

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-1890

ARTHURINE BROWN,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference between Tallahassee and Miami, Florida, on July 25, 2013, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Sara Marken, Esquire
Heather L. Ward, Esquire
Miami-Dade County Public Schools
1450 Northeast Second Avenue
Miami, Florida 33132

For Respondent: Branden M. Vicari, Esquire
Herdman and Sakellarides, PA
29605 US Highway 19, North
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether Arthurine Brown (Respondent) committed the acts alleged in the Notice of Specific Charges filed by the Miami-Dade

School Board (the School Board) on July 3, 2013, and whether the School Board has good cause to terminate Respondent's employment as a paraprofessional.

PRELIMINARY STATEMENT

At the times relevant to this proceeding, Respondent was employed by the School Board as a paraprofessional at North Miami Senior High School (NMSHS), a public school in Miami-Dade County. Respondent's assigned duties were in a special education classroom.

At its regularly scheduled meeting on May 8, 2013, the School Board took action to suspend Respondent's employment without pay and institute proceedings to terminate her employment. Respondent timely challenged the School Board's action, the matter was referred to DOAH, and this proceeding followed.

The School Board filed its Notice of Specific Charges on July 3, 2013, in which it made factual allegations relating to Respondent's use of profanity and her conduct towards a student. Based on those factual allegations, the School Board charged in five separate counts that Respondent was guilty of (1) Misconduct in Office; (2) Violation of School Board policy 4210, Standards of Ethical Conduct; (3) Violation of School Board policy 4120.01, Code of Ethics; (4) Violation of School Board policy 4213, Student Supervision and Welfare; and (5) Violation of School

Board policy 5630, Corporal Punishment and Use of Reasonable Force.

At the final hearing, the School Board presented the testimony of Dorothy Roberts (teacher), Frantzso Brice (paraprofessional), Michael Lewis (principal), and Joyce Castro (district director). The School Board entered into evidence pre-marked Exhibits 1-5 and 19. Respondent testified on her own behalf and presented the additional testimony of Darryel Bethune (teacher) and Larry Eason (paraprofessional).

A Transcript of the proceedings, consisting of one volume, was filed on August 18, 2013. The parties timely filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2012), and all references to rules are to the version thereof in effect as of the entry of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, the School Board has been the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida. NMSHS is a public school in Miami-Dade County, Florida.

2. During the 2012-2013 school year, the School Board employed Respondent as a paraprofessional pursuant to a

professional service contract. The School Board assigned Respondent to a self-contained, special education classroom at NMSHS taught by Dorothy Roberts. Respondent has worked at NMSHS as a paraprofessional since 2004.

3. During the 2012-2013 school year, paraprofessionals Frantzso Brice and Larry Eason were also assigned to Ms. Roberts' classroom.

4. Ms. Roberts' class consisted of 13 special needs children with varying exceptionalities. The vast majority of Ms. Roberts' class was of Haitian descent.

5. Ms. Roberts' students included P.P.C. (the Student), a non-verbal child on the autism spectrum. The Student is a 14-year-old male who functions at the level of a two or three-year-old child.

6. On January 17, 2013, Ms. Roberts, Mr. Brice, and Respondent were in the process of escorting children into the classroom for the beginning of the school day when an incident involving Respondent and the Student occurred. Ms. Roberts, Mr. Brice, and Respondent were in the classroom when the incident occurred. Mr. Eason was not in the classroom when the incident occurred.

7. After the Student entered the classroom at approximately 7:15 a.m., he picked up Respondent's purse from a table and went towards a window. What happened next is in dispute.

8. The greater weight of the credible evidence established that Respondent cornered the Student, grabbed him by the throat with her left hand, and slapped him in the face using the palm of her right hand. Ms. Roberts heard the sound of the slap. Ms. Roberts and Mr. Brice described the slap as being very hard. Ms. Roberts heard Respondent warn against "touching her fucking shit." Mr. Brice heard Respondent warn against "touching her fucking stuff." ^{1/}

9. Immediately after the incident, the Student had tears in his eyes, but his face had no observable bruising or swelling.

10. Ms. Roberts immediately reported her version of the incident to Michael Lewis, the principal of NMSHS.

11. After talking to Ms. Roberts, Mr. Lewis interviewed Respondent in Ms. Roberts' classroom, without Ms. Roberts being present. Mr. Lewis removed Respondent from the classroom, and instigated an investigation that culminated in this proceeding.

12. Respondent had no justification for striking the Student.

13. During the 2012-2013 school year, Respondent repeatedly used profanity in front of students and co-workers. Ms. Roberts repeatedly told Respondent to stop using profanity, but Respondent did not heed that instruction.

14. During the 2012-2013 school year, Respondent repeatedly made derogatory remarks about Haitians. Respondent stated that

she was tired of working with "fucking" Haitians and declared that Haitians were dumb, stupid, and should go home.

15. Mr. Brice, who is Haitian, felt disrespected by Respondent's disparaging statements.

16. At its regularly scheduled meeting on May 8, 2013, the School Board suspended Respondent's employment and instituted these proceedings to terminate her employment.

CONCLUSIONS OF LAW

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

18. Respondent is an "educational support employee" within the meaning of section 1012.40, Florida Statutes. Section 1012.40(2)(c) pertains to educational support employees and provides as follows:

(c) In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process or by district school board rule in the event there is no collective bargaining agreement.

19. Because the School Board seeks to terminate Respondent's employment, which does not involve the loss of a license or certification, the School Board has the burden of

proving the allegations in its Notice of Specific Charges by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

20. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000) (relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997), quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

21. This is a de novo proceeding designed to formulate final agency action. See Hamilton Cnty. Bd. of Cnty. Comm'rs v. Dep't Env'tl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991), and section 120.57(1)(k).

THE ALLEGED VIOLATIONS

22. Article XXI(3)(D) of the collective bargaining agreement between the School Board and the teacher's union provides that just cause for the termination of educational support personnel includes misconduct in office.

23. The Notice of Specific Charges alleged that Respondent was guilty of the following: (Count 1) Misconduct in Office; (Count 2) Violation of School Board policy 4210, Standards of Ethical Conduct; (Count 3) Violation of School Board policy 4120.01, Code of Ethics; (Count 4) Violation of School Board policy 4213, Student Supervision and Welfare; and (Count 5) Violation of School Board policy 5630, Corporal Punishment and Use of Reasonable Force.

COUNT 1: MISCONDUCT IN OFFICE

24. Florida Administrative Code Rule 6A-5.056(2) defines the term "Misconduct in Office," in relevant part, as follows:

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

(a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in [rule 6A-10.080];

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in [rule 6A-10.081];

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

25. Florida Administrative Code Rule 6A-10.080 sets forth the following as the Code of Ethics of the Education Profession in Florida:

(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.

26. Rule 6A-10.081 sets forth the "Principles of Professional Conduct for the Education Profession in Florida," and provides, in relevant part, as follows:

(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. . . .

27. Petitioner proved that Respondent was guilty of misconduct in office by striking the Student and by repeatedly making profane, derogatory statements.

COUNT 2: VIOLATION OF POLICY 4210

28. School Board policy 4210 was admitted into evidence as Petitioner's Exhibit 2. The policy requires that a school support staff member shall "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."

Petitioner proved that Respondent violated policy 4210 by striking the Student and making profane, disparaging comments about Haitians.

COUNT 3: VIOLATION OF POLICY 4120.01

29. School Board policy 4120.01, the School Board's Code of Ethics, was admitted into evidence as Petitioner's Exhibit 3. The policy requires that School Board employees adhere to certain ethical conduct, reiterates the requirement that each employee "make reasonable efforts to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety." Petitioner proved that Respondent violated policy 4210.01 by striking the Student and making profane, disparaging comments about Haitians.

COUNT 4: VIOLATION OF POLICY 4213

30. School Board policy 4213, which pertains to "Student Supervision and Welfare," was admitted into evidence as Petitioner's Exhibit 4. The policy requires that "[e]ach support staff member shall maintain the highest professional, moral, and ethical standards in dealing with the supervision, control, and protection of students on or off school property." Petitioner proved that Respondent violated policy 4213 by striking the Student and by repeatedly making profane, disparaging comments about Haitians.

COUNT 5: VIOLATION OF POLICY 5630

31. School Board policy 5630, which pertains to "Corporal Punishment and Use of Reasonable Force," was admitted into evidence as Petitioner's Exhibit 5. That policy prohibits the use of corporal punishment, but authorizes the use of reasonable force in circumstances inapplicable to this proceeding. Petitioner proved that Respondent violated policy 5630 by grabbing the Student and striking him.

32. Pursuant to rule 6A-5.056(2)(c), the violation of the foregoing School Board policies constitutes misconduct in office.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law:

It is RECOMMENDED that the School Board of Miami-Dade County, Florida, enter a final order adopting the findings of fact and conclusions of law set forth in this Recommended Order. It is FURTHER RECOMMENDED that the final order uphold the suspension without pay of employment of Arthurine Brown and terminates that employment.

DONE AND ENTERED this 30th day of September, 2013, in
Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2013.

ENDNOTE

^{1/} In making these findings, the undersigned has carefully considered Respondent's testimony. Respondent testified that she "grabbed" the Student's shoulder with her right hand and retrieved her purse with her left hand. Respondent denied grabbing the Student by the neck or slapping him. Respondent also denied making either statement attributed to her, and denied using profanity on a regular basis. The undersigned is persuaded by the clear, credible testimony of Ms. Roberts, which is the primary basis for the findings. Ms. Roberts testified without hesitation or doubt (except that she incorrectly testified that Respondent struck the Student on the right side of the face, when it was the left). Ms. Roberts was in position to observe the incident, and she had no apparent motivation to lie about what she had seen or heard. The undersigned has also considered the testimony of Mr. Brice, which is consistent with that of Ms. Roberts. In evaluating Mr. Brice's testimony, the undersigned has considered that Mr. Eason testified that when he came into the classroom on the morning of the incident, Mr. Brice told him (Mr. Eason) that Ms. Roberts had gone to the principal's office, but that he would not have done so because he (Mr. Brice) had not seen Respondent slap the student. Mr. Brice denied making the statement attributed to him by Mr. Eason.

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.