

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0271TTS

PRISCILLA PARRIS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing by video teleconference on May 22, 2014, with sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Sara M. Marken, Esquire  
Miami-Dade County School Board  
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1450 Northeast Second Avenue  
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent for 30 days without pay.

PRELIMINARY STATEMENT

On January 15, 2014, at its scheduled meeting, Petitioner, Miami-Dade County School Board ("School Board"), took action to suspend Respondent, Priscilla Parris ("Respondent"), for 30 days without pay. Respondent was advised of her right to request an administrative hearing within 15 days.

On January 16, 2014, 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 April 2, 2014. On February 18, 2014, the undersigned entered an Order requiring the School Board to file specific charges by no later than February 28, 2014. On February 28, 2014, the School Board filed its Notice of Specific Charges.

On March 20, 2014, the School Board filed an unopposed motion to continue the final hearing. On March 24, 2014, the undersigned entered an Order resetting the final hearing for May 22, 2014.

On April 18, 2014, the School Board filed a motion to amend the notice of specific charges. Respondent did not file a response in opposition to the motion. On April 28, 2014, the undersigned entered an Order granting the School Board's motion, and the Amended Notice of Specific Charges was deemed filed. The

Amended 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 counts: (1) Misconduct in Office; (2) Gross Insubordination; (3) Incompetency Due to Inefficiency; (4) Violation of School Board Policy 3210 (Standards of Ethical Conduct); and (5) Violation of School Board Policy 3210.01 (Code of Ethics).

The final hearing commenced as scheduled on May 22, 2014, with both parties present. At the hearing, the School Board presented the testimony of Julian E. Gibbs, Aaron Taylor, Lorena Belloso, Glen Roberts, and Dr. Jimmie Brown, Jr. The School Board's Exhibits 1 through 7, 9 through 12, 14 through 18, and 21 were received into evidence. Respondent testified on her own behalf and presented the additional testimony of Avril Nesmith. Respondent did not offer any exhibits into evidence.

The final hearing Transcript was filed on July 24, 2014. On August 4, 2014, Respondent filed an unopposed motion for extension of time until August 8, 2014, for the parties to file their proposed recommended orders. On August 5, 2014, the undersigned entered an Order granting the motion. 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 teacher at Henry E.S. Reeves Elementary School ("Henry Reeves"), 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 1982.

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 ("CBA") between the School Board and the United Teachers of Dade ("UTD").

4. Julian Gibbs, the principal of Henry Reeves ("Principal Gibbs"), was authorized to issue directives to his employees, including Respondent.

#### The 2011-2012 School Year

5. After holding various teaching positions within the School Board, Respondent was assigned to Henry Reeves beginning with the 2011-2012 school year.

6. On August 18, 2011, Respondent arrived late to work on her first day at Henry Reeves. Respondent was supposed to arrive at Henry Reeves at 8:20 a.m., for a pre-planning faculty meeting and to set-up her room, but she did not arrive until after 12:30 p.m., because she reported that morning to another school, Van E. Blanton Elementary School. On August 23, 2011, Principal Gibbs issued Respondent a Professional Duty and Responsibilities memorandum concerning Respondent's tardiness and informed Respondent that failure to report to work on time in the future would result in further disciplinary action.<sup>1/</sup>

7. Some time during the next few weeks, Principal Gibbs conducted an informal classroom walkthrough of Respondent's class. At that time, Principal Gibbs observed that Respondent did not have any lesson plans, grades for students, or a "print-rich" classroom and outside bulletin board.<sup>2/</sup> On September 16, 2011, Principal Gibbs issued Respondent a Professional Responsibilities memorandum for failing to display current student work, update and have print-rich classroom and outside bulletin boards, timely grade and file student assignments, label data charts, and graph student assessment results. Respondent was advised to ensure she fulfilled these responsibilities by September 20, 2011.

8. On January 4, 2012, Principal Gibbs issued Respondent a Professional Responsibilities memorandum for failing to update

outside bulletin boards and ensure her desk was organized and clutter free. The memorandum advised Respondent to ensure she fulfilled these responsibilities by January 6, 2012.

The 2012-2013 School Year

9. On October 17, 2012, Principal Gibbs issued Respondent a Professional Responsibilities memorandum for allegedly not providing updated lesson plans for a substitute teacher when she was absent on October 8 and 12, 2012. However, the School Board did not prove at the hearing that Respondent failed to provide updated lesson plans for a substitute teacher when she was absent. Although Principal Gibbs testified about the October 17, 2012, memorandum he authored, he lacked personal knowledge of the lack of updated lesson plans for the substitute teacher on October 8 and 12, 2012. No witness with personal knowledge of the lack of updated lesson plans for the substitute teacher testified at the hearing. The content of the memorandum is hearsay.

10. In any event, the October 17, 2012, memorandum directed Respondent to "read and review the Code of Ethics cited in The School Board of Miami-Dade County Bylaws and Policies, 4210.01 and Common Sense Suggestions and School Board Policy 1139, Responsibilities and Duties for Full-Time Personnel." Principal Gibbs informed Respondent that failure to comply with her

"professional responsibilities may be considered a violation of School Board and Administrative policies."

11. On November 29, 2012, Principal Gibbs issued Respondent a Professional Responsibilities memorandum for arriving late to two meetings on November 13 and 29, 2012. Principal Gibbs informed Respondent that it is her "professional duty and responsibility to report to all scheduled meetings on time" and "to review all notifications in regards to scheduled meetings and events." Principal Gibbs informed Respondent that failure to comply with her "professional responsibilities may be considered a violation of School Board and Administrative policies."

12. On December 12, 2012, Principal Gibbs placed Respondent on support dialogue following an observation he made of Respondent in her classroom. Support dialogue involves a "two-way conversation" between the principal and teacher to develop strategies so that the teacher may improve for the next evaluation.

13. Respondent was upset that she was placed on support dialogue. During the support dialogue meeting between Principal Gibbs and Respondent, Respondent spoke to Principal Gibbs in a loud manner. Later that day during dismissal, Respondent again spoke to Principal Gibbs in a loud manner, but this time in front of other teachers. Because of Respondent's loud tone of voice during and after the support dialogue meeting, Principal Gibbs

issued Respondent a Professional Responsibilities memorandum advising her to "immediately refrain from exhibiting inappropriate behavior, and adhere to all school site and M-DCPS policies and regulations at all times, specifically School Board Policies 3210, Standards of Ethical Conduct, 3210.01, and Code of Ethics." Respondent was informed that "[a]ny recurrence of the above infraction may lead to further disciplinary actions."

14. On December 18, 2012, Principal Gibbs held a Conference For The Record ("CFR") with Respondent, because she allegedly struck a student with a ruler. During the conference, Principal Gibbs provided Respondent with a copy of School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics, and "How to Use Common Sense and Professional Judgment to Avoid Legal Complications in Teaching." Respondent was "advised of the high esteem in which M-DCPS employees are held and of the District's concern for any behavior which adversely affects this level of professionalism." Respondent was "reminded of the prime directive to maintain a safe learning environment for all students." Respondent was informed that "[n]oncompliance with these directives will necessitate further review for the imposition of additional disciplinary measures and will be deemed as insubordination."<sup>3/</sup>

15. During the December 18, 2012, conference, Principal Gibbs issued Respondent a written letter of reprimand. The



written reprimand directed Respondent to: 1) immediately refrain from inappropriate physical contact/discipline with students; 2) adhere to all School Board policies and regulations at all times, specifically School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; and 3) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board. Respondent was informed that "[a]ny recurrence of the above infraction may lead to further disciplinary actions."<sup>4/</sup>

16. On January 16, 2013, Principal Gibbs issued Respondent "Absences and Tardies From Work Directives," because Respondent was allegedly tardy and/or absent from work during the 2012-2013 school year on the following occasions:

October 1, 2012: tardy one hour  
October 8, 2012: sick one day  
October 11, 2012: tardy 1 ½ hour  
October 12, 2012: personal one day  
October 25, 2012: sick one day  
December 4, 2012: personal one day  
December 6, 2012: sick one day  
December 12, 2012: sick one day  
December 19, 2012: personal .5 day  
January 9, 2013: sick one day  
January 10, 2013: sick one day  
January 15, 2013: sick one day

17. However, the School Board failed to prove at the hearing that Respondent was tardy and/or absent from work as indicated in the directives and accompanying documentation. Although Principal Gibbs testified about the January 16, 2013,

directives he authored, he lacked personal knowledge of the tardiness and absences. No witness with personal knowledge of the tardiness and absences testified at the hearing. The content of the memorandum and accompanying documentation are hearsay. In any event, Respondent was informed that “[n]on-compliance with the directives will be considered a violation of professional responsibilities and insubordination.”<sup>5/</sup>

18. On February 22, 2013, Principal Gibbs issued Respondent a Professional Duty and Responsibility memorandum because she was allegedly six minutes late picking up her students from the cafeteria. Although Principal Gibbs testified about the February 22, 2013, memorandum he authored, he lacked personal knowledge of the incident. No witness with personal knowledge of the incident testified at the hearing. The content of the memorandum is hearsay. In any event, Respondent was informed in the memorandum that “[i]t is essential that all teachers pick up their classes on time, especially when other classes are entering the cafeteria.”

19. On March 14, 2013, Principal Gibbs held a CFR with Respondent because she “grabbed” a student “by the arm” on some unspecified date and time when the student was attempting to obtain a set of headphones out of his backpack. Principal Gibbs witnessed this incident [while] conducting an observation of Respondent in her classroom. However, at the hearing, Principal

Gibbs provided no further detail regarding the alleged incident other than indicating that Respondent "grabbed" the student "by the arm." There was no evidence presented at the hearing that Respondent caused the student any emotional or physical injury. The student did not testify.<sup>6/</sup> In any event, the CFR directed Respondent to: 1) immediately refrain from inappropriate physical contact/discipline with students; 2) adhere to all School Board policies and regulations at all times, specifically School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; and 3) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board.

#### The 2013-2014 School Year

20. The School Board alleged in paragraph 18 of its Amended Notice of Specific Charges that: "On September 13, 2013, a parent reported that her child had been poked under the eye and Respondent failed to render first aid. When asked about the incident, Respondent was completely unaware that a student had been injured [while] under her supervision."<sup>7/</sup>

21. The School Board failed to prove that a student was poked under the eye on September 13, 2013, while under Respondent's supervision. The parent's report is hearsay. No students, parents, or witnesses to the alleged incident testified at the hearing. Respondent denied the allegations.

22. In an effort to demonstrate that Respondent is guilty of the allegations, however, the School Board points to Principal Gibbs's testimony that he "personally observed the lead mark under the child's eye." This observation by Principal Gibbs allegedly occurred at some point on September 13, 2013, after the school's dismissal of students, and after "the parent" returned to the school with the child. The undersigned finds that Principal Gibbs's testimony is unpersuasive.

23. Even if Principal Gibbs observed a lead mark under a child's eye at some time after the alleged incident occurred, that does not prove that the child was poked under the eye while under Respondent's supervision. The child could have been poked under the eye at any time and anywhere. Principal Gibbs's conclusion that a child was poked under the eye with a pencil while under Respondent's supervision is based on speculation and hearsay of the parent and students.

24. Nevertheless, on September 16, 2013, Principal Gibbs issued to Respondent a Professional Responsibilities memorandum regarding the alleged incident, requiring her to "[e]nsure the safety and well-being of students at all times"; "[m]aintain close supervision of students at all times"; "[r]eport immediately to administration any accidents or incidents involving student welfare"; and "[n]otify parents in regards to any accident or incidents occurring with students."

25. The School Board alleged in paragraph 19 of its Amended Notice of Specific Charges that: "On September 17, 2013 Respondent informed Mr. Gibbs that she had scratched 'L.G.', her student." The School Board failed to prove that Respondent scratched a student under her supervision as alleged in paragraph 19 of the Amended Notice of Specific Charges. No evidence was adduced at hearing in support of the School Board's allegations in paragraph 19 of the Amended Notice of Specific Charges. Moreover, the School Board failed to address this issue in its Proposed Recommended Order.

26. The School Board alleged in paragraph 20 of its Amended Notice of Specific Charges that: "On September 18, 2013, a parent reported that her child had been stabbed . . . three times with a pencil by another student. Respondent failed to render first aid and failed to notify the other student's parents."

27. The School Board failed to prove that a student was stabbed with a pencil by another student while under Respondent's supervision as alleged in paragraph 20 of the Amended Notice of Specific Charges. Again, the parent's report is hearsay. No students, parents, or witnesses to the alleged incident testified at the hearing.

28. In an effort to demonstrate that Respondent is guilty of the allegations, however, the School Board argues in its Proposed Recommended Order that: "[w]hen Respondent was asked

about the incident, she indicated that she was on the other side of the room when it happened.”

29. The School Board’s position, however, contradicts Principal Gibbs’s testimony at the hearing when he was asked:

Q. Did you speak to Ms. Parris about this incident?

A. Yes, I did.

Q. And what did she say to you?

A. She doesn’t recollect the child being poked by another child in the wrist with the pencil. She just had no memory.

Transcript, pages 53-54.

30. Nevertheless, on September 19, 2013, Principal Gibbs issued to Respondent a Professional Responsibilities memorandum regarding the alleged incident, requiring her to “[e]nsure the safety and well-being of students at all times”; “[m]aintain close supervision of students at all times”; “[r]eport immediately to administration any accidents or incidents involving student welfare”; and “[n]otify parents in regards to any accident or incidents occurring with students.”

31. The School Board alleged in paragraph 21 of the Amended Notice of Specific Charges that: “Based on the witness statements, the following was gathered during the investigation:

i. On September 24, 2013, under Respondent’s supervision, or lack thereof, four students were injured. [One] student, ‘A.J.’

was taken to the hospital by her mother hospital [sic] because of a facial contusion.”

32. The School Board failed to prove that any students were injured while under Respondent’s supervision as alleged in paragraph 21 of the Amended Notice of Specific Charges. Any witness statements are hearsay. No students, parents, or witnesses to the incident testified at the hearing.

33. The School Board argues in its Proposed Recommended Order that on September 25, 2013, a third incident occurred in Respondent’s classroom. Specifically, the School Board contends: “A parent approached administration concerned about the safety of her child. . . . The student had been kicked in the face causing her face to swell.”

34. Notably, this alleged incident is not referred to in the Amended Notice of Specific Charges. The notice was, therefore, insufficient to inform Respondent of the School Board’s contention.

35. Even if Respondent was on notice of the allegations, however, the School Board failed to prove that a student was kicked in the face while under Respondent’s supervision. The parent’s report is hearsay. No students, parents, or witnesses to the incident testified at the hearing. Respondent denied the allegations.

36. Notably, Principal Gibbs testified that when asked about the incident, Respondent "said that she doesn't recall a child being kicked in the face, but allegedly she was pushed by another child in the class, but she doesn't recall the child being kicked in the face." The undersigned finds that Principal Gibbs's testimony is not credible and is unpersuasive. The purported statement contradicts what Principal Gibbs wrote in the September 26, 2013, Professional Responsibilities memorandum. At that time, Principal Gibbs wrote that when Respondent was "asked what happened. [She] stated I have nothing to say."

37. Nevertheless, on September 26, 2013, Principal Gibbs issued to Respondent a Professional Responsibilities memorandum regarding the alleged incident, requiring her to "[e]nsure the safety and well-being of students at all times"; "[m]aintain close supervision of students at all times"; "[r]eport immediately to administration any accidents or incidents involving student welfare"; and "[n]otify parents in regards to any accident or incidents occurring with students."

38. On September 25, 2013, Principal Gibbs met with Respondent in his office to discuss her classroom supervision. The meeting was held behind Principal Gibbs's closed door. During the meeting, Respondent felt as if Principal Gibbs was speaking to her in an arrogant manner. Respondent became upset at Principal Gibbs, spoke to him in a loud manner, and, at one



point, hit his desk with one of her hands and stated: "No, I'm not going to allow you to speak to me like that, because I'm 61 years old and I'm old enough to be your mother." At no time during the meeting did Respondent threaten or intimidate Principal Gibbs in any way.

39. Approximately one week later, Principal Gibbs and Respondent met in his office to discuss some student discipline referrals. During this meeting, Respondent became upset at Principal Gibbs and spoke to him in a loud manner. At no time during this meeting did Respondent threaten or intimidate Principal Gibbs in any way.<sup>8/</sup>

40. In sum, the evidence at hearing failed to show that Respondent's loud voice and conduct in her meetings and conversations with Principal Gibbs constitute misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies. Although Respondent may have used a loud voice during the meetings and conversations, and staff members may have overheard Respondent's loud voice, given the context in which these meetings and conversations occurred (they were meetings and conversations between a principal and teacher--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, incompetency due to inefficiency, or a violation of applicable School Board policies.

41. As to the alleged incident on March 14, 2013, the evidence at hearing failed to show that Respondent engaged in conduct which rose to the level of misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies.

42. As to each of the alleged incidents in September 2013, involving allegations of students getting injured while under Respondent's supervision, the evidence at hearing failed to show that students were injured while under Respondent's supervision. Accordingly, the evidence at hearing failed to show that Respondent is guilty of misconduct in office, gross insubordination, incompetency due to inefficiency, or that she violated applicable School Board policies with regard to these alleged incidents.

43. The evidence at hearing failed to show that Respondent's failure to have any lesson plans, grades for students, or a "print-rich" classroom and outside bulletin board, constitutes misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies.

44. The evidence at hearing failed to show that Respondent did not have lesson plans available for a substitute teacher on

October 8 and 12, 2012. Thus, the evidence at hearing failed to show that Respondent is guilty of misconduct in office, gross insubordination, incompetency due to inefficiency, or that she violated applicable School Board policies with regard to these allegations.

45. The evidence at hearing failed to show that Respondent "significantly arrived late" to important faculty meetings. The evidence presented at hearing merely showed that Respondent was late to a pre-planning faculty meeting on her first day at Henry Reeves on August 18, 2011, because she went to the wrong school. The significance of this faculty meeting was not established at the hearing. During the next school year, she was late to two other meetings in November 2012. It is unclear from the record that these two other meetings in November 2012, were, in fact, faculty meetings. Be that as it may, the fact that Respondent was late to three meetings from August 2011 to September 2013--one of which was on the first day of school when she went to the wrong school--is insufficient to demonstrate that Respondent engaged in conduct which constitutes misconduct in office, gross insubordination, incompetence due to inefficiency, or a violation of applicable School Board policies.

46. The evidence at hearing failed to show that Respondent was tardy and absent from work to the extent alleged in the Amended Notice of Specific Charges. Even if she was tardy and

absent as alleged, however, the tardiness and absences do not constitute misconduct in office, gross insubordination, incompetence due to inefficiency, or a violation of applicable School Board policies.

47. The evidence at hearing failed to show that Respondent engaged in any conduct alleged in the Amended Notice of Specific Charges which constitutes misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of School Board policies.

#### CONCLUSIONS OF LAW

48. 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 (2013).

49. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes (2013). Petitioner has the authority to suspend instructional employees pursuant to sections 1012.22(1)(f), 1012.33(4)(c), and 1012.33(6)(a).

50. To do so, the School Board must prove, by a preponderance of the evidence, that Respondent committed the violations alleged in the Amended Notice of Specific Charges and that such violations constitute "just cause" for suspension. §§ 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).

51. 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).

52. 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).

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

54. 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.

55. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code 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.

56. 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.

57. Florida Administrative Code Rule 6B-1.001, renumbered without change effective January 11, 2013, as rule 6A-10.080, "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.

58. 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).

59. Rule 6A-5.056(2)(b) incorporates by reference rule 6B-1.006, renumbered without change effective January 11, 2013, as rule 6A-10.081, "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081 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.

60. 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;

4. not unreasonably restrain a student from independent action in pursuit of learning;



\* \* \*

7. not intentionally expose a student to unnecessary embarrassment or disparagement;

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

\* \* \*

17. maintain honesty in all professional dealings;

\* \* \*

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

61. 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:

\* \* \*

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.

\* \* \*

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;

\* \* \*

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

62. 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.

63. 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.

64. Consistent with its rulemaking authority, the State Board of Education has defined "Incompetency" in rule 6A-5.056(3), effective July 8, 2012, to mean "the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity." Consistent with its rulemaking authority, the State Board of Education has defined "Inefficiency" in rule 6A-5.056(3)(a), effective July 8, 2012, to mean:

1. Failure to perform duties prescribed by law;

2. Failure to communicate appropriately and relate to students;
3. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
4. Disorganization of his or her classroom to such an extent that the health, safety or welfare of the students is diminished; or
5. Excessive absences or tardiness.

65. Respondent's conduct alleged to constitute incompetency due to inefficiency that took place prior to July 8, 2012, is governed by the version of rule 6A-5.056(1)(a) in effect at that time. Rule 6A-5.056(1) states, in pertinent part:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, F.S.); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; . . .

66. Turning to the present case, the School Board failed to prove by a preponderance of the evidence that Respondent's loud

voice and conduct in her meetings and conversations with Principal Gibbs constitute misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies. Although Respondent may have used a loud voice during the meetings and conversations, and staff members may have overheard Respondent's loud voice, given the context in which these meetings and conversations occurred (they were meetings and conversations between a principal and teacher--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, incompetency due to inefficiency, or a violation of School Board policies.

67. The School Board failed to prove by a preponderance of evidence that, with regard to the alleged incident on March 14, 2013, Respondent engaged in conduct which rose to the level of misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies.

68. The School Board failed to prove by a preponderance of the evidence that, with regard to each of the alleged incidents in September 2013 involving allegations of students getting injured while under Respondent's supervision, students were, in fact, injured while under Respondent's supervision. Accordingly, the School Board failed to prove that Respondent committed

misconduct in office, gross insubordination, incompetency due to inefficiency, or that she violated applicable School Board policies with regard to these alleged incidents.

69. The School Board failed to prove by a preponderance of the evidence that Respondent's failure to have any lesson plans, grades for students, or a "print-rich" classroom and outside bulletin board constitutes misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of applicable School Board policies.

70. The School Board failed to prove by a preponderance of the evidence that Respondent did not have lesson plans available for a substitute teacher on October 8 and 12, 2012. Thus, the evidence at hearing failed to show that Respondent is guilty of misconduct in office, gross insubordination, incompetency due to inefficiency, or that she violated applicable School Board policies with regard to these allegations.

71. The School Board failed to prove by a preponderance of the evidence that Respondent "significantly arrived late" to important faculty meetings. That Respondent was late to a faculty meeting on her first day at Henry Reeves on August 18, 2011, because she reported earlier that day to another school, and she was late to two other meetings in November 2012, is insufficient to demonstrate that Respondent engaged in conduct which constitutes misconduct in office, gross insubordination,

incompetence due to inefficiency, or a violation of applicable School Board policies.

72. The School Board failed to prove by a preponderance of the evidence that Respondent was tardy and absent from work to the extent alleged in the Amended Notice of Specific Charges. Even if she was tardy and absent as alleged, however, the tardiness and absences do not constitute misconduct in office, gross insubordination, incompetence due to inefficiency, or a violation of applicable School Board policies.

73. The School Board failed to prove by a preponderance of the evidence that Respondent engaged in any conduct rising to the level of gross insubordination. Because the School Board failed to prove that Respondent is guilty of any of the conduct alleged during the 2013-2014 school year, she is not guilty of "gross insubordination" for allegedly violating any directives that school year or prior to the 2013-2014 school year. Moreover, the written directives are general in nature, directing Respondent to comply with all or various rules and policies. The single reprimand and multiple Professional Responsibilities memorandums (characterized by Principal Gibbs as "friendly reminder[s]"), and CFR's 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.

74. The undersigned has carefully considered each of the School Board's contentions in its Amended Notice of Specific Charges and Proposed Recommended Order, and they are all rejected. In sum, the School Board failed to prove that Respondent engaged in any conduct alleged in the Amended Notice of Specific Charges which constitutes misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of School Board policies.<sup>9/</sup>

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 rescinding the 30-day suspension with back pay.

DONE AND ENTERED this 26th day of August, 2014, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of August, 2014.

ENDNOTES

<sup>1/</sup> The School Board failed to prove at hearing that a Professional Duty and Responsibilities memorandum is a form of teacher disciplinary action. Neither the CBA nor applicable statutes, rules, and policies address the issue. Notably, Principal Gibbs testified on direct examination that a Professional Duty and Responsibilities memorandum is a "friendly reminder" designed to correct teacher behavior. On cross-examination, however, Principal Gibbs was vague, inconsistent, and testified as follows:

Q: Is that discipline in the discipline system in existence?

A: Well, it depends, because I had already spoken to her in regards to the fact that this is where you need to report, but she was very adamant of not coming to Reeves for whatever reason.

Q: I guess it was a broader question.

A: Okay.

Q: Do you understand a professional responsibilities memorandum to be a disciplinary action against the teacher?

A: It's progressive discipline, yes.

Transcript, p. 63.

<sup>2/</sup> "Print-rich" requires that classroom rules, benchmarks, and objectives be posted on the classroom walls. All teachers are expected to have print-rich classrooms. To assist in this effort, teachers are given a voucher to purchase necessary materials and supplies.

<sup>3/</sup> The CBA addresses a "CFR." A review of Section 1 of the CBA indicates that a CFR is not a form of discipline. According to the CBA, a CFR "may lead to disciplinary action or reprimand."

Thus, the undersigned rejects the School Board's contention that a CFR is a form of disciplinary action against Respondent.

<sup>4/</sup> A reprimand is a form of disciplinary action against Respondent. At the hearing, counsel for the School Board acknowledged that the School Board is not seeking to prove that Respondent, in fact, struck a student with a ruler because she is not being suspended for that reason. Transcript, p. 32. Rather, the School Board's allegations regarding Respondent allegedly striking a student with a ruler relate to the issue of progressive discipline.

<sup>5/</sup> Even if Respondent was tardy and absent as indicated in the Absences and Tardies Directives, Respondent's conduct does not constitute misconduct in office, gross insubordination, incompetency due to inefficiency, or a violation of School Board policies. At best, the directives indicate Respondent was absent due to sickness on seven days from August 2012 to January 15, 2013. However, as of January 14, 2013, she still had 32 hours of sick time available. She was also absent due to personal leave for 2.5 days. However, as of January 14, 2013, she still had 3.5 hours of personal time available. She was tardy for work a total of 2.5 hours.

<sup>6/</sup> The Amended Notice of Specific Charges alleged "Respondent grabbed a student by the wrist in the presence of her supervisor."

<sup>7/</sup> The Amended Notice of Specific Charges makes no reference to a pencil. In paragraph 22.a. of its Proposed Recommended Order, however, the School Board contends that "[o]n September 13, 2013 a student in Respondent's class was poked under the eye with a pencil, and Respondent was completely unaware the incident had even occurred." For the purposes of this Recommended Order, the undersigned's findings are based on the School Board's contention that a student was poked under the eye with a pencil while under Respondent's supervision.

<sup>8/</sup> Principal Gibbs is of large stature, Respondent is not. Based on the undersigned's observation of Respondent and Principal Gibbs at the hearing and the evidence presented at hearing, Principal Gibbs's testimony that he was intimidated by Respondent's loud voice during these meetings is rejected as unpersuasive and not credible.

<sup>9/</sup> Although not raised as an issue by Respondent, the School Board's Amended Notice of Specific Charges and Proposed

Recommended Order fail to set forth precisely what alleged conduct applies to each count:

Paragraph 32 in Count I--Misconduct In Office: "Respondent's conduct, as described herein, constitutes misconduct in office . . . .";

Paragraph 38 in Count II--Gross Insubordination: "Accordingly, Respondent's conduct, as described herein, constitutes gross insubordination . . . .";

Paragraph 40 in Count III--Incompetency Due to Inefficiency: The School Board refers to various definitions of incompetency, but then goes on to allege:

Paragraph 41 in Count III--Respondent "failed to perform her duties by failing to communicate appropriately with and relate to colleagues and administration by becoming irate in conversations with her superiors."

Paragraph 42 in Count III--The School Board then alleges "For the foregoing reasons, Respondent's conduct, as described herein, constitutes incompetency . . . ."

Paragraph 45 in Count IV--Violation of School Board Policy 3210: "Respondent's failure to supervise her students and striking her student violated the Standards of Ethical conduct and constitute just cause to suspend Respondent for thirty (30) workdays."

Paragraph 48 in Count V--Violation of School Board Policy 3210.01: "Respondent's conduct, as described herein, violated School Board Policy 3210.01 . . . ."

These concerns were exacerbated by a review of the School Board's Proposed Recommended Order.

In its Proposed Recommended Order, the School Board limits its arguments as to the charge of misconduct in office by stating in paragraph 39 that: "Respondent's engaged in behavior which disrupted the student's learning environment when she: 1) yelled so loud in her meetings with her supervisors, that other staff members could hear her outside; 2) failed to communicate with parents and informed them that their children had been injured in the classroom; 3) failed to have lesson plans available for substitutes; 4) significantly arrived late to important faculty meetings."

However, the School Board went on to argue, with respect to the other counts:

Paragraph 50: "Respondent's conduct, as described herein, constitutes gross insubordination . . . .";

Paragraph 53: "Respondent's disrespectful conduct illustrates her complete failure to appropriately communicate with colleagues and administration.";

Paragraph 54: "For the foregoing reasons, the Respondent's conduct, as described herein, constitutes incompetency . . . .";

Paragraphs 58-62.

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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.