the following witnesses: Ucola Barrett-Baxter[2/]; Susan Ranew; and Tammy DePace. Petitioner's Exhibits 2 through 5 and 7 through 19 were admitted into evidence.[3/] Respondent testified on her

own behalf and called two witnesses, Shameria Baker and Fred Bradley. Respondent introduced five exhibits into evidence, numbered 1-3, 7, and 9.

The final hearing transcript, which consists of two volumes, was filed with DOAH on November 21, 2012, and December 3, 2012. Pursuant to the parties' joint request, the deadline for the submission of proposed recommended orders was extended to January 15, 2013. Both parties thereafter submitted proposed recommended orders, which have been considered in the preparation of this Recommended Order.

Unless otherwise noted, citations to the Florida Statutes refer to the 2012 version.

FINDINGS OF FACT

A. The Parties

1. Petitioner is the authorized entity charged with the responsibility to operate, control, and supervise the public schools within St. Lucie County, Florida.

2. At all times material to this proceeding, Respondent was employed by Petitioner as a teacher at Parkway Elementary School in the St. Lucie County School District.

3. During the 2011-2012 school year, Respondent was assigned to a class of 14 pre-kindergarten children, all of whom received exceptional student education ("ESE") services.

B. Incident of March 14, 2012

4. As noted previously, this case arises from an interaction between Respondent and one of her students, G.M., during the morning of March 14, 2012.

5. At approximately 9:30 a.m. on that date, Respondent and her paraprofessional, Shameria Baker, assembled the students outside their classroom in preparation for recess. Prior to departing for the school playground, Respondent selected one of the students to act as the "line leader," and chose a second student, G.M., to pull a small cart that held playground toys.

6. Once the students were suitably lined up, Respondent and Ms. Baker began to escort the children towards the playground area, with Ms. Baker situated near the front of the line and Respondent toward the back, in close proximity to G.M.

7. While en route to the school playground, the students, Respondent, and Ms. Baker proceeded down a path that immediately adjoined a volleyball area (on the left) and a basketball court (on the right). For reasons known only to him, G.M. veered from the walkway and headed——with the cart in tow——towards the volleyball net.[4/]

8. Respondent, who was attending to another child at that time, attempted, unsuccessfully, to stop G.M. with verbal redirection. Undeterred, G.M. continued onward and entangled

the cart in the volleyball net, which had been set at a low height.

9. At that point, Respondent walked over to G.M. (who was crying), removed the cart from the net, and handed off the cart to another child. Seconds later, and in an effort to motion G.M. towards the walkway, Respondent placed her hand——in a benign and wholly appropriate fashion——on G.M.'s upper back area.[5/] At no point did Respondent hit or strike G.M.

10. Unbeknownst to Respondent, her interaction with G.M. had been witnessed from an indeterminate[6/] distance by the school principal, Ucola Barrett-Baxter. (Ms. Barrett-Baxter's vantage point was from behind the line of students, who were walking in the opposite direction.) Believing, erroneously, that she had observed Respondent hit G.M. on the head, Ms. Barrett-Baxter proceeded to the administration building and instructed the school clerk to find Respondent in the playground area and send her to the office.

11. As she awaited Respondent's arrival, Ms. Barrett-Baxter telephoned Susan Ranew, the School Board's Assistant Superintendent for Human Resources. During the call, Ms. Barrett-Baxter advised Ms. Ranew of the event she believed she had witnessed and discussed the need to contact the Florida Department of Children and Families ("DCF").

12. After she completed the call, Ms. Barrett-Baxter summoned to her office the school's ESE chairperson, Tammy DePace. A brief discussion ensued, during which Ms. Barrett-Baxter informed Ms. DePace of the allegations. Respondent entered the room moments later, at which point Ms. Barrett-Baxter, who was visibly angry, accused Respondent of committing the improper act (a hit) she thought she had witnessed. The witnesses' accounts as to what occurred next vary considerably: Ms. DePace testified that Respondent initially denied any wrongdoing, yet later admitted, during the same conversation, to hitting[7/] G.M. after being confronted by Ms. Barrett-Baxter a second time; Ms. Barrett-Baxter testified, in contrast, that Respondent did not deny the misconduct and stated, "yes, it did happen," or words to that effect, upon being informed of the allegations; Respondent, offering the third (and credible) version of what occurred, testified that she was in a state of shock during the conversation, that she did not knowingly admit to any wrongdoing, and that any affirmative response on her part (e.g., "yes" or "okay") resulted from a misunderstanding as to the nature of the conduct of which she was accused.

13. In the ensuing hours, Fred Bradley,[8/] a DCF employee, initiated an investigation concerning that allegations raised by Ms. Barrett-Baxter. An examination of G.M., which Mr. Bradley conducted during the evening of March 14, 2012, yielded no sign

of physical injury.[9/] The following day, Mr. Bradley interviewed Respondent, who denied the allegations, as well as Ms. Barrett-Baxter, who described (and physically demonstrated) Respondent's conduct as a "shove"——as opposed to a "hit," the precise conduct alleged in the Petition.[10/] Significantly, Ms. Barrett-Baxter did not advise Mr. Bradley of Respondent's supposed confession from the previous day.[11/]

C. Determinations of Ultimate Fact

14. The greater weight of the evidence fails to establish that Respondent is guilty of violating School Board Policy 6.301(2).

15. The greater weight of the evidence fails to establish that Respondent is guilty of violating School Board Policy 6.301(3)(b).

16. The greater weight of the evidence fails to establish that Respondent is guilty of violating School Board Policy 6.302.

CONCLUSIONS OF LAW

A. Jurisdiction

17. DOAH has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

B. Notice of Charges / Burden of Proof

18. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J., concurring).

19. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

20. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179

(Fla. 5th DCA 1995). The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000); see also Williams v. Eau Claire Pub. Sch., 397 F.3d 441, 446 (6th Cir. 2005)(holding trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and produces . . . [a] belief that what is sought to be proved is more likely true than not true").

21. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

C. Grounds for Termination

22. In its Petition, the School Board advances three theories for terminating Respondent's employment: a violation of School Board Policy 6.301(2), which requires that each member of the instructional staff abide by the "Code of Ethics of the Education Profession in Florida, the Principles of Professional Conduct for the Education Profession in Florida, and the Standards of Competent and Professional Performance in Florida"; a violation of School Board Policy 6.301(3)(b), which

proscribes, among other conduct, striking another person; and School Board Policy 6.302, which prohibits members of the instructional staff from committing any acts of violence, abuse, or unwarranted touching.

23. Each of the School Board's charges is predicated, of course, upon the allegation in the Petition that Respondent "hit" G.M. with an open hand on the back of the child's head. The School Board, however, failed to prove this essential allegation by a preponderance of the evidence. Thus, all of the charges against Respondent necessarily fail, as a matter of fact. Due to this dispositive failure of proof, it is not necessary to render additional conclusions of law.[12/]

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the School Board enter a final order: (a) exonerating Respondent of all charges brought against her in this proceeding; (b) providing that Respondent be reinstated to the position from which she was suspended without pay; and (c) awarding Respondent back salary, plus benefits, that accrued during the suspension period, together with interest thereon at the statutory rate.

DONE AND ENTERED this 24th day of January, 2013, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of January, 2013.

ENDNOTES

[1/] The final hearing transcript erroneously designates Ms. Coke and Ms. Beuttell, both of whom represent the School Board, as counsel for Respondent. (Inversely, Respondent's attorney, Mr. Sirmons, is listed as the School Board's counsel.)

[2/] The final hearing transcript incorrectly references Ms. Barrett-Baxter as "Baxter-Baker."

[3/] The index of admitted exhibits, which is found on page three of the October 10, 2012, transcript, fails to list Petitioner's exhibits 4 and 16, both of which were admitted without objection. See Transcript of October 10, 2012, proceedings at page 13, lines 7-8; page 14, line 3; and page 16, lines 17-24.

[4/] Respondent's assertion that G.M. proceeded into the volleyball area is corroborated by the testimony of Ms. Baker. See Transcript of October 12, 2012, proceedings at p. 151.

[5/] In so finding, the undersigned credits Respondent's testimony over that of Ms. Barrett-Baxter's.

[6/] The only evidence concerning Ms. Barrett-Baxter's proximity to Respondent and G.M. comes from Ms. Barrett-Baxter herself, who testified during the final hearing that she stood "approximately 28 feet" away. See Transcript of October 12, 2012, proceedings at p. 46. Notably, however, Ms. Barrett-Baxter was unable to offer such a precise——or, for that matter, any——numerical figure during her sworn deposition a mere 13 days earlier:

> A. I saw Ms. Woodcock walking towards the playground area with her classroom. I saw a student to the right of Ms. Woodcock screaming. And I saw Ms. Woodcock hit the student in the back of the head, say "move," and I saw the student sort of move forward.
>
> Q. Okay. Where were you standing?
>
> A. Behind her.
>
> Q. How far behind her?
>
> A. Some yards away. I'm not really good with measurements.

Pet. Ex. 17, p. 13-14 (emphasis added). Owing to this significant (and unexplained) inconsistency, Ms. Barrett-Baxter's testimony concerning this issue is rejected.

[7/] Ms. DePace's unequivocal claim during the final hearing that Respondent confessed to "hitting" G.M. is at odds with her prior acknowledgement, made during a sworn deposition, that she could not remember whether Respondent admitted to hitting, striking, or simply pushing the child:

> Q. And was that what the principal said? Did the principal state . . . "I saw you hit the child in the back of the head" or –
>
> A. I'm sorry – I'm telling you I really don't know the exact words she used, if it was "strike," "hit," "push" a child. . . . You know, it's one of those words. And that the boy moved forward, jolted forward.

Pet. Ex. 15, p. 84 (emphasis added). In light of this substantial discrepancy, Ms. DePace's testimony has not been credited by the undersigned.

[8/] Mr. Bradley, who has served as a DCF investigator for over five years, was previously employed as a police officer (for ten years) and, subsequent to that, a death penalty investigator with the Mid-Atlantic Innocence Project.

[9/] To be sure, Petitioner was not required to adduce evidence of physical injury to sustain its charge that Respondent "hit" G.M. However, visible signs of injury could have served to corroborate Ms. Barrett-Baxter's final hearing testimony——which, as detailed elsewhere in this Recommended Order, lacked persuasive force because it was: inconsistent with previous testimony she offered concerning a material issue (i.e., her proximity to Respondent and G.M.); at odds with the credible testimony of Mr. Bradley, who recalls that Ms. Barrett-Baxter described, and demonstrated, a "shove"; and inconsistent with the credible testimony of Ms. Baker, who confirms G.M.'s presence near the volleyball net.

[10/] Ms. Barrett-Baxter's testimony to the contrary——i.e., that at no time has she described the event as anything but a "hit"—— is rejected in favor of Mr. Bradley's account, which is credited for two principal reasons. First, Mr. Bradley is, as best the undersigned can determine, disinterested with respect to the outcome of this proceeding, while Ms. Barrett-Baxter, on the other hand, admits that she is "bothered" by Respondent's decision to contest her termination. Consider the following exchange between Ms. Barrett-Baxter and Petitioner's counsel:

> Q. How has your opinion of Ms. Woodcock changed from March 14th to today? Has your opinion of Ms. Woodcock changed from March 14th to today?
>
> A. I would say yes.
>
> Q. And can you explain --
>
> A. The mere fact that we're here today for the sole purpose of questioning whether I saw what I saw what I know I saw bothers me, and I just feel that it's an integrity issue.

Transcript of Oct. 10, 2012, proceedings at p. 50 (emphasis added). Further, it is unlikely that an abuse investigator (particularly one with Mr. Bradley's professional background) would confuse a "hit" with a "shove."

[11/] Although the outcome of the DCF investigation is not relevant to this proceeding, it is noted, parenthetically, that the matter was closed with no indications of abuse.

[12/] As a final matter, Respondent moves for attorney's fees pursuant to the following statutory provisions: section 57.105, Florida Statutes, which authorizes an award of fees in civil and administrative proceedings where the losing party did not act in good faith and knew or should have known that a claim was not supported by the necessary material facts and/or by application of then-existing law; section 120.569(2)(e), Florida Statutes, which authorizes reimbursement of attorney's fees "incurred because of the filing of [a] pleading, motion, or other paper" that was submitted by a party for an improper or frivolous purpose; section 120.595, Florida Statutes, which requires an award of fees where the administrative law judge determines that a party participated in a proceeding for an improper purpose, which is defined as "participation in a proceeding . . . primarily to harass or to cause unnecessary delay or for frivolous purpose or to needless increase the cost of litigation . . . ."; and/or section 1012.26, Florida Statutes, which obligates a district school board to reimburse the reasonable legal expenses incurred by employees who successfully defend civil or criminal actions that arise "out of and in the course of the performance of assigned duties and responsibilities."

Section 1012.26 does not apply in situations where a school district employee successfully defends a termination or suspension action. Silver v. Duval Cnty. Sch. Bd., 92 So. 3d 237, 239 (Fla. 1st DCA 2012)(Marstiller, J., concurring) ("[S]ection 1012.26, Florida Statutes, by its terms, does not require a school district to reimburse an employee for legal expenses incurred in successfully defending an employment termination (or suspension) action in the administrative forum."); Weatherman v. Sch. Bd. of Seminole Cnty., 599 So. 2d 220, 222 (Fla. 5th DCA 1992). With respect to the other statutes cited by Respondent, the record is devoid of evidence that the School Board participated in this matter for an improper purpose, filed a pleading for a frivolous or improper purpose, or pursued Respondent's termination in the absence of supporting facts or law. Indeed, as to the last point, the

testimony of Ms. Barrett-Baxter and Ms. DePace, although ultimately rejected by the undersigned, provided an ample basis upon which to initiate the present action. See Siegel v. Rowe, 71 So. 3d 205, 212 (Fla. 2d DCA 2011)("Where, as in this case, the losing party presents competent, substantial evidence in support of the claims . . . and the trial court determines the issues of fact adversely to the losing party based on conflicting evidence, section 57.105(1) does not authorize an award of attorney's fees."). Respondent's Motion for Attorney's Fees is therefore DENIED.

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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 must be filed with the agency that will issue the final order in this case.