

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HERNANDO COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-1200

WILDA MAYMI,

Respondent.

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RECOMMENDED ORDER

D. R. Alexander, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing in this matter on May 14, 2015, in Brooksville, Florida.

APPEARANCES

For Petitioner: Thomas M. Gonzalez, Esquire  
Nathan James Paulich, Esquire  
Thompson, Sizemore, Gonzalez  
& Hearing, P.A.  
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For Respondent: Wilda Maymi, pro se  
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STATEMENT OF THE ISSUE

The issue is whether Respondent, a non-instructional employee of the School Board, is guilty of violating School Board Policy 6.37, and if so, whether termination of her employment is an appropriate sanction.

## PRELIMINARY STATEMENT

After conducting an investigation of allegations of inappropriate conduct by Respondent, a non-instructional employee, the Superintendent recommended that she be terminated from employment effective February 4, 2015, for violating School Board Policy 6.37. Respondent timely requested a hearing, and the matter was referred by the School Board to DOAH with a request that a formal hearing be conducted.

At the final hearing, Petitioner presented the testimony of seven witnesses. Petitioner's Exhibits 1 through 19 were accepted in evidence. Respondent testified on her own behalf.

A one-volume Transcript of the hearing has been prepared. Proposed recommended orders (PROs) were filed by the parties, and they have been considered in the preparation of this Recommended Order.<sup>1/</sup>

## FINDINGS OF FACT

### A. Background

1. The School Board is responsible for hiring, overseeing, and terminating employees in the school district.

2. Respondent is a non-instructional (support) employee at Explorer K-8 School (Explorer) in Spring Hill. She began working at Explorer as a Custodian I in school year 2014-2015 and was assigned the night shift, 3:45 p.m. to 11:30 p.m. Before coming to Explorer, Respondent was a custodian at

Hernando High School in Brooksville, but left to fill a vacancy at Explorer, which was closer to her home. She was hired at the recommendation of Homer Lawson, an African American male and head custodian at Explorer.

3. Barbara Kidder is principal at Explorer and has ultimate supervisory responsibility for all employees at the school, including the custodial staff. Lillian DiTucci is the assistant principal and also has supervisory duties over the custodial staff.

4. Custodians at Explorer are assigned to either the day or night shift. Lawson, as head custodian, is responsible for supervising all custodians, regardless of the shift assignment. Eric Harris is the night custodian supervisor and is next in the chain of command below Lawson. Although Lawson works the day shift, he is present for approximately one hour of the night shift and meets with Harris prior to the start of that shift to go over various issues, including performance of custodial staff. Lawson is the first person to arrive at Explorer the next morning and conducts walk-throughs to ensure the areas have been cleaned by the night shift.

5. As head custodian, Lawson is also in charge of custodial supplies at Explorer. If a custodian is out of supplies, Lawson requires the custodian to write on the board the supplies he or she needs for the next day and then he

processes the request. The supplies usage is documented in a log book, with notation of the custodian's name and the date the supplies were issued. If the documentation shows one custodian is going through more supplies than the others, Lawson inquires of the custodian. Because of strict budgetary concerns, Lawson is vigilant in tracking the use of supplies. He does not deny necessary supplies, but he will give direction to be more responsible.

6. The School Board has adopted Policy 6.37, which establishes standards for the separation, discipline, and discharge of non-instructional employees, including Respondent. Paragraph (5)(d) recognizes three categories of offenses and a guide for recommended penalties. Relevant to this proceeding are the offenses and recommended penalties for Groups II and III. The penalty for Group II offenses ranges from a written reprimand for the first offense to discharge for a third offense. Group III offenses are the most serious and carry a recommended penalty of "up to discharge" for the first violation.

7. The School Board has charged Respondent with violating two Group II offenses, referred to as items in the policy:

Item 7 - Creating or contributing to unsafe, unsanitary or poor housekeeping conditions; and

Item 13 - Incompetency or inefficiency in the performance of duties.

8. Respondent is also charged with violating five Group III offenses:

Item 1 - Insubordination;

Item 4 - Interfering with the work of other employees or refusal to perform assigned task;

Item 12 - Violation of a posted or otherwise known Board or departmental rule, procedure, order, regulation of any State or County statute or ordinance which is related to the employee's employment;

Item 14 - Improper racial or sexual comments, harassment or acts; and

Item 23 - Refusal to work overtime or hours as assigned.

B. The Inappropriate Conduct Which Led to the Charges

9. From the very beginning of her employment with Explorer, Respondent exhibited numerous performance issues, including the complete failure to perform assigned tasks, which resulted in a high volume of complaints from teachers and staff throughout the fall term and required multiple meetings with, and direction from, supervisors.

10. On September 4, 2014, or a few days after she began working at the school, Harris met with Respondent regarding her cell phone usage during work hours. Harris witnessed and

received complaints from other school employees that Respondent was on her cell phone "a lot," which resulted in less productivity and caused a distraction because she often kept her phone on speakerphone. Respondent responded that she would shut it off and use it only for emergencies.

11. Respondent was assigned to clean the classroom of Michele Hann, an Exceptional Student Education (ESE) teacher at Explorer. On Thursday, September 18, 2014, Hann emailed Lawson and stated that her classroom had not been properly cleaned in a manner that was acceptable for ESE students, some of whom had medical needs requiring a very clean environment. She also noted that food from the day before was still on the floor, the paper towels by the sink had not been replaced since the previous Friday, and her Terminator bottle (containing a disinfectant) was empty. Harris was given a copy of Hann's email and discussed these complaints with Respondent.

12. Among other responsibilities, Respondent was required to restock paper towels in the classrooms that she cleaned. On September 19, Lori Linauer, a teacher at Explorer, emailed Lawson that the bathroom in her classroom had been out of paper towels since the day before.

13. Based on these complaints, Respondent was assigned a new area that required less responsibility, but the complaints regarding her performance deficiencies continued. One of her

new assignments was cleaning the school's locker rooms. A few days later, Harris received a complaint that the locker rooms were not being cleaned. It takes "at least a half hour [to clean] each locker room to do a good job," and the night shift ends at 11:30 p.m. Harris observed that on September 22 and 23, Respondent did not begin cleaning the locker rooms until around 10:45 p.m. and 11:10 p.m., respectively. These observations enabled Harris to confirm that Respondent was doing her work "quick at the end of the night," without properly cleaning the rooms. Harris discussed this concern with Respondent and even assisted her with cleaning the locker rooms on several occasions.

14. Custodians are instructed to place their carts in the custodial closet at the end of their shifts. On September 25, Harris met with Respondent after she continued to leave her cart and radio in the recreation hall at the end of her shift. Respondent gave no credible reason why she ignored this requirement.

15. On September 29, Harris received another complaint that the locker rooms were not properly cleaned. When he confronted Respondent about this complaint, she explained that other rooms were messy and she had "meetings," implying that she had insufficient time to finish her work. Because Respondent had still not secured her assigned badge that would allow her

access to the locker rooms (once they were electronically locked in the evening), Harris had to unlock the boys' locker room at 11:30 p.m. and then retrieve her cleaning materials so that she could finish the job.

16. On October 21, Harris checked the boys' gang bathroom (a multi-use bathroom with six or more stalls) and found the toilet bases filthy and not wiped down. Harris met with Respondent to discuss this concern. The next day he noticed that Respondent failed to properly clean the toilets and mirrors in the girls' gang bathroom. Harris once again met with Respondent to discuss these concerns. Respondent told Harris that she needed a brush with a stick on it to make the job easier. Harris told her that she should clean the toilets the way everyone else did, by bending down and wiping them clean.

17. On October 24, Respondent telephoned the principal's secretary at 4:15 p.m. and said she would be late because she had to pick up her employee's badge. However, Respondent did not pick up her badge that day.

18. On October 28, Joanne Yarin, a Media Specialist at the school, informed Lawson by email that the women's restroom in the media center ran out of paper towels the afternoon before. Yarin had asked Respondent to refill the paper towels, but Respondent told her she wasn't sure if there were any more in the supply room. When the paper towels were not restocked by



the following morning, Yarin contacted another custodian who promptly complied with her request.

19. On October 29, Karen Federico, a music teacher at Explorer, complained to Lawson by email that Respondent failed to vacuum her classroom or take out the trash the night before. She also complained that the concession area women's bathroom had no paper towels.

20. On November 3, Tammy Ashurst, a behavior specialist at the school, emailed Lawson regarding her concerns about Respondent's performance. A copy of the email was forwarded to Kidder and Harris. Ashurst pointed out that Respondent's failure to sweep or vacuum the floors was a recurring problem. When she entered her classroom that morning, Ashurst found a large section of the floor dirty and sticky and she had to ask another custodian to clean it. Ashurst asked Lawson to speak with Respondent regarding this issue.

21. On November 5, Respondent telephoned the principal's secretary to say if she was not at work by 5:00 p.m. that day she was not coming in. She did not show up for work. Whether Respondent turned in a leave form for that day is not of record.

22. Beside the performance issues, Respondent did not interact well with other staff at Explorer. On November 7, she was involved in a verbal altercation with another custodian, Haley Carson, whose car (with the Carson baby inside) was nearly

struck by Respondent's car the prior evening when Respondent sped out of the parking lot at the end of their shifts.

Respondent also had a verbal altercation with another co-worker in the parking lot after parking at an angle and into the adjacent parking space used by the co-worker. Respondent told the co-worker that she (Respondent) always parked like that and to move her car if she didn't like it.

23. On November 7, Harris received a complaint from another school employee, Mr. Baroudi, whose position is unknown, that the garbage in his room had not been emptied on two occasions and food sat in the trash can for days.

24. On November 18, Juliet Figueroa, another night shift custodian who had just started work the day before, was given the rundown on her job (a "411") by Respondent. During the conversation Respondent asked Figueroa if "you know the manager Homer [Lawson]? I don't call him that I call him nigger." During the same conversation, Respondent referred to a former co-worker, Mundreanu, who is Romanian, as a "communist." She also asked Figueroa if she was a Puerto Rican, since Respondent thought she looked like a Mexican. Figueroa was "taken aback" by these comments and reported the incident to Kidder. At hearing, Respondent claimed that Figueroa misunderstood her and that she actually used the word "negro," which means black in Spanish, and not the word "nigger." However, Figueroa

understands Spanish and knows the difference between "nigger" and "negro." Respondent's assertion that she did not use this language has not been accepted.

25. On or about November 19, during his morning walk-through, Lawson observed feces in the stalls and soap scum on the walls of the girls' gang bathroom near the school cafeteria that should have been cleaned by Respondent. Lawson spoke with Harris and told him to direct Respondent to take care of it. Harris directed Respondent to clean the area, but she failed to comply with his instructions. Lawson then informed DiTucci.

26. On November 20, DiTucci met with Respondent to discuss these latest performance deficiencies. Respondent refused to attend the meeting unless Lawson was not present, claiming she did not consider him to be her supervisor and he had "disrespected" her at work.

27. At the meeting, Respondent argued the substance was chocolate and not feces, but the areas should have been cleaned regardless of the substance. By then, DiTucci had checked it out and confirmed Lawson's initial findings. Respondent also contended that she was not given sufficient supplies to finish her work, even though she sometimes used three times the amount of supplies as other custodians. Finally, she claimed that Lawson had accused her of stealing supplies but there is no credible evidence to support this assertion. The meeting ended

with Respondent threatening to hire an attorney to respond to the charge that she was stealing supplies.

28. On November 21, Harris documented that Maggie, another school custodian, witnessed Respondent's cart not moving for more than an hour earlier in the day. Each room typically takes 15 to 20 minutes to clean, and the cart is parked outside the room for easy access. Harris testified that this may have explained why Respondent's areas were not being properly cleaned.

29. The same day, without seeking permission, Respondent told Harris she was leaving early, saying she "forgot to punch out for lunch goodnight." Custodians are required to punch out for "lunch" from 7:30 p.m. to 8:15 p.m., a paid break. There is no option available to employees to work through lunch period and leave work earlier at the end of the shift.

30. As of November 25, Respondent had still not cleaned the feces off the girls' bathroom wall. As a result, Kidder asked Harris to again direct Respondent to clean the girls' bathroom. She also asked Harris to remind Respondent to turn in a leave form for November 21, and to explain that she must punch in and out for lunch.

31. Respondent finally complied with the directive to clean the girls' bathroom wall after DiTucci and Harris

accompanied her to the bathroom, showed her the feces, and directed her to clean the area.

32. On December 1, Stacy Tarbox, a paraprofessional at the school, emailed Lawson and Harris regarding Respondent's failure to clean the girl's locker room. Tarbox noted that it was dirty, the lockers had a thick layer of dust on top, the walls had not been cleaned, and the floors had not been pressure washed for some time. This was the same locker room Harris had previously talked to Respondent about in September.

33. On December 2, Figueroa filed a bullying and harassment complaint against Respondent based on the November 18 incident in which Respondent made disparaging remarks about Lawson and Mundreanu. The essence of the complaint was that these comments created a hostile working environment.

34. That afternoon, Kidder conducted a conference with DiTucci, Lawson, Respondent, and her union representative to discuss the bullying complaint and allegations that Respondent's conduct constituted a violation of three Group III offenses (items 7, 14, and 23) and one Group II offense (item 7).

35. In response to these charges, Respondent initially said she could not remember using any racial terms when speaking with Figueroa but later labeled Figueroa as a liar and threatened to sue her. She claimed that she did not know what a "commie" meant and again called Figueroa a liar. She also said

she never saw feces on the bathroom wall. If that was the case, she should have asked Harris where it was rather than doing nothing. In response to the charge that she refused to meet with her supervisor, Lawson, she claimed that he had accused her of stealing supplies, disrespected her, and hindered her in performing her work. Finally, she contended that before she left work on November 21 (without punching out for lunch), she told Harris that she was not feeling well. At the conclusion of the meeting, Kidder twice asked Respondent if she had any further response to the allegations and what it would take to change things. Respondent refused to respond. Respondent also declined to say if she intended to return to work at her assigned time and perform her duties.

36. Kidder ultimately determined on December 18 that the bullying and harassment complaint was unfounded since it was an isolated incident, but concluded that Respondent's use of the offensive language was a violation of item 14 in Group III, which prohibits the use of improper racial comments.

37. Beside the performance issues, Respondent's behavior at school offended other custodians. According to one co-worker, Respondent made the work environment feel "hostile" and "tense." There was testimony that co-workers had confrontations with Respondent about her work ethic and that Respondent gave a minimal effort to complete tasks. Also, there were nights when

co-workers had to help her complete her assignments. Finally, the record shows that Respondent was always complaining about work and how she did not like her job. In short, there was a "bad atmosphere" at school among the custodians.

38. Given the myriad of performance deficiencies, Lawson recommended to Kidder that Respondent be terminated, as her performance had steadily gone "downhill." Harris agreed with this assessment and pointed out that when compared with other custodians, Respondent's job performance was "poor to fair." Notably, the number of complaints about Respondent far exceeded those received for any other custodian.

39. Kidder decided to make a recommendation at the school level to terminate Respondent. Her recommendation was based on Respondent's gross insubordination, a failure to perform assigned tasks, and violations of policy 6.37. This recommendation was supported by the fact that there were numerous emails and documents from teachers and staff outlining Respondent's issues as well as a series of meetings to address the concerns, none of which resulted in an improvement in Respondent's performance.

40. In accordance with school protocol, a pre-determination meeting was held by Kidder on December 10, 2014, for the purpose of allowing Respondent to respond to not only the charges discussed at the December 2 meeting, but all

offenses that had occurred since September. Respondent attended the meeting with a union representative. During the meeting, she refused to take responsibility for her actions and offered only excuses. She was argumentative with School staff and her union representative. Based on her lack of remorse and caustic attitude towards supervisors and co-workers, Kidder determined that termination was the appropriate action.

41. On January 7, 2015, the Superintendent recommended that Respondent should be terminated, and pending final action by the School Board, she should be suspended, with pay. After Respondent filed a letter appealing this proposed action, the Superintendent recommended that the School Board suspend Respondent, without pay and benefits, pending an administrative appeal to DOAH. The recommendation was accepted by the School Board and the matter was referred to DOAH.

42. At hearing, Respondent failed to present any credible evidence to rebut the charges or the evidence presented. She simply offered excuses like Lawson was difficult to work with, she was assigned a difficult area to clean due to high use, her co-workers did not help her clean, and she did not get sufficient supplies. While a former custodian testified that she also had problems getting sufficient supplies from Harris, neither spoke directly with Lawson to remedy this situation.



Moreover, the evidence shows that Respondent used far more supplies than necessary and far more than other custodians.

CONCLUSIONS OF LAW

43. Because the Board seeks to terminate Respondent's employment, it bears the burden of proof and must prove the allegations by a preponderance of the evidence. See, e.g., McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); § 120.57(1)(j), Fla. Stat.

44. As a member of the support staff, Respondent may be terminated from employment for the "reasons stated . . . in [a] district school board rule." § 1012.40(2)(b), Fla. Stat. (2014). Here, the School Board has adopted policy 6.37, which establishes the grounds upon which a custodian may be terminated.

45. Respondent is charged with violating two Group II offenses (items 7 and 13) and five Group III offenses (items 1, 4, 12, 14, and 23). The policy authorizes the School Board to discharge (terminate) a support employee for the first violation of a Group III offense.

46. By making an inappropriate racial comment when referring to Lawson, an African American male, Respondent violated item 14 in Group III, which prohibits the use of improper racial comments.

47. By repeated acts of insubordination regarding her assigned duties, and failing to correct these performance deficiencies after being given multiple directions by her supervisors, Respondent has violated item 1 of Group III, insubordination. Especially egregious was her outright refusal to clean the feces off the girls' gang bathroom wall for five days after receiving repeated instructions to do so. Equally egregious was her refusal to recognize Lawson as her supervisor, refusal to talk to him, and refusal to participate in a meeting if he was present.

48. By failing to perform her assigned duties and exhibiting continued poor performance over the course of her employment, Respondent violated items 1 and 4 of Group III and items 7 and 13 of Group II. Such conduct constitutes insubordination (item 1), refusing to perform assigned work (item 4), creating unsanitary or poor housekeeping conditions (item 7), and exhibiting incompetency or inefficiency in the performance of her duties (item 13).

49. By failing to work assigned hours, Respondent has violated items 12 and 23 of Group III, which require that employees comply with school work rules and regulations and work all hours as assigned.

50. Had the evidence in this case established only a few isolated violations, the undersigned would consider the

imposition of a penalty less than termination. Here, however, by a preponderance of the evidence, the School Board has established multiple and repeated violations of school policy during the fall term, job performance that steadily declined, and a lack of remorse or responsibility by Respondent. Thus, the short answer to the issues raised by this appeal is that Respondent violated Policy 6.37 in numerous respects, and termination of her employment is the appropriate sanction.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Hernando County School Board enter a final order terminating Respondent's employment for violating the following offenses in School Board Policy 6.37: items 7 and 13 in Group II and items 1, 4, 12, 14, and 23 in Group III.

DONE AND ENTERED this 13th day of July, 2015, in Tallahassee, Leon County, Florida.

*D.R. Alexander*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of July, 2015.

ENDNOTE

<sup>1/</sup> Respondent filed a one-page PRO in which she characterized the case as nothing more than a "he said she said" affair. She asks that she be reinstated as a custodian, transferred to another school, placed on probation, and given a face-to-face meeting with her new supervisor.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.