

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-5940TTS

JANNETT PUSEY,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference at sites in Tallahassee and Miami, Florida, on April 14, 2015.

APPEARANCES

For Petitioner: Cristina Rivera Correa, Esquire  
Miami-Dade County School Board  
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For Respondent: Melissa C. Mihok, Esquire  
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STATEMENT OF THE ISSUE

Whether Petitioner has just cause to terminate Respondent's employment as a classroom teacher for the conduct alleged in the Amended Notice of Specific Charges.

PRELIMINARY STATEMENT

At its regularly scheduled meeting on December 10, 2014, Miami-Dade County School Board (Petitioner or School Board) voted to terminate the employment of Jannett Pusey (Respondent). On that same date, Respondent requested a formal administrative hearing to contest Petitioner's action. On December 16, 2014, Petitioner forwarded the request to the Division of Administrative Hearings (DOAH), which scheduled and conducted the hearing.

The matter was originally set for hearing on February 9, 2015. The matter was rescheduled based upon the Respondent's Motion for Continuance. On April 13, 2015, the parties filed a Pre-hearing Stipulation, including a statement of agreed facts that have been adopted and incorporated herein as necessary.

At the final hearing, which took place on April 14, 2015, Petitioner called the following witnesses: Luis Bello, Principal of Aventura Waterways K-8 Center (Aventura); Betty Pollard, paraprofessional; Kristy Garcia, teacher; Helen Pina, District Director, Office of Professional Standards (OPS). Petitioner's Exhibits 1 through 12, 15, 16 and 24 were admitted in evidence. Respondent testified on her own behalf and submitted no exhibits.

The one-volume final hearing Transcript was filed on May 26, 2015. Both parties filed proposed recommended orders which were considered in the preparation of this Recommended Order.

Unless otherwise noted, citations to the Florida Statutes and administrative rules refer to the versions in effect at the time of the events giving rise to the charges identified in the Administrative Complaint.

#### FINDINGS OF FACT

1. At all times material hereto, Petitioner has been the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida. Both West Hialeah and Aventura are public schools in Miami-Dade County, Florida.

2. During the 2011-12 school year, Respondent was employed as a teacher assigned to West Hialeah. Respondent's teaching assignment during the 2014-2015 school year was as a teacher at Aventura.

3. Respondent's employment is governed by the collective bargaining agreement between Petitioner and the United Teachers of Dade ("UTD Contract"), Florida Statutes, the regulations issued by the Florida State Board of Education as set forth in the Florida Administrative Code, and the School Board's policies and procedures.

#### Respondent's Prior Discipline

4. During the 2011-2012 school year, Respondent was investigated for hitting an exceptional student education (ESE) student at West Hialeah. The investigation concluded that there

was probable cause to charge Respondent with violating School Board Policies 3210 and 3210.01. As a result, a conference-for-the-record (CFR) was held on December 15, 2011, wherein OPS District Director, Dr. Brown, issued Respondent directives to:

adhere to all School Board policies, specifically 3210, Standards of Ethical Conduct; 3210.01, the Code of Ethics; and 5630, Corporal Punishment and the Use of Reasonable Force; refrain from contacting in person or by any other means any of the parties involved in the investigation; refrain from using physical means as a form of discipline; and [] conduct [herself], both in [her] employment and in the community, in a manner that reflects credit upon [herself] and the district.

Respondent signed on January 3, 2012, that she was in receipt of these directives.

5. Although the charges against Respondent relating to physical aggression against a student merited a recommendation from the School Board that Respondent be terminated, the School Board took into consideration Respondent's length of service with the School Board and the fact that she had not received any prior discipline. As such, it was recommended that Respondent be suspended for 25 workdays without pay. Respondent contested this recommendation. Following a final hearing on September 24, 2012, Administrative Law Judge Stuart M. Lerner found that Respondent used physical aggression toward an ESE student and recommended

that the School Board uphold Respondent's 25-workday suspension. Ultimately, Respondent was suspended for 25 workdays without pay.

6. The September 2011 incident was reported to the Florida Department of Education (Florida DOE), and a hearing was held on October 15, 2014, to determine whether any disciplinary measures should be taken on Respondent's educator certificate. Following that hearing, conducted by the undersigned, it was recommended to the Florida DOE that "Respondent be placed on probation for 90 days with a letter or reprimand to be placed in her certification file." The Recommended Order provided that, "[t]his penalty takes into account that Respondent's conduct, in striking the student, was inappropriate under any circumstances, but also places the conduct in perspective in relation to Respondent's otherwise incident-free teaching career."

The September 17, 2014, Incident

7. Respondent later began working as a teacher with ESE students at Aventura beginning in the 2012-2013 school year. During the 2014-2015 school year, Respondent worked as an Autism Spectrum Disorder (ASD) teacher. M.C., who suffers from ASD, was a student in Respondent's class during the 2014-2015 school year.

8. M.C. and his family are from Argentina and the 2014-2015 school year was the first year M.C. attended a public school in the United States. Initially, M.C. could not take instruction in class. Respondent worked with him to develop the skills to take

instruction by demonstrating actions, repeating instruction and praising the student for doing things correctly. Respondent taught M.C. how to write his name, catch a ball, and hold a pencil.

9. Respondent shared a classroom with fellow teacher, Ms. Stubbs. Ms. Stubbs had her own set of students with varying exceptionalities. Ms. Stubbs had six middle school students and Respondent had six elementary school students. Ms. Pollard acted as Respondent's paraprofessional, helping Respondent with her students. Additionally, Ms. Charles would assist Respondent with M.C. for a few hours each day.

10. Respondent's planning period was during the time her students went to art once a week on Wednesday. Respondent voluntarily gave up her planning period to assist the art teacher, Ms. Garcia, with the students.

11. Ms. Garcia worked as an art teacher at Aventura for six (6) years. On September 17, 2014, Ms. Garcia was teaching art to Respondent's students. After Ms. Garcia had provided instructions for the class, she began walking around the room while the students worked on their assignment. M.C. was seated at his desk coloring with crayons. M.C. began throwing crayons on the floor and Respondent, who had been standing behind M.C. with her hands on his shoulders, grabbed M.C.'s hands and wrists and pulled him down to the floor, causing M.C. to fall down to

his knees. Respondent told M.C. to pick up the crayons in a loud tone that conveyed she was annoyed.

12. Once Respondent had M.C. on the floor, she held M.C.'s wrists, forcing him to pick up the crayons off the floor. All the while, M.C., who is non-verbal, was making noises like he was not happy. Ms. Garcia tried to help, but Respondent did not allow her, insisting that M.C. had to clean up by himself.

13. M.C. eventually returned to his seat and then began spitting on the floor. Once again, Respondent pulled M.C. to the floor by his wrists, causing him to land on his knees. Respondent again appeared annoyed as she was forcing M.C. to wipe up the spit. Ms. Garcia attempted once more to assist in the clean-up, but Respondent did not allow her, stating that M.C. had to clean up his own mess.

14. Although Ms. Garcia has seen other ESE students being restrained, she has never seen a teacher treat a student like Respondent treated M.C. by forcefully pulling him to the floor. There was no indication that M.C. was going to hurt himself or other students.

15. Although Ms. Pollard did not see the interaction between Respondent and M.C., because she was busy helping the students with their assignment, she did hear Respondent yell, "Pick it up!" in a tone loud enough to be heard over the noise of the classroom.

16. At the end of the art class, M.C. pinched another student with ASD, K., in front of Respondent. Respondent responded by instructing K. to pinch M.C. back. Ms. Garcia was only three feet away from Respondent when she heard Respondent say this. K. is a very obedient student. When Respondent told him to pinch M.C. back, K. looked confused, shrugged his shoulders and reluctantly pinched M.C. back.

17. Ms. Garcia was shocked by what she witnessed. She verbally intervened by telling Respondent that she would not tolerate Respondent's behavior in her classroom. Ms. Garcia admonished Respondent that the students should not be taught to retaliate against each other. Respondent just stood silent and stunned during the confrontation. Meanwhile, M.C., upset at K.'s retaliation, ran off and pinched another student, R., who retaliated by repeatedly hitting M.C. back. The situation Respondent created was total chaos. Two children, K. and R., who are otherwise well-behaved, were acting aggressively towards each other. Ms. Garcia then had to physically intervene by separating the fighting children because Respondent just stood by.

18. Ms. Pollard, who had been outside Ms. Garcia's classroom with the rest of the class, began to wonder what was taking the other students so long. When Ms. Pollard peered back into the classroom, the expression on Ms. Garcia's face startled her. Ms. Pollard asked Ms. Garcia what was wrong, to which



Ms. Garcia responded, "Do you believe she [Respondent] told K. to hit M.C.?!". Ms. Pollard looked over to Respondent, but Respondent remained silent.

19. Ms. Garcia informed Principal Bello that she witnessed Respondent handle M.C. in an inappropriate manner and that Respondent instructed another student to pinch M.C. in retaliation. Respondent denied these allegations. Ms. Garcia did not have any issues with Respondent prior to Ms. Garcia reporting the incident to Principal Bello. After the incident, Respondent stopped coming into Ms. Garcia's classroom with her students.

#### Respondent's Post-Incident Conduct

20. On September 29, 2014, Mr. Bello issued Respondent a letter, directing her to refrain "from contacting any complainant(s) and/or witnesses, with the intent to interfere with the investigation of the above listed allegation."

21. In November of 2014, M.C.'s mother, S.C., received a telephone call from Respondent on a Saturday night at around 8:00 p.m. Respondent proceeded to tell S.C. that she was going to lose her job and teaching license because of S.C.'s son, M.C. Respondent asked S.C. to have her ex-husband, M.C.'s father, write a letter and backdate it to the first day of school in August 2014.

22. Respondent's call made S.C. feel "extremely horrible" and "guilty." S.C. did not want anyone losing their job because of her son. Subsequently, Respondent repeatedly took advantage of the fact that S.C. picked up M.C. in the classroom to talk to S.C. about the allegations. Respondent cried to S.C., telling her that M.C. had behaved well on the last day of school before the Thanksgiving break because M.C. must have known it would be Respondent's last day as his teacher.

23. Respondent's words and actions towards S.C. made S.C. question why the school was investigating or targeting Respondent and she wanted to ask the school to stop their investigation. The effect that Respondent's words and actions had on S.C. is precisely what Petitioner tries to avoid by issuing standard directives that employees being investigated may not contact witnesses with the intent to interfere with the investigation.<sup>1/</sup>

24. Respondent was afforded her employee and due process rights, including the opportunity to file exceptions to the investigative report and request a superintendent's review. At its regularly scheduled meeting on December 10, 2014, the Petitioner took action to suspend Respondent without pay and initiated dismissal proceedings against her.

25. Respondent claims that allegations against her are falsified, that Ms. Garcia was "coached" for reasons Respondent could not articulate, and that her co-teacher, Ms. Stubbs, is out

to get her. She also believes "the principal and his agents" conspired against her. Notably, Ms. Stubbs was not the individual who reported the incident. She did not provide a statement in support of the allegations nor did she testify at the final hearing. Respondent could not identify the alleged agents of the principal.

26. Respondent's denial of the allegations and conspiracy theory are identical to the defenses she asserted in response to her prior incident of inappropriately touching a child for which she received a 25-day suspension and probation.<sup>2/</sup> Respondent presented no credible evidence in support of these defenses.

27. Respondent also claims that M.C.'s father gave her verbal permission at the beginning of the school year to teach his son "life skills" and put physical limits on his son. The father did not testify, there was no corroboration, and it was denied by S.C. Even assuming this was true, it is implausible that M.C.'s father, or any parent, would envision a scenario in which his child would be pulled to the ground forcibly by his teacher, or another student would be encouraged by a teacher to physically retaliate against his child, to teach "life skills."

Findings of Ultimate Fact

28. As discussed in greater detail below, Petitioner proved Respondent engaged in misconduct in office, gross insubordination, and violated School Board rules 3210 and 3213.

CONCLUSIONS OF LAW

29. DOAH has jurisdiction over the parties to and the subject matter of these proceedings pursuant to sections 120.569 and 120.57(1), Florida Statutes.

30. Because the School Board, acting through the superintendent, 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 Administrative Complaint 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).

31. Section 1012.33(1)(a), Florida Statutes, includes the following definition of just cause to terminate a teacher's professional services contract:

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 or being convicted or found guilty of, or entering a plea of guilty

to, regardless of adjudication of guilt, any crime involving moral turpitude.

32. The Amended Notice of Specific Charges alleges the following: Respondent committed misconduct in office in violation of Florida Administrative Code Rule 6A-5.056(2); a violation of School Board Policy 3210, the Standards of Ethical Conduct; a violation of School Board Policy 3210.01, Code of Ethics; a violation of School Board Policy 3213, Student Supervision and Welfare; and gross insubordination in violation of rule 6A-5.056(4).

33. 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); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

34. 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.

35. Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code Rule 6A-5.056(2), which reads in pertinent 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 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.

Code of Ethics and Principles of Professional Conduct

36. Rule 6B-1.001, renumbered without change as 6A-10.080,

Code of Ethics, 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.

37. Rule 6B-1.006, renumbered without change as 6A-10.081, sets forth the Principles of Professional Conduct. The School Board alleges that Respondent violated sections (3)(a), (e) and (f) of the rule, which read 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.

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

(f) Shall not intentionally violate or deny a student's legal rights.

38. As was stated in Miami-Dade County School Board v. Brenes, Case No. 06-1758, 2007 Fla. Div. Adm. Hear. LEXIS 122 n.12 \*\*42-43 (Fla. DOAH Feb. 27, 2007; Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007):

Rule [6B-4.009(3)] plainly requires that a violation of both the Ethics Code and the Principles of Professional Education be shown, not merely a violation of one or the other. The precepts set forth in the Ethics Code, however, are so general and so obviously aspirational as to be of little practical use in defining normative behavior. It is one thing to say, for example, that

teachers must "strive for professional growth." See Fla. Admin. Code R. 6B-1.001(2). It is quite another to define the behavior which constitutes such striving in a way that puts teachers on notice concerning what conduct is forbidden. The Principles of Professional Conduct accomplish the latter goal, enumerating specific "dos" and "don'ts." Thus, it is concluded that while any violation of one of the Principles would also be a violation of the Code of Ethics, the converse is not true. Put another way, in order to punish a teacher for misconduct in office, it is necessary but not sufficient that a violation of a broad ideal articulated in the Ethics Code be proved, whereas it is both necessary and sufficient that a violation of a specific rule in the Principles of Professional Conduct be proved. It is the necessary and sufficient condition to which the text refers.

39. Respondent's actions, of twice pulling M.C. to his knees, and verbally encouraging another student to pinch M.C., failed "to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety." Respondent intentionally exposed M.C. to physical harm and embarrassment. Respondent's actions resulted in a significant disruption to the classroom. This was not Respondent's use of "best professional judgment."

#### School Board Rules

40. The obligations of the teacher towards a student contained in School Board Policy 3210—Standards of Ethical Conduct, and 3210.01—Code of Ethics, mirror the language of the Principles of Professional Conduct for the Education Profession



in Florida, rule 6A-10.081. For the reasons discussed above, Petitioner demonstrated by a preponderance of the evidence that Respondent violated Policy 3210 and 3210.01 and, therefore, just cause exists for termination.

41. School Board Policy 3213—Student Supervision and Welfare states in relevant part that "[p]rotecting the physical and emotional well-being of students is of paramount importance." As such, School Board Policy 3213 requires "[e]ach instructional staff member [to] maintain the highest professional, moral, and ethical standards in dealing with the supervision, control, and protection of students on or off school property."

42. Respondent failed her obligation under School Board Policy 3213 to incorporate high professional, moral, and ethical standards with respect to the ASD students. Respondent not only neglected to protect M.C., K., and R. from conditions harmful to them, she created them.

#### Gross Insubordination

43. Section 6A-5.056(4) of the Florida Administrative Code defines gross insubordination as 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."

44. On December 15, 2011, Dr. Brown issued Respondent directives at her CFR. The directives were appropriate and

reasonable in nature, and were issued by Dr. Brown, who had proper authority as OPS District Director. By violating the same School Board Policies on September 17, 2014, with similar conduct—physical aggression towards students—Respondent intentionally refused to obey Dr. Brown's direct orders.

45. On September 29, 2015, Mr. Bello directed Respondent to not contact witnesses with the intent to interfere with the investigation of the September 17th incident. As Respondent's principal, Mr. Bello is authorized to issue those directives. They were reasonable in nature, given Petitioner's interests in maintaining the integrity of the investigation process, and insuring that witnesses are not tainted.


46. By telephoning, and speaking to S.C. in person, with the intent to make S.C. feel bad for her regarding the allegations and the possibility of Respondent losing her job, Respondent intentionally interfered with the investigation. Whether Respondent's action had any actual impact on the investigation is not of consequence; rather her intent to interfere is sufficient. Accordingly, Respondent's conduct, as described herein, constitutes gross insubordination and just cause for dismissal from employment.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, including Respondent's prior 25-day suspension for similar

conduct (inappropriate physical contact with a student) and the seriousness of these violations, it is RECOMMENDED that the School Board enter a Final Order terminating Respondent's employment.

DONE AND ENTERED this 26th day of June, 2015, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of June, 2015.

ENDNOTES

<sup>1/</sup> Although S.C. initially supported Respondent, the behavior M.C. began displaying over the winter recess caused S.C. to question what her son experienced with Respondent. By the time M.C. returned to school from the winter break, Respondent had already been suspended and there was no need for S.C. to request M.C.'s removal from Respondent's classroom, as she intended.

<sup>2/</sup> In this proceeding, Respondent also alleged that her deposition transcript was altered to include things she did not say. This far-fetched assertion further weakened Respondent's credibility.

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.