

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 12-3970TTS

JANA LANTZ,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing on May 6, 2014, in Miami, Florida.

APPEARANCES

For Petitioner: Heather Ward, Esquire
Sara Marken, Esquire
Miami-Dade County School Board
Suite 430
1450 Northeast Second Avenue
Miami, Florida 33132

For Respondent: Jana Lantz, pro se
Post Office Box 613
Meadville, Pennsylvania 16335

STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent without pay and terminate her employment as a teacher.

PRELIMINARY STATEMENT

On November 21, 2012, at its scheduled meeting, Petitioner, Miami-Dade County School Board ("School Board"), took action to

suspend Respondent, Jana Lantz ("Respondent"), without pay and initiate proceedings to terminate her employment as a teacher. Respondent was advised of her right to request an administrative hearing within 15 days.

On November 30, 2012, Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

At the request of the parties, the final hearing initially was set for February 19, 2013. On January 8, 2013, Respondent requested a continuance, and Judge Errol H. Powell entered an Order on January 23, 2013, resetting the hearing for April 5, 2013.

On March 5, 2013, the School Board filed its Corrected Notice of Specific Charges. The Corrected Notice of Specific Charges contains certain factual allegations, and, based on those factual allegations, the School Board charged Respondent with the following violations in five consecutively numbered counts:

- (1) Misconduct In Office;
- (2) Gross Insubordination;
- (3) Violation of School Board Policy (Standards of Ethical Conduct-3210);
- (4) Violation of School Board Policy (Code of Ethics-3210.01);
- and (5) Violation of School Board Policy (Threatening Behavior Toward Staff-3380).

On March 7, 2013, the School Board requested a continuance of the final hearing, and Judge Powell entered an Order on March 18, 2013, resetting the hearing for June 19, 2013. On April 3, 2013, this case was transferred to Judge R. Bruce McKibben, Jr. On May 21, 2013, the School Board requested a continuance, and Judge McKibben entered an Order on May 22, 2013, denying the continuance.

In the meantime, on April 23, 2013, the Education Practices Commission ("EPC") in the case of Robinson v. Lantz, EPC Case No. 12-0126-RT, entered a Final Order suspending Respondent's educator's certificate for a period of one year - until April 24, 2014. On June 6, 2013, Judge McKibben placed the instant case in abeyance, while Respondent appealed the EPC's decision to suspend her teaching certificate for one year. The EPC's decision was per curiam affirmed without opinion by the First District Court of Appeal on January 23, 2014. On March 6, 2014, a pre-hearing conference was held with the parties, after which Judge McKibben entered an Order on March 11, 2014, resetting the final hearing for May 6, 2014. On April 18, 2014, this case was transferred to the undersigned for all further proceedings.

The final hearing commenced as scheduled on May 6, 2014, with both parties present. At the hearing, the School Board presented the testimony of Maria Fernandez, Yvetot Antoine, Eulalee Sleight, Luis Chiles, and Dr. Jimmie Brown, Jr.

Petitioner's Exhibits 1 through 6, 8 through 10, 12, 14, and 15 were received into evidence. Respondent testified on her own behalf and presented the additional testimony of Mercita Wimberly, Julia Dixon, Dwayne J. Turner, Leonardo Valmana, and Arthur Leichner. Respondent's Exhibits 1, 2, 2a, 2b, 2c, 2d, 2e, 3a, 5 (first page only), 10, 11, and 16 were received into evidence.

The two-volume final hearing Transcript was filed on June 27, 2014. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise the public schools within Miami-Dade County, Florida.

2. At all times material to this case, Respondent was employed as a science teacher at Thomas Jefferson Middle School ("Thomas Jefferson"), a public school in Miami-Dade County, Florida, pursuant to a professional services contract. Respondent was initially hired by the School Board as a teacher in 1994.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law, the School Board's policies, and the collective bargaining agreement between the School Board and the United Teachers of Dade ("UTD").

4. Maria Fernandez, the principal of Thomas Jefferson, was authorized to issue directives to her employees, including Respondent.

The 2010-2011 School Year

5. Principal Fernandez issued Respondent a letter of reprimand on February 8, 2011, concerning an alleged incident that occurred on January 4, 2011. The reprimand directed Respondent to: (1) strictly adhere to all School Board rules and regulations, specifically, School Board rules 6Gx13-4A-1.21 and 6Gx13-4A-1.213; (2) cease and desist from engaging in any unprofessional conduct while serving as an employee of the School Board; (3) perform duties and responsibilities given to her by Principal Fernandez; and (4) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board. Principal Fernandez informed Respondent that failure to comply with the directives would result in further disciplinary action. On February 8, 2011, Principal Fernandez held a Conference for the Record ("CFR") with Respondent regarding this alleged incident.

The 2011-2012 School Year

6. On November 11, 2011, Principal Fernandez called Respondent into her office to speak with her about the School Board's policy regarding the appropriate use of e-mail. Respondent allegedly stormed out of the meeting and, in the process of doing so, called Principal Fernandez a "racist pig." As she was leaving the office, two other administrators were in the vicinity, and Respondent allegedly stated: "I'm tired of dealing with you three pigs."

7. During a teacher-of-the-year faculty meeting in November 2011, Respondent allegedly called the assistant principal a "bully" and allegedly refused to leave the meeting after being directed to do so by the assistant principal.

8. Principal Fernandez held another CFR with Respondent on November 29, 2011. Furthermore, Principal Fernandez issued Respondent another letter of reprimand on November 29, 2011, concerning these incidents, which again directed Respondent to:

- (1) strictly adhere to all School Board rules and regulations, specifically, School Board rules 6Gx13-4A-1.21 and 6Gx13-4A-1.213;
- (2) cease and desist from engaging in any unprofessional conduct while serving as an employee of the School Board;
- (3) perform duties and responsibilities given to her by Principal Fernandez; and
- (4) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself

and the School Board. Principal Fernandez informed Respondent that failure to comply with the directives would result in further disciplinary action.

9. On May 24, 2012, Principal Fernandez observed Respondent in another teacher's homeroom class. Principal Fernandez allegedly told Respondent she should not be in the other teacher's class because she was interrupting that teacher's supervisory duties of her students. In response, Respondent allegedly yelled, in a very loud voice, and in front of the students and teacher: "That's what the grievance is all about. Get some dopamine." Respondent then allegedly pulled her cellphone out of her pocket and said, "Here, let me record this."

10. As a result of this incident, Principal Fernandez held another CFR with Respondent on June 4, 2012. During the conference, Respondent chose to leave the meeting and walked out of the principal's office. An employee is expected to remain in a CFR for the duration of the meeting. Principal Fernandez issued Respondent another letter of reprimand on June 4, 2012, concerning this incident and for gross insubordination, which directed Respondent to: (1) strictly adhere to all School Board rules and regulations, specifically, School Board Policy 3210 and 3210.01; (2) cease and desist from engaging in any unprofessional conduct while serving as an employee of the School Board; (3) perform duties and responsibilities given to her by

Principal Fernandez; and (4) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board. Principal Fernandez informed Respondent that failure to comply with the directives would result in further disciplinary action. Because Respondent prematurely left the CFR, her UTD representatives signed the reprimand on her behalf.

The 2012-2013 School Year

11. On August 31, 2012, an Educational Excellence School Advisory Committee ("EESAC") meeting was held in the media center at Thomas Jefferson. EESAC is an advisory committee comprised of parents, teachers, students, staff members, and business partners. The committee typically meets once a month at the school to review the school improvement plan and make decisions on how to improve the school.

12. Respondent attended the meeting in her capacity as a representative of the UTD. During the meeting, Respondent told the chairperson that there was no quorum. Respondent then left the meeting. As she exited the meeting, Respondent stated: "This is why we're an ETO school," and she referred to the group as "fools." A few minutes later, Respondent returned to the meeting, took the sign-out sheet with her without permission, and then left the meeting.^{1/}

13. On September 20, 2012, Principal Fernandez met with the science department coach, Respondent, and two other science teachers to discuss ideas on how to improve the school. Principal Fernandez asked Respondent to share a document with the other teachers that Respondent said she had. Respondent became irate, refused Principal Fernandez's request, and stated: "No, I'm not giving it to them. They can go to their own CRISS training like I did." Respondent proceeded to stand up and threaten Principal Fernandez, stating: "Don't worry, you'll get yours." Respondent then stormed out of the meeting.

14. On September 20, 2012, Respondent sent an e-mail to MeShonika Green, another science teacher at Thomas Jefferson, regarding "Addressing your concerns." In this e-mail, Respondent wrote:

Ms. Green,

Some of the members of the faculty have come to me to report that you were carrying on in the hall, claiming that you were in fear for your life because you thought I was going to come out and shoot up the school. I just wanted to put your fears to rest. Just because I speak my mind and am willing to stand up for what is right does not mean I will turn to physical violence. That is not me . . . I don't believe in physical violence and have worked to promote that ideal. But from a psychological perspective it is the person that holds everything in that one day snaps and loses it. You know like tearing up a legal summons, throwing it in the face of a process server and becoming irate that they are arrested. I suppose that

person could take it one step further and in what you said if the authorities did not intervene. But I only know what I've read in textbooks, I've never experienced it.

But anyway I would appreciate if instead of you spreading this around the staff and faculty where students could hear you that you come and speak to me about any concerns you have with me, or at least talk to a therapist. Because your unsubstantiated remarks could be considered slander and as I am highly offended by your actions and they affect me professionally. If this were to happen again I would find it necessary to follow up through appropriate channels.

Thank you in advance for understanding and acting accordingly [.]

15. On September 24, 2012, Principal Fernandez met with Respondent to discuss the School Board's e-mail policy, and Respondent's inappropriate use of e-mails. At that time, Principal Fernandez provided Respondent with a memorandum regarding the appropriate use of e-mails.

16. On September 27, 2012, Ms. Green sent Respondent an e-mail regarding "Addressing your concerns," which states: "We are mature adults. You should not be listening to RUMORS or hear-say, especially when you see me almost everyday. This could be considered CYBER BULLYING. Thanks for your attention." Shortly thereafter on September 27, 2012, Respondent responded to Ms. Green by e-mail as follows:

Ms. Green,

You are right chronologically we are two mature adults. This is in no way cyber bullying. This is me asking you to stop engaging in inappropriate behavior that slanders me, and me promising to take legal action if you don't. So as a mature adult I am asking you to please stop and warning you of the consequences if you do not. Also there is no reason to yell (all caps), and it is not a rumor when three credible adults (as well as a number of less credible people) come to me at different times and state that they witnessed you doing this. Here say is when someone reports hearing that someone did something but did not see it. And yes I see you every day, and any attempt to communicate is met with negativity and usually ends in your saying "well you do what you want because I'm going to . . ." I hope this clears things up for you. Enjoy the rest of your day.

17. On October 2, 2012, Respondent sent an e-mail to Mr. Yvetot Antoine, the science coach at Thomas Jefferson. As the science coach, Mr. Antoine assists all of the science teachers in implementing the science curriculum in their classrooms. The e-mail states:

Mr. Antoine,

Please stop sending me all these e-mails with attachments. I do not need my mailbox to go over its limit. I know you are just trying to do your job but as I already told you I already have my plan in place along with methods of assessment and analysis. I do not need to be bombarded with elementary solutions to a problem that you are only exasperating. The problem at TJ is that no one works together in the decision making process, decision are made that further

divide the faculty and then they bring in people with little experience to cram their agenda down our throats. Most of us do what we need to and we do not need fixing. The fixing needs to start at the top and that is beyond both of our pay grades. If you need to send this stuff for your service log please use attachment manager.

18. Mr. Antoine was offended and disheartened by this e-mail, because he did not believe that he was implementing elementary solutions or exacerbating a problem. Mr. Antoine forwarded the e-mail to Principal Fernandez.

19. On October 11, 2012, Principal Fernandez met with Respondent to discuss the School Board's e-mail policy, and Respondent's inappropriate use of e-mails. At that time, Principal Fernandez provided Respondent with another memorandum regarding the appropriate use of e-mails.

20. On October 18, 2012, Mr. Antoine entered Respondent's classroom to conduct an informal observation. As the students entered the classroom, Mr. Antoine proceeded to the back of the room. Respondent appeared very serious and disturbed by Mr. Antoine's presence in the classroom. As the students settled into their seats, Respondent asked the students to raise their hands if they felt that Mr. Antoine's presence in the classroom was disturbing. In response, some of the students raised their hands.

21. Shortly thereafter, Respondent asked the students again to raise their hands if they felt Mr. Antoine's presence in the classroom was disturbing. In response, most of the students raised their hands.

22. At this point, Respondent announced to the class that "she would not share her classroom in an oppressive environment where she feels like her civil rights were being violated." By this time, Mr. Antoine was sitting at a table in the back of the classroom, and he had not said anything to Respondent.

23. Respondent paced up and down the classroom and instructed the students to write definitions for six vocabulary words that were posted on the board. As she paced up and down the classroom, Respondent pulled out her cellphone and tried unsuccessfully to call someone.

24. Respondent then returned to her seat and announced to the students that she has over 20 years of experience and that "I was teaching when this guy [Mr. Antoine] was still in high school."

25. At this point, the only instruction Respondent had given her students was to tell them to define six vocabulary words.

26. As the class period progressed, Respondent did not give any further educational instruction to her students. Instead, Respondent proceeded to the back of the classroom where

Mr. Antoine was sitting, pulled up a chair, and sat directly across from him. Respondent looked directly at Mr. Antoine and stated in front of the students: "I'm going to stare at those eyes that are observing me."

27. After a while, Respondent got up, went back to her desk, and was at her computer. Toward the end of the class period, Respondent handed a stack of papers to one of her students. The student walked to the back of the classroom and gave the stack of papers to Mr. Antoine. The papers were titled, "Responsibilities of the Coach-Instructional Coach."^{2/}

28. As a result of these incidents from August through October 2012, Principal Fernandez held another CFR with Respondent at some point in October 2012.

29. On November 7, 2012, Respondent encountered Eulalee Sleight, another teacher at Thomas Jefferson. On that date, Ms. Sleight was meeting with a student when Respondent commented, in front of the student, "Do you know I'm not going to be your teacher anymore?" "Because I'm making sure they follow rules. They don't like to follow rules at this school."

30. At the end of this same school day, Respondent walked up to Ms. Sleight and took a picture of her and a student who was Ms. Sleight's assistant. In the presence of the other student, Respondent stated: "This is to show the illegal things that's happening at the school."^{3/}

31. On November 8, 2012, Respondent encountered Thomas Jefferson School Counselor Luis Chiles at Mr. Chiles's office. On this occasion, Mr. Chiles was in a meeting with an ESOL (English speakers of other languages) teacher, conducting a review of students. Respondent had no business being in the meeting. Nevertheless, Respondent opened the door to Mr. Chiles's office and stepped inside Mr. Chiles's office. Respondent was agitated, very upset, and told Mr. Chiles that she hoped he was happy that she was going to lose her job. Mr. Chiles was dumbfounded and did not respond to Respondent's comment. Respondent then exited the office.

32. As a result of all the foregoing incidents, Principal Fernandez recommended to the School Board that Respondent's employment be terminated. Thereafter, the School Board recommended that Respondent's employment be suspended pending dismissal.

33. The evidence at hearing failed to show that Respondent's conduct on June 4, 2012, constitutes misconduct in office, gross insubordination, or a violation of applicable School Board policies. The School Board merely showed that Respondent chose to leave the CFR with Principal Fernandez, and that she was expected to stay for the duration of the meeting. Respondent's conduct may have been inappropriate, but the School Board failed to show that the conduct violated School Board

policies, and was "so serious as to impair the [Respondent's] effectiveness in the school system," so as to constitute misconduct in office. Furthermore, the School Board failed to show that Respondent's conduct involved "a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority," so as to rise to the level of gross insubordination.

34. The evidence at hearing failed to show that Respondent's conduct at the EESAC meeting on August 31, 2012, constitutes misconduct in office, gross insubordination, or a violation of applicable School Board policies. Respondent attended the meeting in her capacity as a representative of UTD. Although Respondent may have been rude during the meeting, given the context in which this incident occurred (this was an EESAC meeting--not a classroom situation involving students), the School Board failed to establish that Respondent engaged in conduct which rose to the level of misconduct in office, gross insubordination, or a violation of School Board policies.

35. The evidence at hearing showed that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2), and that she violated School Board Policies 3210 and 3210.01. Respondent engaged in conduct which is unseemly in the workplace and reduces a teacher's or her colleagues' ability to effectively perform duties when she met with Principal Fernandez, the science

department coach, and two other science teachers on September 20, 2012, to discuss ideas on how to improve the school. When asked by Principal Fernandez to share a document with the other teachers, Respondent became irate and refused to do so.

Respondent also violated this rule and School Board Policies 3210, 3210.01, and 3380, when she stood up during the meeting and threatened Principal Fernandez, stating: "Don't worry, you'll get yours," and stormed out of the meeting. Such conduct created a hostile, intimidating, abusive, offensive, or oppressive environment, and involved threatening behavior consisting of words that intimidated Principal Fernandez.

36. The evidence at hearing failed to show that Respondent's conduct on September 20, 2012, constitutes gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

37. The evidence at hearing failed to show that Respondent's e-mails to Ms. Green on September 20 and 27, 2012, and Respondent's e-mail to Mr. Antoine on October 2, 2012, constitute misconduct in office, gross insubordination, or a violation of applicable School Board policies. The School Board failed to present its e-mail policy at the hearing. Given the context and nature of the emails (between adults and not involving students), and the fact that the School Board failed to

present its e-mail policy at the hearing, the School Board failed to meet its burden to establish that the e-mails rose to the level of misconduct in office, gross insubordination, or constitute a violation of applicable School Board policies.

38. The evidence at hearing showed that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2), and that she violated rules 6B-1.006(3)(a), (f), (5)(d), and School Board Policies 3210 and 3210.01, by engaging in conduct which is unseemly in the workplace and disruptive to the students' learning environment; failed to make reasonable effort to protect students from conditions harmful to learning; violated the students' legal right to an education; engaged in behavior that reduces her ability or her colleagues' ability to effectively perform duties or the orderly processes of education; and created a hostile, intimidating, abusive, offensive, or oppressive work environment.

39. Respondent violated these rules and policies when she: 1) asked students in the classroom on October 18, 2012, if they felt that Mr. Antoine's presence in the classroom was disturbing, they should raise their hands; 2) announced to the students in the classroom that "she would not share her classroom in an oppressive environment where she feels like her civil rights were being violated"; 3) paced up and down the classroom and placed a personal telephone call during class while only instructing the

students to write definitions for six vocabulary words that were posted on the board; 4) announced to her students that she has over 20 years of experience, and that "I was teaching when this guy [Mr. Antoine] was still in high school"; 5) proceeded to the back of the classroom, sat across from Mr. Antoine, and announced to the class: "I'm going to stare at those eyes that are observing me"; and 6) handed a stack of papers to one of her students titled, "Responsibilities of the Coach-Instructional Coach," and had the student hand the stack of documents to Mr. Antoine.

40. Respondent's conduct on October 18, 2012, sought to advance her personal agenda, was not conducive to her students' learning, and was harmful to the students' learning. Respondent effectively used the students in her classroom as pawns in her personal battle against the administration and her colleagues. Rather than focusing on Mr. Antoine's presence and her personal battle, Respondent should have focused on the students and teaching the students. Respondent's conduct on October 18, 2012, has no place in a middle school science classroom.

41. The evidence failed to show that Respondent's conduct on October 18, 2012, rose to the level of gross insubordination in violation of rule 6A-5.056(4), in that the conduct did not involve the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

42. The evidence at hearing showed that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2), and that she violated rules 6B-1.006(3)(a), (f), and (5)(d), and School Board Policies 3210 and 3210.01, by engaging in conduct which is unseemly in the workplace and disruptive to the students' learning environment; failed to make reasonable effort to protect students from conditions harmful to learning; violated the students' legal right to an education; engaged in behavior that reduces her ability or her colleagues' ability to effectively perform duties or the orderly processes of education; and created a hostile, intimidating, abusive, offensive, or oppressive work environment. Respondent violated these rules and policies when she: 1) interrupted a meeting between Ms. Sleight and another student on November 7, 2012; 2) told the student "Do you know I'm not going to be your teacher anymore?" "Because I'm making sure they follow rules. They don't like to follow rules at this school"; and 3) took a picture of a student who was Ms. Sleight's assistant and stated: "This is to show the illegal things that's happening at the school."

43. Through her conduct on November 7, 2012, Respondent again sought to advance her personal agenda, failed to engage in conduct conducive to the student's learning, and engaged in conduct harmful to the students' learning. Respondent effectively used the students as her pawns in her personal battle

against the administration and her colleagues. Raising a legitimate complaint through the proper channels is one thing. However, a middle school teacher cannot use students as her pawns and air her personal battles to students in an effort to advance her personal agenda.^{4/}

44. The evidence failed to show that Respondent's conduct on November 7, 2012, rose to the level of gross insubordination in violation of rule 6A-5.056(4), in that the conduct did not involve the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

45. The evidence at hearing failed to show that Respondent's encounter with Mr. Chiles on November 8, 2012, constitutes misconduct in office, gross insubordination, or a violation of applicable School Board policies. The evidence presented at hearing did not establish that Respondent knew Mr. Chiles was in a meeting when she opened the door. It would have been polite for Respondent to knock first. Nevertheless, merely opening a door that is not locked, and telling a colleague that she "hoped he was happy that she was going to lose her job," and then turning around and leaving, does not rise to the level of misconduct in office, gross insubordination, or a violation of School Board policies.

CONCLUSIONS OF LAW

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

47. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes (2012). Petitioner has the authority to suspend and terminate instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

48. To do so, Petitioner must prove, by a preponderance of the evidence, that Respondent committed the violations alleged in the Corrected Notice of Specific Charges, and that such violations constitute "just cause" for dismissal. § 1012.33(1)(a) and (6), Fla. Stat.; Mitchell v. Sch. Bd., 972 So. 2d 900, 901 (Fla. 3d DCA 2007); Gabriele v. Sch. Bd. of Manatee Cnty., 114 So. 3d 477, 480 (Fla. 2d DCA 2013).

49. 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. Gross v. Lyons, 763 So. 2d 276, 280, n.1 (Fla. 2000). The preponderance of the evidence standard is less stringent than the standard of clear and convincing evidence applicable to loss of a license or certification. Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

50. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); McMillian v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 228 (Fla. 1st DCA 1993).

51. Sections 1012.33(1)(a) and (6) provide in pertinent part that instructional staff may be terminated during the term of their employment contract only for "just cause." § 1012.33(1)(a) and (6), Fla. Stat. "Just cause" is defined in section 1012.33(1)(a) to include "misconduct in office" and "gross insubordination."

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

53. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), effective July 8, 2012, which provides:

(2) "Misconduct in Office" means one or more of the following:

(a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education

Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;

(c) A violation of the adopted school board rules;

(d) Behavior that disrupts the student's learning environment; or

(e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

54. Respondent's conduct alleged to constitute misconduct in office that took place prior to July 8, 2012, is governed by the version of rule 6A-5.056(3) in effect at that time. That rule defines "misconduct in office" as:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in [r]ule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in [r]ule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

55. Rule 6B-1.001, titled "Code of Ethics of the Education Profession in Florida," provides:

(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 of 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.^[5/]

56. While rule 6A-5.056(2)(a) provides that violation of the Code of Ethics rule constitutes "misconduct," it has been frequently noted that the precepts set forth in the above-cited "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." Walton Cnty. Sch. Bd. v. Hurley, Case No. 14-0429 (Fla. DOAH May 14, 2014); Miami-Dade Cnty. Sch. Bd. v. Anderson, Case No. 13-2414 (Fla. DOAH Jan. 14, 2014).

57. Rule 6A-5.056(2)(b) incorporates by reference rule 6B-1.006, which is titled: "Principles of Professional Conduct for the Education Profession in Florida." Rule 6B-1.006 provides, in pertinent part:

(3) Obligation to the student 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.^[6/]

58. School Board Policy 3210, Standards of Ethical Conduct, effective July 1, 2011, is a "rule" within the meaning of

rule 6A-5.056(2)(c). School Board Policy 3210 provides, in pertinent part:

All employees are representatives of the District and shall conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

A. An instructional staff member shall:

* * *

3. make a 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;

* * *

8. not intentionally violate or deny a student's legal rights;

* * *

10. not exploit a relationship with a student for personal gain or advantage;

* * *

21. not use abusive and/or profane language or display unseemly conduct in the workplace.

22. not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the order processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable efforts to assure that each individual is protected from such harassment or discrimination.

59. School Board Policy 3210.01, Code of Ethics, effective July 1, 2011, is a "rule" within the meaning of rule 6A-5.056(2)(c). School Board Policy 3210.01 provides, in pertinent part:

Fundamental Principles

The fundamental principles upon which this Code of Ethics is predicated are as follows:

* * *

- B. Cooperation--Working together toward goals as basic as human survival in an increasingly interdependent world.
- C. Fairness--Treating people impartially, not playing favorites, being open-minded, and maintaining an objective attitude toward those whose actions and ideas are different from our own.
- D. Honesty--Dealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating nor lying.
- E. Integrity--Standing up for their beliefs about what is right and what is wrong and resisting social pressure to do wrong.
- F. Kindness--Being sympathetic, helpful, compassionate, benevolent, agreeable, and gentle toward people and other living things.
- G. Pursuit of Excellence--Doing their best with their talents, striving toward a goal, and not giving up.
- H. Respect--Showing regard for the worth and dignity of someone or something, being courteous and polite, and judging people on their merits. It takes three (3) major forms: respect for oneself, respect for

other people, and respect for all forms of life and the environment.

I. Responsibility--Thinking before acting and being accountable for their actions, paying attention to others and responding to their needs. Responsibility emphasizes our positive obligations to care for each other.

Each employee agrees and pledges:

A. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

B. To obey local, State, and national laws, codes and regulations.

C. To support the principles of due process to protect the civil and human rights of all individuals.

D. To treat all persons with respect and to strive to be fair in all matters.

E. To take responsibility and be accountable for his/her actions.

F. To avoid conflicts of interest or any appearance of impropriety.

G. To cooperate with others to protect and advance the District and its students.

H. To be efficient and effective in the performance of job duties.

Conduct Regarding Students

Each employee:

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;

* * *

H. shall not exploit a relationship with a student for personal gain or advantage.

60. School Board Policy 3380, Threatening Behavior Towards Staff, effective July 1, 2011, provides that:

Employees have a right to work in a safe environment. Violence or the threat of violence by or against students and employees will not be tolerated.

Threatening behavior consisting of any words or deeds that intimidates a staff member or cause anxiety concerning physical well-being is strictly forbidden. Any student, parent, visitor, staff member, volunteer, or agent of the Board who is found to have threatened a member of staff will be subject to discipline or reported to the appropriate law enforcement agency.

61. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), effective July 8, 2012, which provides:

(4) "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

62. Respondent's conduct alleged to constitute gross insubordination that took place prior to July 8, 2012, is

governed by the version of rule 6A-5.056(4) in effect at that time. That rule defines "gross insubordination" as:

(4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

63. Turning to the present case, the School Board argues that Respondent is guilty of gross insubordination for failing to comply with the three written reprimands issued by Principal Fernandez, on February 8, 2011, November 29, 2011, and June 4, 2012, which direct Respondent to act professionally and follow School Board policies. The written directives are general in nature, directing Respondent to comply with all or various rules and policies. The reprimands are not tantamount to a direct order, reasonable in nature, and given with proper authority. To hold otherwise would permit a Principal to direct all teachers to follow all rules and policies, and upon a violation of any rule or policy, conclude that the teacher was grossly insubordinate.

64. The School Board failed to prove by a preponderance of the evidence that, with regard to the June 4, 2012, incident, Respondent committed misconduct in office, was grossly insubordinate, or violated any School Board policies.

65. The School Board failed to prove by a preponderance of the evidence that, with regard to the August 31, 2012, incident,

Respondent committed misconduct in office, was grossly insubordinate, or violated any School Board policies.

66. The School Board proved by a preponderance of the evidence that, with regard to the September 20, 2012, incident involving the meeting between Principal Fernandez, Respondent, the science department coach, and two other science teachers, Respondent is guilty of misconduct in office, in that she engaged in conduct which is unseemly in the workplace; reduces a teacher's or her colleagues' ability to effectively perform duties, created a hostile, intimidating, abusive, offensive, or oppressive environment, and involved threatening behavior consisting of words that intimidated Principal Fernandez.

67. The School Board failed to prove by a preponderance of the evidence that, with regard to the September 20, 2012, incident involving the meeting between Principal Fernandez, the science department coach, and two other science teachers, Respondent was grossly insubordinate by refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

68. The School Board failed to prove by a preponderance of the evidence that, with regard to Respondent's e-mails to Ms. Green on September 20 and 27, 2012, and Respondent's e-mail to Mr. Antoine on October 2, 2012, that Respondent committed

misconduct in office, was grossly insubordinate, or violated any School Board policies.

69. The School Board proved by a preponderance of the evidence that, with regard to the October 18, 2012, incident, Respondent is guilty of misconduct in office, in that she engaged in conduct unseemly in the workplace; disruptive to students' learning environment; failed to make reasonable effort to protect students from conditions harmful to learning; violated the students' legal right to an education; engaged in behavior that reduced her ability or her colleagues' ability to effectively perform duties or the orderly processes of education; and created a hostile, intimidating, abusive, offensive, or oppressive work environment.

70. The School Board failed to prove by a preponderance of the evidence that, with regard to the October 18, 2012, incident, Respondent is guilty of gross insubordination, in that the conduct did not involve the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

71. The School Board proved by a preponderance of the evidence that, with regard to the November 7, 2012, incident, Respondent is guilty of misconduct in office, in that she engaged in conduct which is unseemly in the workplace; disruptive to students' learning environment; failed to make reasonable effort

to protect students from conditions harmful to learning; violated the students' legal right to an education; engaged in behavior that reduced her ability or her colleagues' ability to effectively perform duties or the orderly processes of education; and created a hostile, intimidating, abusive, offensive, or oppressive work environment.

72. The School Board failed to prove by a preponderance of the evidence that, with regard to the November 7, 2012, incident, Respondent is guilty of gross insubordination, in that the conduct did not involve the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

73. The School Board failed to prove by a preponderance of the evidence that with regard to the November 8, 2012, incident, Respondent committed misconduct, was grossly insubordinate, or violated any School Board policies.

Penalty

74. Instructional employees who have engaged in misconduct in office and gross insubordination may be suspended without pay and dismissed. §§ 1012.33(4) and 1012.33(6)(a), Fla. Stat.; Mitchell v. Sch. Bd., 972 So. 2d 900 (Fla. 3d DCA 2007).

75. The facts show that Respondent engaged in misconduct in the office, and therefore "just cause" exists authorizing Respondent's termination.

76. The facts show that Respondent disregarded the learning of middle school students and used them as pawns to fight her personal battle against Principal Fernandez and her colleagues. Respondent intruded upon the rights of students, the principal, and her colleagues through her conduct. Respondent's many years of teaching experience should have led her to know better, yet it is apparent that Respondent thrives on confrontation.

77. Respondent crossed-the-line when she involved the middle school students in her personal agenda, and she did not in any way acknowledge her actions or show any remorse at the hearing. Considering the seriousness and nature of the offenses, the entire record, and the fact of prior discipline,^{7/} termination is appropriate.

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 upholding the suspension and terminating Respondent's employment.

DONE AND ENTERED this 29th day of July, 2014, in
Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 2014.

ENDNOTES

^{1/} ETO means education transformation office.

^{2/} Respondent denies that the incident on October 18, 2012, occurred. The undersigned credits Mr. Antoine's testimony regarding the events of October 18, 2012, as found by the undersigned, and rejects the testimony of Respondent as unpersuasive and not credible.

^{3/} The undersigned credits Ms. Sleights's testimony regarding the events of November 7, 2012, as found by the undersigned, and rejects the testimony of Respondent as unpersuasive and not credible. However, the School Board failed to present persuasive evidence in support of its contention that on November 7, 2012, Respondent was seen by Ms. Sleight turning off switches in the emergency panel box while angrily stating, "Let them figure out what's wrong," and that Respondent caused the power to go out.

^{4/} The undersigned rejects Respondent's contention that her suspension and termination were retaliatory for her complaints and union activities. Respondent failed to present persuasive evidence to support her theory.

^{5/} Also, on January 11, 2013, rule 6B-1.001 was transferred to rule 6A-10.080. The rule's text was not amended.

^{6/} On January 11, 2013, rule 6B-1.006 was transferred to rule 6A-10.081. The rule's text was not amended. Rule 6B-1.006 governs Respondent's conduct alleged to have occurred before January 11, 2013.

^{7/} The School Board's allegations regarding the January 2011, November 2011, and May 2012 alleged incidents relate to the issue of progressive discipline. Respondent was reprimanded for each of these alleged incidents.

COPIES FURNISHED:

Alberto M. Carvalho, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 912
Miami, Florida 33132

Pam Stewart, Commissioner
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Heather Ward, Esquire
Sara Marken, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

Jana Lantz
Post Office Box 613
Meadville, Pennsylvania 16335

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.