

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-3017TTS

ROBERT HARRY KONNOVITCH,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on October 20, 2015, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Tria Lawton-Russell, Esquire  
The School Board of Broward County  
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600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

For Respondent: Robert Konnovitch, pro se  
Unit 301  
5740 Rock Island Road  
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to terminate Respondent's employment as a teacher.

PRELIMINARY STATEMENT

By letter dated April 22, 2015, Petitioner, Broward County School Board ("School Board"), notified Respondent, Robert Konnovitch ("Respondent"), of the School Board's intent to suspend without pay and terminate his employment. On May 6, 2015, Respondent timely requested an administrative hearing. On May 19, 2015, at its scheduled meeting, the School Board took action to suspend and terminate Respondent's employment as a teacher. 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.

The final hearing was initially set for August 11, 2015. On July 24, 2015, the School Board filed an unopposed motion to continue the final hearing. On July 31, 2015, the undersigned entered an Order resetting the final hearing for October 20 and 21, 2015.

The Administrative Complaint contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with the following six counts: (1) Just Cause; (2) Misconduct in Office; (3) Incompetency; (4) Immorality; (5) Gross Insubordination; and (6) Violation of School Board Policy 4008(B).<sup>1/</sup>

The final hearing commenced as scheduled on October 20, 2015, with both parties present. At the hearing, the School

Board presented the testimony of M.Z., B.S., B.F., A.S., E.M., A.S., M.I., J.B., E.W., Hillary Gottlieb, Rubie Rachel, Barton Christopher Duhart, and Joanne Seltzer. The School Board's Exhibits 1 through 25 were received into evidence. Respondent testified on his own behalf. Respondent's Exhibits 1 through 4 and 6 through 10 were received into evidence.

At hearing, the undersigned granted the School Board's ore tenus request for official recognition of the recommended and final orders issued in the case of Broward County School Board v. Robert Konnovitch, Case No. 14-2696TTS (Fla. DOAH Aug. 24, 2015; Broward Cnty Sch. Bd. Oct. 13, 2015).

At hearing, the parties agreed to file their proposed recommended orders within 30 days after the filing of the final hearing transcript at DOAH. The two-volume final hearing Transcript was filed at DOAH on November 9, 2015. The School Board timely filed a proposed recommended order, which was given consideration in the preparation of this Recommended Order. Respondent did not file a proposed recommended order.

On October 12, 2015, the parties filed their Joint Pre-hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below.

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 Broward County, Florida.

2. At all times material to this case, Respondent was employed by the School Board as a physical education teacher at Riverglades Elementary School ("Riverglades"), pursuant to a Professional Services Contract, issued in accordance with section 1012.33(3)(a), Florida Statutes (2014).

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law and the School Board's policies.

#### 2007-2008 School Year

4. On February 13, 2008, the executive director of the School Board's Professional Standards and Special Investigative Unit issued to Respondent a written reprimand based upon allegations of assault and battery.

5. On February 13, 2008, the principal of Village Elementary School, Respondent's employer at the time, held a meeting with Respondent at which time Respondent was directed to: 1) "follow the school wide discipline plan"; 2) "take a class in

Behavior Management and/or Classroom Management, such as 'Champs''"; 3) "discipline with respect"; and 4) "not to yell at children"

2012-2013 School Year

6. On March 7, 2013, Barton Christopher Duhart, interim principal at Riverglades, met with Respondent and directed that his:

[l]anguage with all students be kept professional at all times. Please refrain from using language that is abusive or may be easily misconstrued as being abusive toward any students regardless of their behavior.

2013-2014 School Year

7. On January 15, 2014, JoAnne Seltzer, interim principal at Riverglades, held an informal conference with Respondent regarding an alleged incident involving S.W., a fifth-grade student in Respondent's physical education class. At that time, it was alleged that Respondent had grabbed S.W.'s arm, yelled at her in her ear, told her "to shut up," and made inappropriate remarks about the way she talks. In the conference summary report issued on January 21, 2014, Principal Seltzer directed Respondent to refrain from touching, embarrassing, screaming at, or demeaning students in the future.

8. The School Board proposed to suspend Respondent based on the alleged incident involving S.W. Respondent requested an

administrative hearing to challenge the School Board's proposed action.

9. On August 24, 2015, following a one-day hearing, Administrative Law Judge F. Scott Boyd issued his Recommended Order in the case of Broward County School Board v. Robert Konnovitch, DOAH Case No. 14-2696TTS. Based on the evidence presented at the May 22, 2015, final hearing, Judge Boyd found, in pertinent part:

5. On January 10, 2014, Respondent was attempting to move his students inside after their time on the playground. One student, S.W., was talking loudly and frustrating Respondent's efforts. In response to this, Respondent pulled down on S.W.'s arm or wrist and screamed "Be quiet!" in her ear.

6. S.W. was not physically harmed by this incident and did not cry. However, when asked about how the incident made her feel, she testified "not good."

10. As a result of Respondent's conduct involving S.W. and evidence presented at that hearing, Judge Boyd concluded that Respondent was guilty of misconduct in office, incompetency, and insubordination, and recommended that Respondent's employment be suspended for ten days without pay.

11. Subsequently, the School Board entered a final order adopting Judge Boyd's Recommended Order.

12. The incident giving rise to the School Board's proposed termination of Respondent in the instant case occurred on

April 1, 2014. On April 1, 2014, M.Z. was a fifth-grade student in Respondent's physical education class. Shortly before class ended, M.Z. was misbehaving and got out of line.

13. In response to M.Z.'s misbehavior, Respondent became angry and threatened to punch M.Z. in the face.

14. Respondent, who was standing very close to M.Z., turned around and yelled at M.Z.: "If you don't get in line, then I will punch you in the face."

15. M.Z. was not physically harmed by this incident and did not cry. However, he was scared by Respondent's threatening comment and got back in line.

16. Respondent made the threatening comment in front of the entire physical education class.

17. Respondent's conduct was inappropriate and verbally abusive. Respondent could certainly have projected authority and corrected M.Z.'s behavior without the need to resort to a physical threat of violence.<sup>2/</sup>

18. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of misconduct in office in violation of Florida Administrative Code Rule 6A-5.056.

19. By verbally threatening M.Z. with physical violence, Respondent violated Florida Administrative Code Rules 6A-10.081(3)(a) and (e) by failing to make reasonable effort to protect his students from conditions harmful to learning and

intentionally exposing a student to unnecessary embarrassment or disparagement. Respondent also violated rules 6A-5.056(2)(d) and (e) by engaging in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform duties.

20. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of incompetence in violation of rule 6A-5.056(3).

21. By verbally threatening M.Z. with physical violence, Respondent failed to discharge his required duties as a teacher as a result of inefficiency. Respondent was inefficient by failing to perform duties prescribed by law and by failing to communicate appropriately with and relate to students.

22. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

23. By failing to comply with the specific directives detailed above, Respondent intentionally refused a direct order, reasonable in nature, and given by and with proper authority.

24. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of immorality in violation of rule 6A-5.056(1).



25. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of violating School Board Policy 4008(B). No such policy was offered into evidence at the final hearing.

CONCLUSIONS OF LAW

26. DOAH has jurisdiction of the subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

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

28. The School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the violations alleged in the Administrative Complaint and that such violations constitute "just cause" for dismissal.

§§ 1012.33(1)(a) and (6), Fla. Stat.; Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

29. 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).

30. 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).

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

32. 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.

33. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), 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.

34. Rule 6A-10.080, titled "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.

35. 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." Miami-Dade Cnty. Sch. Bd. v. Lantz, Case No. 12-3970 (Fla. DOAH July 29, 2014).

36. Rule 6A-5.056(2)(b) incorporates by reference rule 6A-10.081, which is titled: "Principles of Professional Conduct for the Education Profession in Florida."

Rule 6A-10.081(3)(a) 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.

\* \* \*

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

37. Consistent with its rulemaking authority, the State Board of Education has defined "incompetency" in rule 6A-5.056(3), which provides, in pertinent part:

(3) "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

(a) "Inefficiency" means one or more of the following:

1. Failure to perform duties prescribed by law;
2. Failure to communicate appropriately with and relate to students.

38. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), 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.

39. Consistent with its rulemaking authority, the State Board of Education has defined "immorality" in rule 6A-5.056(1), which provides:

(1) "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

40. Turning to the present case, the School Board proved by a preponderance of the evidence that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2). As detailed above, the School Board proved by a preponderance of the evidence that Respondent is guilty of misconduct in office, in that he failed to make reasonable effort to protect students from

conditions harmful to learning and engaged in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform duties.

41. The School Board proved by a preponderance of the evidence that Respondent is guilty of incompetence in violation of rule 6A-5.056(3). As detailed above, Respondent was inefficient by failing to perform duties prescribed by law, and by failing to communicate appropriately with and relate to students.

42. The School Board proved by a preponderance of the evidence that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

43. The School Board failed to prove by a preponderance of the evidence that Respondent violated School Board Policy 4008(B).

44. The School Board failed to prove by a preponderance of the evidence that Respondent is guilty of immorality in violation of rule 6A-5.056(1).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Broward County School Board enter

a final order upholding the termination of Respondent's employment.<sup>3/</sup>

DONE AND ENTERED this 8th day of January, 2016, 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 8th day of January, 2016.

#### ENDNOTES

<sup>1/</sup> Typographical errors appear in the Administrative Complaint, numbering "Incompetency" as Count 2, "Immorality" as Count 3, "Gross Insubordination" as Count 4, and "School Board Policy 4008(B)" as Count 5 when, in fact, they are Counts 3 through 6, respectively.

<sup>2/</sup> In the Joint Pre-hearing Stipulation, Respondent admitted to "hitting M.Z. in the chest area." However, at hearing, M.Z. did not testify to any physical contact between him and Respondent on April 1, 2014. The persuasive and credible evidence adduced at hearing establishes that at most, there was slight, inadvertent physical contact between Respondent and M.Z. at the time of the subject April 1, 2014, incident when Respondent verbally threatened M.Z. At that time, Respondent inadvertently and unintentionally physically "bumped" M.Z. in the chest area.

<sup>3/</sup> The conduct identified above by the undersigned involving Respondent prior to the incident involving M.Z., was admissible and relevant to prove the material facts at issue with regard to

the allegations of gross insubordination and the appropriate recommended penalty, only. The undersigned rejects the School Board's contention that such conduct and other alleged prior conduct was admissible and relevant pursuant to section 120.57(1)(d) to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

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.