

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-5367TTS

BRENT SAWDY,

Respondent.

_____ /

RECOMMENDED ORDER

On September 26 and 27, 2018, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings ("Division"), conducted a duly-noticed final hearing in Jacksonville, Florida, pursuant to section 120.57(1), Florida Statutes (2018).

APPEARANCES

For Petitioner: Tracey Kort Parde, Esquire
Stanley M. Weston, Esquire
Office of General Counsel
City of Jacksonville
Room 651 E
1701 Prudential Drive
Jacksonville, Florida 32207

For Respondent: Henry Matson Coxe, III, Esquire
Ashley Cox, Esquire
Bedell, Dittmar, DeVault,
Pillans & Coxe, P.A.
101 East Adams Street
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether Petitioner, Duval County School Board, had just cause to suspend Respondent without pay for seven days for the reasons specified in the agency action letter.

PRELIMINARY STATEMENT

By letter dated September 18, 2017, Sonita D. Young, assistant superintendent of Human Resources of the Duval County School Board ("Petitioner" or "School Board"), issued a Notice letter ("Notice") to Brent Sawdy ("Respondent" or "Mr. Sawdy") notifying him that Petitioner took action approving a recommendation to reprimand and suspend Respondent without pay for seven days based on conduct described in the Notice. The Notice alleged that Respondent failed to provide adequate supervision when he allowed students in his classroom to participate in an inappropriate game, involving kissing and exposure of private body parts. The Notice further alleged that such conduct violated Florida Administrative Code Rule 6A-10.081(1)(b) and (2)(a)1.

On September 20, 2017, Respondent timely requested a hearing to dispute Petitioner's action; and on September 26, 2017, the School Board referred this case to the Division for assignment to an Administrative Law Judge.

The undersigned issued a Notice of Hearing scheduling this matter for hearing on November 30 and December 1, 2017.

Following several requests for continuance, this case was rescheduled for September 26 and 27, 2018.

The hearing commenced as scheduled with both parties represented by counsel. Petitioner presented the testimony of the following witnesses: Caleb Gottberg, former principal of Lake Shore Middle School ("Lake Shore"); Sonita Young; and the following students: C.A., D.B., F.G., and H.P. Petitioner's Exhibits 1, 2, 5, 9 through 11, 13, and 15 through 22 were admitted. Respondent presented the testimony of Mary Alice Knouse, former Duval County school resource officer; Zandra Bryant, teacher at Lake Shore; Mallory Layton, former intern and teacher at Lake Shore; Melissa Cash, former teacher at Lake Shore; Kasey Winter, teacher at Lake Shore; and the following students: K.M., C.D., C.W., and J.B. Respondent also testified on his own behalf. Respondent's Exhibits 1 through 4 and 6 were admitted into evidence.

The two-volume Transcript was filed with the Division on October 18, 2018. The parties requested that they be permitted 30 days to file their proposed recommended orders ("PROs"), which was granted.^{1/} The parties timely filed PROs, which have been considered in preparation of this Recommended Order. In addition, a pre-hearing stipulation was filed by the parties stipulating to certain facts and those facts are incorporated into the Findings of Fact below, to the extent relevant.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013). Thus, references to statutes are to Florida Statutes (2016), unless otherwise noted.

FINDINGS OF FACT

Jurisdiction

1. Petitioner, Duval County School Board, is the constitutional entity authorized to operate, control, and supervise the public schools within Duval County. See Art. IX, § 4(b), Fla. Const.; § 1001.32, Fla. Stat. Petitioner is authorized to discipline instructional staff and other school employees. See § 1012.22(1)(f), Fla. Stat.

2. Mr. Sawdy was employed as a teacher at Lake Shore in Duval County, Florida, from 2011 through June 2018. During the 2016-2017 school year, Mr. Sawdy taught civics to seventh grade students. During the time he was a teacher at Lake Shore, Mr. Sawdy received an effective or highly effective rating on his performance evaluations.

3. Mr. Sawdy has never received discipline during his tenure as a teacher. Specifically, during the time that he had worked at Lake Shore, he was never disciplined for failure to adequately supervise students.

4. After the 2017-2018 school year, Mr. Sawdy relocated to North Carolina and is serving as a teacher there.

Background

5. The incident that served as the basis for this proceeding occurred on May 2, 2017.

6. Mr. Sawdy's classroom was located in a portable unit with windows at Lake Shore. Generally, Mr. Sawdy would have a structured lesson for the class period. However, on this day the students in the class returned from a field trip in the middle of the third period at approximately 1:30 p.m. The students were instructed to go to their designated class and remain there until the fourth class period. The field trip was to the Diamond D Ranch, a farm in Jacksonville, Florida.

7. There were approximately 20 students who went to Mr. Sawdy's classroom after the field trip. As was the typical case when students returned from a field trip, the students were described as rowdy.

8. As a result, Mr. Sawdy permitted the students to work on note cards and listen to music. The music was from Hamilton, the musical, which was used to teach the students about the historical figure, Alexander Hamilton. Although music was playing, the students could hear each other. The lights were off, but you could see in the room because the windows allowed sufficient ambient light.

9. The School Board alleged that Mr. Sawdy allowed a group of students in his class to participate in an inappropriate game. One of the students from the group included R.G. The group was located at the back of the classroom. The testimony from various witnesses about what happened in the classroom on May 2, 2017, varied in several areas.

Student Testimony

Student C.A.

10. C.A. testified that when the class returned to the classroom, Mr. Sawdy did not have a specific lesson. He played music and allowed students to move freely. According to the diagram of the room, C.A. was sitting near R.G., with one chair between them, in the group. C.A. testified that he witnessed R.G. lift her shirt, exposing her breasts. C.A. described the event as "flashing" that happened quickly.

11. C.A. testified that Mr. Sawdy was sitting at his desk at the front of the room when R.G. lifted her shirt, which was farther away from R.G. than was C.A. C.A. credibly testified that Mr. Sawdy was strict regarding discipline for inappropriate behavior. If Mr. Sawdy had seen R.G.'s conduct, he would have called her parents or referred her to the principal. C.A. testified that he did not see anyone kissing or touching private parts.

12. At some point during the class, C.A. slapped D.B. on the back of her thigh. C.A. testified that Mr. Sawdy took him outside the classroom to discipline him for hitting D.B., which redirected his behavior.

Student D.B.

13. D.B. testified that Mr. Sawdy's class is usually laid back and there is even less structure after a field trip. After the field trip, Mr. Sawdy instructed students to work on note cards. While music was playing, they could hear each other. While the lights were off, they could see each other because of the lights from the windows. Turning off the lights was a common practice of other teachers at Lake Shore as well. D.B. was sitting at a desk on the opposite side of the group from R.G. D.B. recalled that Mr. Sawdy was at his desk working on his computer. There were students sitting between R.G. and Mr. Sawdy.

14. D.B. testified that she saw K.^{2/} lick R.G.'s breast, which happened within two seconds. D.B. credibly testified that she did not see anyone else expose their breasts or kiss anyone.

Student H.P.

15. H.P. was sitting near the group. She testified that although music was playing, it was not so loud that she could not hear.

16. She testified that she was aware that a game was taking place. However, she did not see anyone kiss anyone, or engage in any inappropriate activity. H.P. testified that Mr. Sawdy was doing paperwork, and she did not see him walk around during class. However, H.P. credibly testified that Respondent would discipline students if he aware that they misbehaved.

Student K.M.

17. K.M. was sitting at the same table as H.P., near the group. In fact, she was sitting closer to R.G. than H.P. K.M. testified that Mr. Sawdy was sitting at his desk working on his laptop. However, she saw him walk around the classroom "one or two times." K.M. testified that Mr. Sawdy instructed students that it would be a free day because they had returned from the field trip. During the class, Mr. Sawdy turned on music from Hamilton.

18. K.M. stated that she witnessed C.A. slap D.B.'s thigh and saw Mr. Sawdy remove C.A. from the classroom to discipline him for his actions. Despite her close proximity to the group, K.M. did not see anyone kiss anyone, lift their shirt, or lick anyone.

19. K.M. traveled to Europe for a field trip chaperoned by Mr. Sawdy in June 2018. She testified that he did well as a chaperone.

Student C.W.

20. C.W. testified that Mr. Sawdy permitted students to listen to music and hang out after the field trip. C.W. was sitting near the windows, near the corner of the class, but closer to the group than Mr. Sawdy. She characterized the group as "troublemakers." She stated that Mr. Sawdy warned the group to settle down several times. Despite her criticism of the group, C.W. did not see anyone kiss or lick anyone, or otherwise engage in inappropriate activity.

Student J.B.

21. J.B. testified that after the field trip, Mr. Sawdy turned on a video of Bill Nye, "the science guy," on the television. Since students were not watching the video, Mr. Sawdy turned on music. At some point, Mr. Sawdy told the group of students to quiet down because they were being loud. J.B. testified that Mr. Sawdy would discipline students who misbehaved by talking to them or issuing a referral to the principal's office.

22. J.B. stated that he was not aware of a game of truth or dare being played at the time. He also credibly testified that he did not see anyone kiss anyone, lift up his or her shirt, or see anyone do anything inappropriate.

Student F.G.

23. When F.G. and the other students returned to class, Mr. Sawdy instructed them to watch the Bill Nye video and work on note cards. Music from the musical Hamilton was playing toward the end of class, but it was not too loud.

24. F.G. testified that Mr. Sawdy was sitting at his desk during class, but he walked around a few times. Although F.G. was sitting close to the group, she did not know that any inappropriate activity occurred until a few weeks later. F.G. credibly testified that she did not see anyone dancing, kissing, or engaging in inappropriate touching.

25. F.G. also confirmed the testimony of C.A. and D.B. that Mr. Sawdy would discipline students who misbehaved, beginning with a warning outside the classroom, followed by a phone call to their parents and then, a referral to the principal.

26. None of the students who testified stated that they had concerns for their safety or the safety of other students in the class.

27. Although subpoenaed, the complaining student, K.A.M. did not appear at the final hearing.^{3/}

Mr. Sawdy's Testimony

28. Mr. Sawdy also testified at the final hearing. He stated that he chaperoned a group of students on a field trip

to Diamond D Ranch. When the students returned from the trip, they were instructed to go to his classroom. No other teachers or teaching professionals were in the classroom at that time.

29. Mr. Sawdy testified that students are usually more relaxed after field trips and would benefit from a less restrictive teaching class period. As a result, Mr. Sawdy played music from Hamilton and instructed the students to work on note cards. The lights were off, but you could see because of ambient light.

30. Mr. Sawdy credibly testified that he had no knowledge of any inappropriate conduct in his classroom on May 2, 2017, until Mr. Gottberg told him about the complaint regarding inappropriate activity in his classroom. If he had seen anything inappropriate, he would have addressed the actors accordingly. He described the instance where he counseled C.A. Mr. Sawdy's testimony was consistent with that of C.A. and D.B., when he testified that he heard a slap, turned in the direction that he heard it and saw C.A. looking strange. He took C.A. outside the classroom and counseled him for hitting D.B.

31. Subsequent to May 2, 2017, Mr. Sawdy planned and chaperoned a field trip to Europe with 10 middle school students, which took place in June 2018. The principal of each student's school approved the trip to Europe without objection. Furthermore, there were no parents that objected to Mr. Sawdy

chaperoning the students on the trip. Specifically, students M.W. (who did not testify at hearing) and K.M. were in the class on the date in question and still attended the trip to Europe without objection from their parents.

32. There is no reason to believe or evidence to support that Mr. Sawdy would not have disciplined the students engaging in the activity alleged if he had knowledge of their conduct. Moreover, based on his experience with the class, there was no indication to Mr. Sawdy that the students would have the propensity to engage in the alleged conduct. The evidence demonstrates that the incident was, at most, a matter of two students surreptitiously engaging in unexpected inappropriate activity.

33. There was no evidence offered to demonstrate that the alleged student conduct harmed the health or safety of the students in the class. Even if it is determined that the allegations on their face would demonstrate actual harm, rule 6A-10.081(2)(a)1. requires a showing that Respondent failed to make reasonable efforts to protect students from such harm. Gerald Robinson, as Comm'r of Educ. v. William Randall Aydelott, Case No. 12-0621PL, RO at 76 (Fla. DOAH Aug. 29, 2102; EPC Dec. 19, 2012).

Investigation

34. Mr. Gottberg was the principal at Lake Shore during the 2016-2017 school year. He testified that there was an expectation that teachers would maintain a safe environment for students through classroom management and disciplinary action when necessary. There was also an expectation, but not a requirement, that classroom instruction would take place from beginning of class until the end of class (bell-to-bell instruction).

35. On May 3, 2017, Mr. Gottberg's assistant informed him that there was a parent and student that had a complaint about inappropriate student activity in Mr. Sawdy's classroom that had occurred on May 2, 2017. Mr. Gottberg briefly interviewed the student and ultimately, referred the complaint to the Office of Professional Standards.

36. The student resource officer, Mary Alice Knouse, interviewed three of the 22 students who were in the class on May 2, 2017. Based on her interview of the students, she determined that other than K.A.M. and K.M., no students witnessed any inappropriate conduct.

37. The investigator assigned to investigate the complaint, James Gregory, also interviewed students. He interviewed students involved in the alleged conduct events

and randomly selected other students. He did not interview all the students in the classroom on May 2, 2017.

38. Mr. Gottberg was instructed to prepare a report regarding the complaint, and he complied. At the direction of the Office of Professional Standards, but before the student interviews were completed, he recommended that Mr. Sawdy receive Step III or Step IV progressive disciplinary action.

39. Mr. Gottberg described Mr. Sawdy as one of the best teachers at Lake Shore. While Mr. Gottberg was principal, he even approved the 10-day field trip to Europe, which was scheduled to take place after the incident on May 2, 2017.

Allegations Not Pled in Notice

40. The School Board made much of the lights being turned off in the room and the music playing.

41. These allegations were not pled in the charges and, thus, may not be relied upon as a basis for the School Board's action. Even if the School Board had pled allegations regarding the lights and music, the School Board failed to prove that these factors proved that Mr. Sawdy inadequately supervised the students in his classroom.

42. At least five witnesses testified that although the lights were off, there was sufficient light from the windows to see in the classroom. Mr. Gottberg sent an email to the Lake Shore teachers the day following the incident directing them to

keep the lights on in the classrooms. However, no witness testified that there was a rule or policy regarding keeping the lights on during classroom instruction prior to the incident. In addition, teachers and students testified that it was a common practice for the lights to be off in the classrooms because sufficient light was available by window.

43. Several witnesses also testified that the music was not so loud that you could not hear.

Mr. Sawdy's Reputation

44. Respondent has a good reputation with other educators and is known to be an effective teacher. Several of those teachers testified at hearing about their experience working with Mr. Sawdy.

45. Zandra Bryant worked on the same team with Mr. Sawdy at Lake Shore for approximately four years. She testified that she had worked at Lake Shore for eight years. She described Mr. Sawdy as "wonderful teacher" who was very organized and attentive. She was also a chaperone for the field trip to Diamond D Ranch and characterized the students as being rowdy when they returned from the field trip. She confirmed Mr. Sawdy's testimony that it would not be a good time to begin a structured lesson.

46. Mallory Layton also worked with Mr. Sawdy. She described him as role model, attentive to students, including

administering discipline when necessary. Similar to Ms. Bryant, she also testified that after a field trip, it is good practice to engage the students in a relaxed activity.

47. Melissa Cash and Kasey Winter testified that Mr. Sawdy was a good teacher who had a respectful relationship with students.

Ultimate Findings of Fact

48. There is no question that the allegations were of a sensitive nature. The testimony varied in material aspects, and was not of such weight (preponderance of evidence) that it produced a firm belief that Mr. Sawdy failed to reasonably protect the safety of the students in his classroom.

49. The allegations that students engaged in exposure and licking of private body parts was supported by a preponderance of evidence. However, even though the evidence supports a finding, by a slim margin, that students engaged in inappropriate conduct, it must also be determined whether Respondent failed to make reasonable efforts to protect students from harm.

50. The testimony varied regarding where Mr. Sawdy was located when the student conduct occurred. The testimony was clear and consistent that Mr. Sawdy was in the classroom. D.B., J.B., and H.P. testified that Mr. Sawdy was sitting at his desk doing work. F.G. testified that Mr. Sawdy was at his desk

during the class, but walked around a few times. K.M. testified that Mr. Sawdy walked around the room one to two times. The totality of the evidence supports a finding that Mr. Sawdy was at his desk at the front of the room during the class period, but he left his desk and walked around a few times.

51. At the final hearing, six witnesses credibly testified that they never saw anyone kiss, lick, or otherwise engage in inappropriate conduct in Mr. Sawdy's classroom on May 2, 2017. The evidence also supports that these students were sitting closer to the group and arguably, were in a better position to see the group's activity.

52. There is no dispute that Mr. Sawdy was not aware that a group of students had engaged in inappropriate conduct in his classroom on May 2, 2017.

53. Based on the evidence presented at hearing, Petitioner did not prove by a preponderance of evidence that Mr. Sawdy inadequately supervised students in his classroom on May 2, 2017. Mr. Sawdy walked around the classroom and interacted with students. He had control of students to the extent that he even disciplined a student for playfully hitting another student. The evidence reflects that the alleged student conduct was an isolated event that happened, at most, within one to two seconds. The conduct was quite unusual and could not be reasonably anticipated.

54. Petitioner failed to prove by a preponderance of evidence that Mr. Sawdy failed to make reasonable efforts to protect the students from harm.

55. There was no evidence offered to support a finding by a preponderance of evidence that the student conduct was harmful to any student's learning, or that the events adversely affected any student's mental or physical health, or safety.

56. Petitioner did not prove by a preponderance of evidence that there is just cause to suspend Mr. Sawdy without pay for seven days.

CONCLUSIONS OF LAW

Jurisdiction

57. The Division has jurisdiction over the subject matter and parties in this case, pursuant to sections 120.569 and 120.57(1), and 1012.33(6), Florida Statutes (2018).

Standards

58. Petitioner is a School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Duval County, Florida, under section 1012.22.

59. As a teacher in Duval County, Respondent's employment, and the suspension of said employment, is governed by the

Collective Bargaining Agreement between Duval Teachers United and Duval County School Board ("Collective Bargaining Agreement").

60. The Collective Bargaining Agreement requires a showing of "just cause" to support the imposition of discipline against a teacher. Regarding the definition of just cause, section 1012.33(1)(a) provides as follows:

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, gross insubordination, willful neglect of duty, or being convicted and found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

61. Here, the relevant factor in section 1012.33, applicable to the allegations in this matter, is misconduct in office.

62. Florida Administrative Code Rule 6A-5.056 establishes the criteria for suspension and dismissal of school personnel. Subsection (2) of the rule, in relevant part, provides as follows:

"Misconduct in Office" means one or more of the following:

* * *

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.

63. Petitioner alleged that Respondent violated the Principles of Professional Conduct of the Education Profession ("Principles") found in rule 6A-10.081. Specifically, the following portions of the principles were alleged to have been violated by the Respondent:

(1) Florida educators shall be guided by the following ethical principles:

* * *

(b) 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.

* * *

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(a) Obligation to the student requires that the individual:

1. 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.

64. The Principles are divided into two sections: subsection (1), which consists of ethical principles; and

subsection (2), which provides disciplinary principles with which educators "must comply."

65. The ethical principles in subsection (1) have been described as "aspirational in nature, and in most cases [are] not susceptible of forming a basis for suspension or dismissal." Sarasota Cnty. Sch. Bd. v. Simmons, Case No. 92-7278 (Fla. DOAH Nov. 9, 1993), and "of little practical use in defining normative behavior." Miami-Dade Cnty. Sch. Bd. v. Lantz, Case No. 12-3970 (Fla. DOAH July 29, 2014); Broward Cnty. Sch. Bd. v. Weinberg, Case No. 15-4993 (Fla. DOAH Apr. 13, 2016; Fla. Broward Cnty. Sch. Bd. Aug. 23, 2016).

66. By contrast, the disciplinary principles enumerate specific "dos" and "don'ts" to put a teacher on notice concerning what conduct is forbidden. See Miami-Dade Cnty. Sch. Bd. v. Brenes, Case No. 06-1758 (Fla. DOAH Feb. 27, 2007; Fla. Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007). "Thus, it is concluded that while any violation of [subsection (2)] would also be a violation of [subsection (1)], the converse is not true." Id. "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 [subsection (1)] be proved, whereas it is both necessary and sufficient that a violation of a specific rule in [subsection (2)] be proved."

Id.; see Miami-Dade Cnty. Sch. Bd. v. Regueira, Case No. 06-4752 (Fla. DOAH Apr. 11, 2007; Fla. Miami-Dade Cnty. Sch. Bd. May 25, 2007).

Burden of Proof

67. This is a disciplinary proceeding brought pursuant to section 1012.33 to uphold Respondent's suspension from employment. Petitioner bears the burden to prove each element of each charged offense by a preponderance of the evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Lake Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990). A preponderance of the evidence is evidence that more likely than not tends to prove the proposition set forth by a proponent. Gross v. Lyons, 763 So. 2d 276, 289 (Fla. 2000). See also Haines v. Dep't of Child. & Fams., 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

68. The allegations of fact set forth in the charging document are the facts upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005). See also Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits the School Board from disciplining a teacher based on matters not specifically alleged in the notice of charges. See Pilla v. Sch. Bd. of Dade Cnty., 655 So. 2d 1312, 1314 (Fla. 3d DCA 1995); Texton v. Hancock, 359 So. 2d 895, 897 n.2 (Fla. 1st DCA

1978); see also Sternberg v. Dep't of Prof'l Reg., 465 So. 2d 1324, 1325 (Fla. 1st DCA 1985) ("For the hearing officer and the Board to have then found Dr. Sternberg guilty of an offense with which he was not charged was to deny him due process.").

69. The Notice alleged that Respondent "failed to provide adequate supervision when you allowed students in your classroom to participate in an inappropriate game, which involved kissing and exposure of private body parts." Thus, the scope of this proceeding is limited to those matters as framed by Petitioner in the Notice. M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

Analysis

70. The alleged violations of the broad aspirational objectives of subsection (1) are insufficient to establish a violation of the Principles.

71. The remaining issue is whether Petitioner proved Respondent violated rule 6A-10.081(2)(a)1.

72. The evidence does not support a finding or conclusion that Respondent's primary professional concern deviated from the students and the development of their potential.

73. Mr. Sawdy did not fail to adequately supervise the students or fail to protect the students from harmful conditions. C.A. and D.B. testified that Mr. Sawdy disciplined C.A. during this class period for hitting D.B.'s thigh. Other

students testified that Mr. Sawdy walked around the classroom and told the group to quiet down.

74. Petitioner proved by a preponderance of the evidence that R.G. flashed her breasts and a student licked her breast. The incidents were isolated and done within one to two seconds. The evidence also demonstrated that Mr. Sawdy walked around the classroom, interacted with students, and disciplined a student for misbehaving. However, there was no competent, substantial, or persuasive evidence to demonstrate that Mr. Sawdy saw or knew of the alleged incident, or otherwise failed to take reasonable efforts to protect the students from harm.

75. The evidence produced at hearing demonstrates that Petitioner did not have just cause to suspend Mr. Sawdy for misconduct in office.

76. Even if the evidence supported a finding that Respondent's conduct warranted discipline, the facts in this case do not justify skipping two steps of the progressive discipline policy under the Collective Bargaining Agreement. In Quiller v. Duval County School Board, 171 So. 3d 745 (Fla. 1st DCA 2015), the First District Court of Appeal reversed and remanded the School Board's rejection of an administrative law judge's recommended order where the administrative law judge had found that the behavior at issue did not constitute severe acts of misconduct as contemplated in the progressive discipline

policy. The allegations in that case included several instances of the teacher using profanity towards and in front of students. The teacher had previously been disciplined twice for similar conduct but had not received a suspension without pay. There the School Board merely skipped one step of progressive discipline and moved to termination.

77. Here, Respondent has never been disciplined in any manner, yet the School Board skipped two steps of progressive discipline for alleged actions. If the allegations had been proven, at best, a reprimand would be commensurate with the alleged offense and the Progressive Discipline policy in the Collective Bargaining Agreement.

RECOMMENDATION

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

- a) dismiss the charges against Respondent;
- b) dismiss the notice of recommendation of issuing a reprimand and suspension without pay for seven days; and
- c) to the extent there is a statute, rule, employment contract, or the Collective Bargaining Agreement authorize back pay as a remedy for Respondent's wrongful suspension without pay; Respondent should be awarded full back pay and benefits. See Sch. Bd. of Seminole Cnty. v. Morgan, 582 So. 2d 787, 788

(Fla. 5th DCA 1991); Brooks v. Sch. Bd. of Brevard Cnty.,
419 So. 2d 659, 661 (Fla. 5th DCA 1982).

DONE AND ENTERED this 9th day of January, 2019, in
Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
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 9th day of January, 2019.

ENDNOTES

^{1/} The parties were granted 30 days from the date the Transcript was filed to submit their PROs. Pursuant to Florida Administrative Code Rule 28-106.216(2), the parties waived the requirement for this Administrative Law Judge to issue this Recommended Order within 30 days after receiving the Transcript.

^{2/} The witness did not provide a last name for K.

^{3/} The undersigned adjusted the presentation of witnesses at the final hearing to accommodate the complaining student, K.A.M., but she did not appear at the final hearing.

COPIES FURNISHED:

Tracey Kort Parde, Esquire
Stanley M. Weston, Esquire
Office of General Counsel
City of Jacksonville
Room 651 E
1701 Prudential Drive
Jacksonville, Florida 32207
(eServed)

Henry Matson Coxe, III, Esquire
Bedell, Dittmar, DeVault,
Pillans & Coxe, P.A.
101 East Adams Street
Jacksonville, Florida 32202
(eServed)

Ashley Cox, Esquire
Bedell, Dittmar, DeVault,
Pillans & Coxe, P.A.
101 East Adams Street
Jacksonville, Florida 32202

Dr. Diana Greene
Superintendent of Schools
Duval County School Board
1701 Prudential Drive
Jacksonville, Florida 32207-8152

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Richard Corcoran
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

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.