

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0683TTS

JACKLYN JAMES,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes, before Jessica E. Varn, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH). The hearing was held on May 14, 2014, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Adrian Alvarez, Esquire  
Haliczer, Pettis, and Schwamm, P. A.  
One Financial Plaza, Seventh Floor  
100 Southeast Third Avenue  
Fort Lauderdale, Florida 33394

For Respondent: Melissa C. Mihok, Esquire  
Melissa C. Mihok, P.A.  
1718 East Seventh Avenue, Suite 301  
Tampa, Florida 33605

STATEMENT OF THE ISSUE

Whether there was just cause to suspend Jacklyn James from her employment for three days without pay.

PRELIMINARY STATEMENT

On or around January 12, 2014, the Broward County Superintendent of Schools (Superintendent) issued an Administrative Complaint recommending that the Broward County School Board (School Board) suspend Ms. James from her teaching position for three days without pay.

Ms. James timely requested a formal administrative hearing. On February 14, 2014, the matter was referred to DOAH for further proceedings. The School Board filed its Administrative Complaint, wherein it alleged that on October 21, 2013, Ms. James left her classroom unattended to use the restroom and make copies in the teacher planning room. The School Board further alleged that Ms. James left her class under the supervision of a teacher's aide and that a fight broke out in the classroom while Ms. James was absent. Based upon this alleged misconduct, the School Board charged Ms. James with misconduct in office, in violation of section 1012.33(1)(a), Florida Statutes.

At the hearing, the School Board presented the testimony of the following witnesses: Priscilla Ribeiro, principal at Fort Lauderdale High School (FLHS); Yatzie Brown, employee and labor

relations specialist; Nikitrius Davis, former student at FLHS; Sara LaRosa, assistant principal at FLHS; Christopher Beaulieu, teacher at FLHS; and Kasim Liburd, substitute teacher.

Petitioner's Exhibits 1 through 5, 7, 12, and 13 were received in evidence. Ms. James testified on her own behalf and filed the deposition transcripts of Brian Fitzgerald, Alan Dwortzan, Fanny Acuna, and Mike Alfieri, each a teacher at FLHS, in lieu of live testimony. The parties stipulated to the admission of the depositions, waiving all objections. Respondent's Exhibit 3 was also received into evidence.

The final hearing Transcript was filed with DOAH on June 10, 2014. The School Board filed an unopposed Motion for Extension of Time to File Proposed Recommended Orders on June 20, 2014, which was granted. Both parties timely filed proposed recommended orders, which were considered 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 misconduct.

#### FINDINGS OF FACT

1. The School Board is charged with the duty to operate, control, and supervise all public schools within Broward County, Florida.

2. At all times relevant to this proceeding, Ms. James was employed as an English teacher at FLHS. She has worked in this capacity for the last nine years, teaching ninth and eleventh grade students.

3. Ms. James taught six periods out of seven every day, with a planning period during the second period of the day.

4. In between periods, there are seven minutes for students to move from class to class. During those transition times, teachers are expected to stand at the door to their classrooms, monitoring halls and greeting students.

5. At FLHS, it was common for a teacher to ask neighboring teachers to watch a classroom if a teacher needed to use the restroom or had some other type of emergency. This was an unwritten policy at FLHS.

6. In the fall semester of 2013, Ms. James had a teacher's assistant who assisted her in the classroom. The teacher's assistant was a student herself, a senior at FLHS.

7. On October 21, 2013, Ms. James did not leave her classroom during her planning period, or during her lunch period. When the sixth period of the day arrived, around 12:50 p.m., she realized she needed to use the restroom.

8. After her students entered the classroom, Ms. James started the class and gave the students instruction on what they needed to do. Realizing that she had to use the restroom,

Ms. James gave additional instruction to her teacher's assistant regarding the lesson and told her she would leave the door open and have Mr. Beaulieu, a neighboring teacher, provide adult supervision to the class in her absence.

9. Prior to leaving the classroom, Ms. James called Mr. Liburd, who was substituting in a classroom adjacent to hers (but without visual), and asked him to listen out for her class.

10. About ten to fifteen minutes after sixth period began, Ms. James left her classroom to use the restroom. Because the restroom was in close vicinity to the planning area, and in another building, she took some items she wanted to drop off at her mailbox when she left. She left the door to her classroom open.

11. Ms. James walked into Mr. Beaulieu's classroom, informed him that her teacher's assistant was still in the room, and asked if he could keep an eye on her classroom while she went to the restroom. Ms. James informed Mr. Beaulieu that she had left the door to her classroom open. Mr. Beaulieu, whose students were taking a test, asked if there was anyone else in the room. Ms. James told him that her teacher's assistant was present, and Mr. Beaulieu indicated he would open his door and look out for her students. Ms. James picked up a ream of paper while in Mr. Beaulieu's classroom and left to walk to the building where the restroom was located.

12. Ms. James left through Mr. Beaulieu's back door, as it was closer to the restroom, with the expectation that Mr. Beaulieu would open the door at the front of his classroom and supervise her class as he agreed to do, and as he had done in the past.

13. Ms. James walked to the planning area, put the ream of paper in her mailbox, and used the restroom. In passing her mailbox on her way back to her classroom, Ms. James noticed some copies had been placed in her mailbox, and she picked those up.

14. When Ms. James left the classroom, her students were sitting quietly, working in pairs. Prior to that date, there had never been a fight between students in her classroom; she had no reason to believe that any of the students would fight in her absence.

15. During the time when Ms. James was away from her classroom, a fight broke out between two boys. They punched each other, wrestled each other to the floor, and dragged each other out into the hallway. Mr. Beaulieu was aware of the fight, but never came out of his classroom to help. Mr. Liburd left his classroom and broke up the fight.

16. When she returned to her classroom, approximately seven minutes after she left, she noticed that Mr. Beaulieu's door was closed, which she immediately thought was strange, given his agreement to watch her class. When she entered the classroom,

her students informed her that a fight had taken place in her absence.

17. Due to a complaint by a parent of one of the boys involved in the fight, the school conducted an investigation regarding an allegation that Ms. James had left her students unsupervised.

18. Likely due to self-interest and self-preservation, Mr. Beaulieu denied ever having been asked to supervise the classroom while Ms. James went to the restroom. Mr. Beaulieu's testimony at the hearing was not found credible. Several portions of his testimony were contradicted by Ms. James, Mr. Liburd, and the teacher's assistant.

19. Based upon the investigation, it was recommended that Ms. James be suspended for three days without pay. Those who made the recommendation admitted that they would not have made such a recommendation if Ms. James had asked another teacher to watch her class while she used the restroom.

20. At the time of the recommendation to suspend Ms. James, the FLHS administration was unaware that it was common practice for the teachers at their school to request a neighboring teacher to watch their classrooms while they used the restroom.

## CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

22. In an administrative proceeding to suspend a member of the instructional staff, the School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995). The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

23. Pursuant to section 1012.33(6)(a), Florida Statutes, the School Board is authorized to suspend:

Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time for just cause as provided in paragraph (1)(a). The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not substantiated, the employee shall be immediately reinstated, and his or her back salary shall be paid.

"Just cause" is defined as:



Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

§ 1012.33(1)(a), Fla. Stat.

24. Florida Administrative Code Rule 6A-5.056 states:

(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 colleague's ability to effectively perform duties.

25. The School Board has alleged a violation of Florida Administrative Code Rule 6A-10.081, specifically the following provision:

(3) Obligation to the student requires 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.

26. No credible evidence was presented establishing that Ms. James placed her students' safety in jeopardy. Ms. James used the common practice of asking a neighboring teacher to supervise her classroom while she used the restroom, and, unfortunately, Mr. Beaulieu failed to supervise the students, as he had agreed to do.

27. The School Board failed to prove, by a preponderance of the evidence, that Ms. James was guilty of misconduct in office.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order dismissing the Administrative Complaint against Ms. James and ordering that Ms. James be awarded back pay for the previously served three-day suspension.

DONE AND ENTERED this 16th day of July, 2014, in  
Tallahassee, Leon County, Florida.



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JESSICA E. VARN  
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 16th day of July, 2014.

COPIES FURNISHED:

Melissa C. Mihok, Esquire  
Melissa C. Mihok, P.A.  
1718 East Seventh Avenue, Suite 301  
Tampa, Florida 33605

Adrian Alvarez, Esquire  
Haliczer, Pettis, and Schwamm, P. A.  
One Financial Plaza, Seventh Floor  
100 Southeast Third Avenue  
Fort Lauderdale, Florida 33394

Matthew Carson, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0442

Robert Runcie, Superintendent  
Broward County School Board  
Floor 10  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

Pam Stewart, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0442

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.