

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-3006TTS

SHARON V. EADDY,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference between Tallahassee and Miami, Florida, on October 9, 2014, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Mark S. Herdman, Esquire  
Herdman and Sakellarides, P.A.  
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STATEMENT OF THE ISSUES

Whether Sharon V. Eaddy (Respondent) committed the acts alleged in the Notice of Specific Charges filed by the Miami-Dade

County School Board (the School Board) on August 29, 2014, 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 Campbell Drive K-8 Center (Campbell Drive Center), a public school in Miami-Dade County. Respondent's assigned duties were in a special education pre-K classroom.

At its regularly scheduled meeting on June 18, 2014, 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 August 29, 2014, in which the School Board made factual allegations relating to Respondent's conduct towards a four-year-old male in her Exceptional Student Education class. Based on those factual allegations, Petitioner charged in four 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, and (4) Violation of School Board Policy 4213-Student Supervision and Welfare.

At the final hearing, Petitioner presented the testimony of Yamile Aponte (parent volunteer), Grisel Gutierrez (Spanish teacher), and Carmen Gutierrez (School Board's director of Office of Professional Standards). Carmen Gutierrez was also called by Petitioner as a rebuttal witness. Petitioner offered four sequentially-numbered exhibits, each of which was admitted into evidence. Petitioner's Exhibit 4 was filed post-hearing.

Respondent presented the testimony of Barbara A. Jackson (first grade teacher at Campbell Drive Center), the mother of student L.H., Pascale Vilaire (pre-K ESE teacher at Campbell Drive Center), Rounett Green (security guard at Campbell Drive Center), and Joan Zaret (an ESE teacher at Campbell Drive Center). Respondent offered one exhibit, which was admitted into evidence. That exhibit was filed post-hearing.

A Transcript of the proceedings, consisting of one volume, was filed on November 24, 2014. On the School Board's unopposed motion, the deadline for filing proposed recommended orders was extended to December 15, 2014. Thereafter, 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 (2013), 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. Campbell Drive Center is a public school in Miami-Dade County, Florida.

2. During the 2013-2014 school year, the School Board employed Respondent as a paraprofessional pursuant to a professional service contract.

3. At all times material hereto, Respondent's employment was governed by the collective bargaining agreement between the School Board and the United Teachers of Dade, the rules and regulations of the School Board, and Florida law.

4. The School Board assigned Respondent to a Pre-K special education classroom at Campbell Drive Center taught by Pascale Vilaire. Respondent has worked at Campbell Drive Center as a paraprofessional for 13 years.

5. During the 2013-2014 school year, 14 special needs students were assigned to Ms. Vilaire's classroom. Those students were between three and five years of age.

6. L.H., a four-year-old boy who was described as being high functioning on the autism spectrum, was one of Ms. Vilaire's students. L.H. had frequent temper tantrums during the 2013-2014 school year. Prior to the conduct at issue in this matter, Respondent had had no difficulty managing L.H.'s behavior.

7. There was a conflict in the evidence as to the date the conduct at issue occurred. The undersigned finds that the conduct occurred April 9, 2014, based on the Incident Information admitted into evidence as Petitioner's Exhibit 4, on the testimony of Yamile Aponte, and on the testimony of Grisel Gutierrez.<sup>1/</sup>

8. Ms. Aponte had a daughter in Ms. Vilaire's class and often served as a parent-volunteer.

9. Ms. Aponte was at Campbell Drive Center's cafeteria on the morning of April 9, 2014.

10. Present in the cafeteria were Ms. Vilaire, Respondent, some of Ms. Vilaire's class (including L.H.) and students from other classes.

11. When Ms. Aponte entered the cafeteria, L.H. was crying and hanging on to a trash bin. Ms. Vilaire was attending to another student. Respondent was trying to deal with L.H. to prevent him from tipping over the trash bin. Respondent led L.H. by the wrist back to a table where they sat together. Ms. Aponte approached them and offered L.H. a milk product referred to as a

Pediasure. Because L.H. was allergic to milk, Respondent told Ms. Aponte that L.H. could not have the product.

12. When Ms. Vilaire lined up her class to leave the cafeteria, L.H. threw a tantrum because he was still hungry. Ms. Aponte testified that Respondent grabbed L.H. by the wrist and pulled him up. Ms. Vilaire observed the entire interaction between L.H. and Respondent in the cafeteria. Ms. Vilaire did not witness anything she thought was inappropriate or caused her concern.

13. Petitioner failed to establish that Respondent became physically aggressive toward L.H. in the cafeteria by dragging him across the floor or otherwise grabbing him inappropriately. Paragraph nine of the Notice of Specific Charges contains the allegation that while in the cafeteria, "Respondent forcefully grabbed L.H. and dragged him across the floor." Petitioner did not prove those alleged facts.

14. After the class finished in the cafeteria, the students lined up to go back to the classroom. Ms. Vilaire was at the front of the line, and Respondent was ten to fifteen feet behind at the end of the line with L.H. Ms. Aponte was part of the group going from the cafeteria to the classroom.

15. During the walk back to the classroom, Ms. Vilaire did not see or hear anything between Respondent and L.H. she thought

was inappropriate. She did not hear anything that diverted her attention to Respondent and L.H.

16. At the time of the conduct at issue, Barbara Jackson, an experienced teacher, taught first grade at Campbell Drive Center. While Ms. Vilaire's class was walking from the cafeteria to the classroom, Ms. Jackson had a brief conversation with Respondent about getting food for her class from McDonald's. Ms. Jackson did not hear or see anything inappropriate between Respondent and L.H.

17. After stopping to talk with Ms. Jackson, Respondent resumed walking to Ms. Vilaire's classroom. L.H. continued to cry and attempted to pull away from Respondent. L.H. wanted to be the leader of the line, a position that is rotated among the class members.

18. Ms. Vilaire led the other class members into the classroom while Ms. Aponte, Respondent, and L.H. were still outside. While still outside, they saw Grisel Gutierrez, a teacher at Campbell Drive Center. L.H. began to throw himself on the ground on top of his backpack. Ms. Aponte and Ms. Gutierrez saw Respondent grab L.H. forcefully by the arm and hit him on his shoulder with a slapping sound.<sup>2/</sup>

19. After Respondent returned L.H. to the classroom, L.H. tried to push over a bookcase containing books and toys. To prevent L.H. from pushing over the bookcase, Respondent grabbed

L.H. by his hands and held them behind his back.

Ms. Vilaire witnessed the interaction between Respondent and L.H. in the classroom and thought Respondent acted appropriately. Petitioner failed to establish that Respondent acted inappropriately towards L.H. while in the classroom.

20. Ms. Aponte reported what she had seen to the school principal the day of the incident.

21. Respondent learned that Ms. Aponte had complained against her the day of the incident.

22. After school the day of the incident, Respondent angrily confronted Ms. Aponte and asked her why she had lied. Rounett Green, a security guard at Campbell Drive Center, stepped in to end the confrontation between Respondent and Ms. Aponte. There was no evidence that Respondent attempted to threaten Ms. Aponte. Respondent did not use inappropriate language towards Ms. Aponte. Respondent did not make physical contact with Ms. Aponte.

23. L.H.'s mother heard about the alleged interactions between Respondent and L.H. When L.H. returned home after school, the mother examined L.H. and found no bruises or other unusual marks on L.H.'s body.

24. At its regularly scheduled meeting on June 18, 2014, the School Board suspended Respondent's employment and instituted these proceedings to terminate her employment.



CONCLUSIONS OF LAW

25. 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 (2013).

26. Respondent is an "educational support employee" within the meaning of section 1012.40, Florida Statutes (2013).

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.

27. 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).

28. 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)).

29. 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), Fla. Stat.

#### THE ALLEGED VIOLATIONS

30. 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.

31. 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, and (Count 4) Violation of School Board Policy 4213-Student Supervision and Welfare.

COUNT 1: MISCONDUCT IN OFFICE

32. 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; . . .

33. 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.

34. 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.

35. Petitioner proved that Respondent was guilty of misconduct in office by proving that Respondent forcefully grabbed L.H. and struck him on the shoulder.

COUNT 2: VIOLATION OF POLICY 4210

36. 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 proving that Respondent forcefully grabbed L.H. and struck him on his shoulder.

COUNT 3: VIOLATION OF POLICY 4120.01

37. 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, and 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 4120.01 by proving that Respondent forcefully grabbed L.H. and struck him on his shoulder.

COUNT 4: VIOLATION OF POLICY 4213

38. 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 proving that Respondent forcefully grabbed L.H. and struck him on the shoulder.

39. Petitioner proved that Respondent violated the policies alleged in counts 2, 3, and 4. The violation of the foregoing School Board policies constitutes misconduct in office.

40. In making the penalty recommendation that follows, the undersigned considered that the School Board has a progressive discipline policy and that the Respondent has a relatively long employment history with the School Board. Also considered is the fact that Respondent did not strike L.H. with sufficient force to bruise him. Notwithstanding those considerations, the undersigned is constrained to recommend that Respondent's employment be terminated because of the egregious nature of her misconduct in striking a four-year-old special needs child.

#### RECOMMENDATION

The following recommendations are 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 adopting the Findings of Fact and Conclusions of Law set forth in this Recommended Order. It is further RECOMMENDED that the final order terminate the employment of Sharon V. Eaddy.

DONE AND ENTERED this 15th day of January, 2015, in  
Tallahassee, Leon County, Florida.



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CLAUDE B. ARRINGTON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of January, 2015.

ENDNOTES

<sup>1/</sup> Respondent asserts that the conduct occurred April 11, 2014. Respondent's Exhibit 1, an Incident Report filed by the school police department, was offered in support of that argument. However, the date reflected on the Incident Report appears to be the date the police department received the complaint, as opposed to the date of the conduct. The findings and conclusions set forth in this Recommended Order do not turn on whether the conduct occurred April 9 or April 11, 2014.

<sup>2/</sup> Ms. Gutierrez testified as to the interaction between Respondent and L.H. at page 30 of the transcript, beginning on line 3: "And she was like dragging him, and I saw when she like slapped him. Like she gave him three pow-pows on the shoulder."

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.