

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-2523TTS

JULIANNA WOESSNER,

Respondent.

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RECOMMENDED ORDER

A final hearing was conducted in this case on June 28, 2018, in Jacksonville, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Stephanie M. Schaap  
Duval Teachers United  
1601 Atlantic Boulevard  
Jacksonville, Florida 32207

STATEMENT OF THE CASE

Whether just cause exists to impose discipline on Respondent's employment; and, if so, what is the appropriate discipline.

PRELIMINARY STATEMENT

By letter dated April 20, 2018, Sonita Young, assistant superintendent of Human Resource Services, Duval County School Board, issued a Step III Notice (Step III Notice) to Respondent, Ms. Julianna Woessner (Respondent), notifying Respondent of the superintendent's Recommendation to suspend Respondent from her teaching position without pay for 10 working days, pending School Board approval. At its regularly scheduled meeting on May 1, 2018, Petitioner, Duval County School Board (School Board or Petitioner), voted to suspend Respondent's employment for a period of 10 days. Respondent timely requested a formal administrative hearing regarding the School Board's action. On May 15, 2018, this matter was referred to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge.

At the administrative hearing held June 28, 2018, the School Board presented the testimony of five witnesses: Caroline Wells, the principal of San Mateo Elementary School (San Mateo); Shaakera Thomas, the assistant principal of San Mateo; Melanie Poag, a reading coach at San Mateo; James

Gregory, investigator for the Office of Professional Standards with Duval County Public Schools (the District); and Sonita Young, the District's assistant superintendent for Human Resource Services. Petitioner offered Exhibits P-1 through P-3, which were admitted into evidence. Respondent testified on her own behalf and offered Exhibits R-1, R-3, R-7, and R-8, which were admitted into evidence.

The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the Transcript within which to file their proposed recommended orders. The parties received transcript copies prior to the actual filing of the Transcript on August 20, 2018. Thereafter, the parties' jointly stipulated that their Proposed Recommended Orders would be filed by August 22, 2018. The parties timely filed their respective Proposed Recommended Orders, both of which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The School Board is charged with the duty to operate, control and supervise free public schools within the School District of Duval County, Florida, pursuant to article IX, section 4(b) of the Florida Constitution, and section 1012.22, Florida Statutes (2018).<sup>1/</sup>

2. At all material times, Respondent has been employed as a classroom teacher with the School Board under a professional services contract.

3. During the 2017-2018 school year, Respondent was assigned to teach first grade at San Mateo in Jacksonville, Florida.

4. The Step III Notice issued by the School Board to Respondent on April 20, 2018, constitutes the administrative charging document in this proceeding.

5. The incident giving rise to this proceeding occurred on Wednesday, February 14, 2018.

6. On February 14, 2018, students were sitting on the carpet in Respondent's classroom ready for a slideshow lesson that Respondent intended to teach. C.K., a 7-year-old student in Respondent's classroom at the time, started off in his chair, but then got up and started crawling under tables in an attempt to collect beads that had been left on the floor during a previous arts and craft activity.

7. In response, Respondent gave C.K. a choice to either sit in his seat or sit at the back table. C.K. did neither, but rather continued to crawl around on the floor.

8. C.K. then made his way to the back table and began making paper airplanes and throwing them. Respondent asked C.K. to stop that behavior and told him that if he continued he would have to

leave the room and she would have to call his mother. At that point, C.K. broke down and became very upset, which was not his normal behavior.

9. Respondent tried to talk to C.K. and calm him down. She also called guidance on the intercom for assistance with C.K., but there was no answer. While Respondent was attempting to contact guidance, C.K. began running around the room and yelling.

10. Around this time, Annette Smith, the paraprofessional assigned to Respondent's classroom, entered the room and tried to talk to C.K.

11. Next, both Respondent and Ms. Smith tried to persuade C.K. to go outside the classroom, but he began to yell, scream, and kick. He grabbed a desk and would not let go.

12. As C.K. was holding onto the desk, Respondent called the front office for assistance. C.K.'s grip on the desk caused the desk to begin to tip over. Ms. Smith reacted by holding the desk to prevent it from falling.

13. Both Respondent and Ms. Smith were able to get C.K. to release the desk; he was kicking and took hold of another desk that had a student sitting in it. As that desk tipped, Respondent and Ms. Smith held onto it to prevent it from falling.

14. Ms. Smith was able to get C.K. to release the desk. Respondent opened the classroom door, and Ms. Smith nudged C.K. out of the classroom and into the hallway.

15. Once in the hall, Respondent tried to calm C.K. down in private, one-on-one.

16. Shortly thereafter, the school nurse, Mindie Rose, came out of another classroom and offered to take C.K. up to the office. Nurse Rose never observed Respondent yelling at C.K. and, in her testimony, described the scene as one in which Respondent was trying to coax C.K. back into the room.

17. While Nurse Rose was standing there, Assistant Principal Poag walked up. Ms. Poag's testimony regarding the scene contrasts with Nurse Rose's recollections. According to Ms. Poag, she heard Respondent yelling at C.K. Ms. Poag testified that she saw red marks on C.K.'s wrists and forearms and scratch marks on his hands.

18. Later, when C.K. was brought to the office, Principal Wells noticed red marks on C.K.'s upper arms and his upper forearms. Nurse Rose saw C.K. rubbing his wrists and forearms and noticed red marks in the area he was rubbing. Nurse Rose was unable to determine whether the red marks came from C.K.'s rubbing or from something that happened in the classroom. Nurse Rose described the marks as "nothing deep," "kind of pink," and

"on the surface." On her own, without direction from anyone else, Nurse Rose got some ice for C.K.'s arms.

19. At the final hearing, C.K. provided persuasive testimony by telephone regarding the incident. C.K. testified that he was being bad on February 14, 2018. He admitted grabbing tables, and that Ms. Smith pulled his hands off, but that he then put his hands back onto a desk. He also confirmed that he was yelling that day in the classroom, but only "half loud." According to C.K., during the incident, Respondent was not holding his feet or yelling at him, she gave him a hug, and was talking to him about being calm.

20. C.K.'s mother testified that Respondent had also taught C.K. the previous 2016-2017 school year, and that when C.K. was retained, she requested that C.K. be assigned to Respondent's class for the 2017-2018 school year. C.K.'s mother testified that she had seen improvement in C.K.'s grades and attitude when being taught by Respondent. According to C.K.'s mother, C.K. never got into trouble at school until December 2017, around the same time that he lost his aunt and there was a custody battle going on with his mother and step-father.

21. When C.K. started acting up in school, Respondent kept C.K.'s mother informed. In the two weeks prior to the incident, Respondent wrote two referrals on C.K. On February 1, 2018, she gave C.K. a written referral because C.K. was insisting on

having his toy car, hitting the table, and yelling at the teacher. Respondent wrote the second referral on February 7, 2018, because C.K. was hitting classmates and throwing books and pencils across the room. For the behaviors leading to the second referral, a guidance counselor took C.K. out of the room. When he returned to the room, C.K. started yelling at others, ignored redirection, and told the teacher, "No, I won't do it."

22. When C.K.'s mother found out that, during the February 14, 2018, School Board meeting, the School Board intended on disciplining Respondent for the incident, she wrote a statement on Respondent's behalf, pleading against the imposition of discipline.

23. Assistant Principal Thomas testified that student behaviors, such as yanking on a desk and almost pulling it over and kicking and hitting a teacher, would be considered aggressive behavior. Principal Wells testified that it is appropriate to remove a child from the classroom when they are hurting themselves or others, if there is a danger, or if they are disrupting teaching and learning. Their testimonies are credited.

24. In addition to her teaching job, Respondent has a second job at Publix Supermarkets. One of Respondent's co-workers at Publix, Megan Foster, told Respondent that she was taking an on-line class to become a teacher and the class



required her to observe a school lesson. Ms. Foster had volunteered at San Mateo before, and Respondent believed that Principal Wells was aware of that. Therefore, Respondent invited Ms. Foster to observe, not teach or intern, in Respondent's first-grade class. Volunteers are allowed in classrooms at San Mateo. Volunteers are not necessarily interns. Ms. Foster was in Respondent's classroom on February 14, 2018, as a volunteer and observer, not as an intern.

25. That same day, shortly after the incident with C.K., Principal Wells observed Ms. Foster for a few seconds. According to Principal Wells, Ms. Foster was speaking to Respondent's classroom children and standing at the projector. According to Principal Wells, Ms. Foster was "an unknown person."

26. As explained by Sonita Young, a onetime visitor can come to San Mateo without any prior approval as long as they are under supervision. At the time that Ms. Foster was observed in Respondent's classroom, Ms. Smith, the classroom paraprofessional, was in the classroom, and Respondent was just outside in the hall.<sup>2/</sup>

CONCLUSIONS OF LAW

27. The Division has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

28. This is a penal disciplinary proceeding brought by the School Board pursuant to section 1012.33. As such, the School Board bears the burden of proving each element of each charged offense by a preponderance of the evidence. See 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).

29. Respondent's employment is governed by the contract negotiated by Duval Teachers United and the School Board. The collective bargaining agreement requires a showing of "just cause" to support the imposition of discipline against a teacher. As defined in section 1012.33:

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.

30. In her testimony, Assistant Superintendent Young identified misconduct in office or, "perhaps," willful neglect of duty, as the just cause factors implicated in this case.

31. Florida Administrative Code Rule 6A-5.056(2) defines "misconduct in office" as one or more of the following:

A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.;

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

A violation of the adopted school board rules;

Behavior that disrupts the student's learning environment; or

Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

32. "Willful neglect of duty" means intentional or reckless failure to carry out required duties. Fla. Admin. Code R. 6A-5.056(5).

33. The Step III progressive discipline (Step III Notice or Complaint) filed by the School Board was filed, despite the fact that a no prior disciplinary proceedings had ever been filed against Respondent. Under the facts and circumstances, the Step III Notice should not have been filed. The Step III Notice alleges that Respondent's behavior violated the following

Principles of Professional Conduct for the Education Profession  
in Florida found in Florida Administrative Code Rule 6A-10.081:

(1) (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.

(1) (c) 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.

(2) (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.

34. The Step III Notice alleges that Respondent "used poor judgment on February 14, 2018, when [she] used an unauthorized method to physically pull a student in an effort to remove him from the classroom. As a result, the child received injury to his arms."

35. The Step III Notice also alleges that Respondent violated School Board policy "by utilizing an unapproved person as an intern in [her] classroom after being told [her] request was denied."

36. The evidence presented at the final hearing was insufficient to support the allegations against Respondent.

37. With regard to C.K.'s removal from the classroom, both the principal and assistant principal described C.K.'s behaviors exhibited on February 14, 2018, to be behaviors requiring his removal from the classroom. Further, the evidence does not support a finding that Respondent used poor judgment or used an unauthorized method to physically pull C.K. from the classroom. C.K. provided credible testimony that Respondent was not holding his feet or yelling at him that day, and the evidence is insufficient to show that the marks on C.K.'s arms were caused by Respondent's actions.

38. Rather than supporting the allegation, the evidence indicates that Respondent was gentle with C.K. that day, and gave him a hug to calm him down. Respondent, the only other person who testified as to her interactions with C.K. in the classroom that day, provided credible testimony that was consistent with C.K.'s recollection.

39. Regarding the allegation that Respondent allowed an unauthorized intern in her office, the evidence did not show that Ms. Foster was an intern. Rather, the sole evidence presented regarding Ms. Foster's status in the classroom that day was from Respondent, who explained that Ms. Foster was there to observe a lesson. Consistent with Respondent's testimony, it

is found that Ms. Foster's presence in the classroom that day was as a volunteer who was there to observe Respondent's teaching.

40. The evidence presented also failed to show that Respondent violated the principles of professional conduct listed in the Step III Notice. The evidence was insufficient to show that the respect and confidence of Respondent's colleagues, students, parents, or other members of the community was damaged by Respondent's actions. The evidence did not demonstrate that Respondent failed to make reasonable effort to protect students from conditions harmful to them. In fact, Respondent's actions regarding C.K. on February 14, 2018, were protective.

41. Further, the evidence failed to show that Respondent violated any School Board rules.

42. In addition, the evidence did not show that Respondent somehow disrupted the learning environment and did not demonstrate that Respondent's actions reduced her ability or a colleague's ability to effectively perform their duties.

43. There was also a lack of evidence that Respondent's effectiveness in the school system was impaired because of her conduct, and there was no evidence that any of Respondent's students had academic issues or had to be treated for any problem because of Respondent's actions. And, the evidence did

not demonstrate that Ms. Foster's presence in the classroom that day impaired Respondent's effectiveness.

44. In sum, the School Board failed to prove the allegations under the facts or the law, and it is concluded that the Step III Notice and any discipline imposed against Respondent based thereon should be dismissed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by Petitioner, Duval County School Board:

1. Dismissing the allegations against Respondent set forth in the Step III Notice and rescinding any discipline imposed thereby; and

2. Reimbursing Respondent for any pay or benefits that she did not receive as a result of the School Board's actions in this case, plus interest from the date that any such pay or benefit was withheld, as appropriate under applicable law.

DONE AND ENTERED this 27th day of September, 2018, in  
Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of September, 2018.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes are to the current version unless otherwise indicated.

<sup>2/</sup> An excerpt from the investigators report was read into the record regarding efforts by Mr. Gregory, the District investigator, to determine whether Ms. Foster was an intern and whether she was an approved volunteer. As the information in that excerpt is hearsay and is not corroborative of any competent, substantial evidence, it has not been utilized as the basis of a finding of fact in this proceeding. See § 120.57(1)(c), Fla. Stat. ("Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").



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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.