

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

LAKE COUNTY SCHOOL BOARD

Petitioner,

v.

CASE NO.: 18-6338TTS

CARA SANDERLIN,

Respondent.

_____ /

FINAL ORDER

THIS MATTER came to be heard by The School Board of Lake County, Florida ("School Board") on June 10, 2019, on the exceptions filed by Petitioner, regarding the Recommended Order issued by Administrative Law Judge G. W. Chisenhall ("ALJ") on March 22, 2019. The School Board having reviewed the complete record and heard argument of counsel and being fully advised in the premises, issues this Final Order.

I. Procedures for Ruling on Exceptions and Adopting Final Order.

Following receipt of Petitioner's Exceptions¹ thereto, the School Board duly noticed a meeting, which was held Monday, June 10, 2019, to hear and address the Exceptions to the ALJ's Recommended Order. All parties were timely served notice of this hearing. At the hearing, counsel for the Respondent and counsel for the Superintendent were entitled and did make oral presentations to the School Board of their arguments and references to the record

¹ Respondent, Cara Sanderlin did not file any Exceptions to the Recommended Order.

as to each Exception. An opportunity existed for the members of the School Board to deliberate and discuss before voting.

The School Board reviewed and duly considered the ALJ's Recommended Order, the Exceptions submitted, and the complete record of this above-styled cause. This review was completed prior to voting on the Exceptions. The School Board had also been advised of the appropriate standards of its review of the ALJ's findings of fact and conclusions of law in the Recommended Order, and consulted legal counsel to provide legal advice in the School Board's deliberations and voting on this matter on the Exceptions and adoption of this Final Order.

II. Rulings on Exceptions.

Each of Petitioner's four (4) Exceptions to the proposed Findings of Fact, Conclusions of Law, and Recommendation contained in the Recommended Order are accepted.

III. Findings of Fact and Conclusions of Law.

The School Board has jurisdiction over the subject matter and the parties hereto. The School Board adopts the Conclusions of Law of the ALJ's Recommended Order except as stated below and finds that they are supported by substantial evidence in the record. The School Board further finds that the proceedings upon which the adopted Conclusions of Law were based complied with the essential requirements of law.

A. Petitioner's Exceptions.

The Petitioner filed four (4) Exceptions to certain paragraphs set forth in the Recommended Order of the ALJ, pursuant to section 120.57, Fla. Stat. All four of the Petitioner's Exceptions are granted because the School Board's substituted legal conclusions or interpretation of administrative rule are more reasonable than that which was rejected or modified.

1. Petitioner's Exception No. 1 to the Recommended Order is in regard to Paragraph 22 and the ALJ's finding that Respondent "directed streams of water to the side of D.H.² in order to get him to comply with verbal directions" is insufficient to support a finding that Ms. Sanderlin committed "misconduct in office" in violation of Rule 6A-5.056(2) or "incompetency" in violation of Rule 6A-5.056(3), nor does such behavior amount to a violation of Rule 6A-10.081(1)(b), (1)(c), and (2)(a).

Petitioner points out in Paragraph 20 of the Recommended Order, Footnote 7 that Ms. Phelps testified that she witnessed Ms. Sanderlin spray water "at" D.H. and saw the water make contact with his face, but that it was possible that D.H. was inadvertently struck with residual water from a stream that was directed to his side. Additionally, in Paragraph 16 of the Recommended Order Petitioner points out that the ALJ found that in the fall of 2018, both Ms. Crinion and Ms. Phelps saw Ms. Sanderlin and/or Ms. Shaw on three or four occasions, use a spray bottle to redirect D.H. after a verbal cue was ineffective in prompting D.H. to move from one part of the classroom to another. Also, in Paragraph 13 of the Recommended Order, the ALJ found that Ms. Rodriguez, the full-time teaching assistant to

² D.H. is autistic and nonverbal.

Respondent, observed Respondent spray water in D.H.'s general direction without intending to get him wet. The ALJ found that Respondent used this method to get D.H.'s attention when other methods were unsuccessful and that although this was not an uncommon occurrence, it did not happen every day. Additionally, in Paragraph 16 the Petitioner points out that the ALJ found that on one occasion, they (Ms. Crinion and Ms. Phelps) saw that D.H.'s shirt was wet. Petitioner points out that the ALJ, in Paragraph 22, found that Respondent directed streams of water to the side of D.H. in order to get him to comply with verbal directions and that this practice should not be condoned as an acceptable means of redirecting a student.

As such, Petitioner's Exception No. 1 is granted and Paragraph 22 of the recommended order is rejected is revised to read:

In the fall of 2018, Ms. Crinion and Ms. Phelps saw Ms. Sanderlin and/or Ms. Shaw, on three or four occasions use the spray bottle to redirect D.H. after a verbal cue was ineffective in prompting D.H. to move from one part of the classroom to another and on one occasion, they saw that D.H.'s shirt was wet. Ms. Rodriguez observed Respondent spray water in D.H.'s general direction without intending to get him wet, and while this was not an uncommon occurrence, it didn't happen everyday. The preponderance of the evidence demonstrated that Ms. Sanderlin directed streams of water to the side of D.H. in order to get him to comply with verbal direction. This practice is not an acceptable means of redirecting a student and as such competent substantial evidence supports a finding that Ms. Sanderlin committed "misconduct in office" in violation of Rule 6A-5.056(2) or "incompetency" in violation of Rule 6A-5.056(3), and also amounts to a violation of 6A-10.081(1)(b), (1)(c), and (2)(a).

2. Petitioner's Exception No. 2 is to the ALJ's conclusion of law in the Recommended Order that Respondent's behavior was insufficient for termination for "misconduct in office" pursuant to Rule 6A-5.056(2), due to a lack of violation of any of the disciplinary principles in Rule 6A-10.081(2). The ALJ found that since there was no violations of the Principles of Professional Conduct for the Education Profession in Florida (the "Principles") as outlined in Rule 6A-10.081(2) there was no "misconduct in office" pursuant to Rule 6A-5.056(2)(b) – violation of the Principles of Professional Conduct for the Education Profession in Florida.

Petitioner points out that the ALJ completely ignored that the School Board had charged the Respondent with a violation of Rule 6A-5.056(2)(c) – violation of adopted school board rules. Petitioner points out that the School Board has codified the Principles in School Board Policy 6.301 which specifically states, "[a]ll Instructional Personnel and School Administrators shall adhere to the *Principles of Professional Conduct for the Education Profession in Florida*, located in State Board of Education Rules."

The relevant portions of Rule 6A-10.081 states that:

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

(a) 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.

(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.

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

As stated in the ruling on Petitioner's Exception No. 1, the School Board has found that the preponderance of the evidence demonstrates that Ms. Sanderlin directed streams of water to the side of D.H. in order to get him to comply with verbal direction. Additionally, in the fall of 2018, Ms. Crinion and Ms. Phelps saw Ms. Sanderlin and/or Ms. Shaw, on three or four occasions use the spray bottle to redirect D.H. after a verbal cue was ineffective in prompting D.H. to move from one part of the classroom to another and on one occasion, they saw that D.H.'s shirt was wet. Also, Ms. Rodriguez observed Respondent spray water in D.H.'s general direction without intending to get him wet, and while this was not an uncommon occurrence, it didn't happen everyday. This practice is not an acceptable means of redirecting a student and as such competent substantial evidence and violates the above Principles.

Petitioner's Exception to No. 2 is granted and Paragraphs 29, 30, 31, 32, and 33 are hereby rejected and revised to read as follows:

The pervasive and credible evidence at the hearing establish that the Respondent violated School Board Policy 6.301 which states that "[a]ll Instructional Personnel and School

Administrators shall adhere to the *Principles of Professional Conduct for the Education Profession in Florida*, located in State Board of Education Rules.” Ms. Sanderlin directed streams of water to the side of D.H. in order to get him to comply with verbal direction. Additionally, in the fall of 2018, Ms. Crinion and Ms. Phelps saw Ms. Sanderlin and/or Ms. Shaw, on three or four occasions use the spray bottle to redirect D.H. after a verbal cue was ineffective in prompting D.H. to move from one part of the classroom to another and on one occasion, they saw that D.H.’s shirt was wet. Also, Ms. Rodriguez observed Respondent spray water in D.H.’s general direction without intending to get him wet, and while this was not an uncommon occurrence, it didn’t happen daily. State Board Rule 6A-5.056(2)(b) defines “misconduct in office” to include a violation of the Principles, codified in Rule 6A-10.081. Rule 6A-5.056(2)(c) also defines “misconduct in office” to include violations of adopted school board rules. Ms. Sanderlin’s actions constitute a violation School Board Policy 6.301 and therefore is a violation of Rule 6A-10.081(1)(b), (1)(c), and (2)(a), and Rule 6A-5.056(2)(b) and (c). A violation of the Principles justifies a finding of misconduct in office to warrant dismissal. Once Petitioner proved a violation of School Board Policy 6.301, it proved a violation of an adopted School Board rule, which is just cause for dismissal for “misconduct in office.”

3. Petitioner’s Exception No. 3 is to the ALJ’s conclusion of law in the Recommended Order that Respondent’s behavior was insufficient for “incompetency” pursuant to Rule 6A-5.056(3), which is defined in relevant part as “a failure to communicate appropriately with and relate to students.” As legal conclusions by an ALJ may be rejected by the school board “without limitation”³, the competent substantial evidence showed that the

³ *Abrams v. Seminole County School Board* 73 So.3rd 285, 294 (Fla. 5th DCA 2011)

Respondent clearly used the water bottle as a method of redirecting the student and that this is inappropriate as contained in Paragraph 18 of the ALJ's finding of facts.⁴ Additionally, the ALJ found that the practice of directing streams of water to the side of D.H. in order to get him to comply with verbal instructions is not an acceptable means of redirecting a student.⁵ Petitioner also points out that testimony by several witnesses at the hearing provided other, more appropriate methods of redirection would include incentives such as a reward for compliance, placing a hand on the child's shoulder, tapping on the desk, or getting on eye level. (Hearing Transcript Page 20, Lines 5-11; Page 21, Lines 12-20; and Page 53, Lines 8-13).

State Board Rule 6A-5.056(3) defines incompetency as the inability, failure or lack of fitness to discharge the required duties as a result of inefficiency or incapacity. Subparagraph (a) defines inefficiency as one or more of the following: 2. Failure to communicate appropriately with and relate to students.

The persuasive and credible evidence adduced at the hearing established that Respondent violated State Board Rule 6A-5.0563(a)(2) by using a water bottle to get a student to comply with verbal directions, an inappropriate method of redirection and a failure to communicate appropriately with D.H., which is just cause for dismissal for "misconduct in office" based upon "incompetency."

4. Petitioner's Exception No. 4 is to the ALJ's conclusion of law in the Recommended Order to the conclusion in Paragraphs 34 through 40 of the Recommended

⁴ Also, see rulings on Exceptions 1 and 2.

⁵ See Paragraph 22 of the Recommended Order

Order that Respondent's violations did not rise to the level of a violation establishing just cause for termination. However, the ALJ found in his recommendations that the findings of facts and conclusions of law do support an imposing of a lesser disciplinary measure within the Lake County School Board's progressive disciplinary system. Petitioner argues that the ALJ found that there was just cause for discipline by recommending a lesser level of discipline, and that the Respondent's actions were inappropriate in Paragraphs 22 of the recommended order. Petitioner argues that the School Board should not apply the recommended penalty and should terminate Respondent's employment.

The School Board has the discretion to increase the penalty recommended by the ALJ. *Criminal Justice Standards and Training Commission v. Bradley*, 596 So.2d 661, 664 (Fla. 1992). This is so even if the school board accepts all the ALJ's findings of facts and conclusions of law in the recommended order. *Bolton v. Morgan* 643 So.2d 1103, 1105 (Fla. 4th DCA 1994).

The School Board may only increase a recommended penalty upon a review of the complete record and stating with particularity its reasons for increasing the penalty cited by the record. Section 120.57(1), Fla. Stat.

In *Bradley*, the Supreme Court explained:

Although hearing officers are entitled to substantial deference, they are judicial generalists who are trained in the law but not necessarily in any specific profession. The various administrative boards have far greater experience in their designated specialties and should be permitted to develop policy concerning penalties within their professions.

Bradley, 596 So.2d at 664.

In this case, the ALJ found in Paragraph 22 of the Recommended Order that Respondent had directed streams of water to the side of D.H. in order to get him to comply with verbal directions; and that this practice should not be condoned as an acceptable means of redirecting a student. Additionally, the ALJ found in Paragraph 20 of the Recommended Order that Ms. Phelps testified she witnessed the Respondent spray water "at" D.H. and saw the water make contact with this face, but it was possible that D.H. was inadvertently struck with residual water from the stream that was directed to his side. The ALJ found in Paragraph 16 of the Recommended Order that Ms. Crinion and Ms. Phelps saw Ms. Sanderlin and/or Ms. Shaw on three or four occasions use the spray bottle to redirect D.H. after a verbal cue was ineffective in prompting D.H. to move from one part of the classroom to another. Also, in Paragraph 13 of the Recommended Order, the ALJ found that Ms. Rodriguez, the full-time teaching assistant to Respondent, observed Respondent spray water in D.H.'s general direction without intending to get him wet. The ALJ found that Respondent used this method to get D.H.'s attention when other methods were unsuccessful and that although this was not an uncommon occurrence, it did not happen every day. The ALJ, based upon his findings of facts and conclusions of law found a reason to discipline Respondent, but the ALJ's recommendation was to impose a lesser disciplinary measure within Petitioner's progressive disciplinary system.

The School Board has substantive jurisdiction to increase the penalty recommended by the ALJ and increase the recommended penalty and terminate Respondent's employment based upon the foregoing findings and conclusions of law contained in the Recommended Order.

As such, the School Board concludes that the penalty recommended by the ALJ in this case is too lenient to address the serious nature of Respondent's misconduct and that a more reasonable penalty for these serious acts of misconduct committed by Respondent is termination of employment and thus finds just cause for termination.

Based upon the foregoing, it is therefore **ORDERED and ADJUDGED** that:

1. The School Board hereby adopts and incorporates the Recommended Order of the Administrative Law Judge G. W. Chisenhall except as modified above.
2. Respondent, Cara Sanderlin's contract and employment is hereby terminated effective November 26, 2018.
3. This Final Order shall take effect upon filing with Clerk to the Board, The School Board of Lake County, Florida.
4. A copy of this Final Order shall be provided to the Divisions of Administrative Hearings within 15 days of filing, as set forth in section 120.57(1)(m), Fla. Stat.

DONE AND ORDERED this 24th day of June, 2019.⁶

**THE SCHOOL BOARD OF LAKE
COUNTY, FLORIDA**



Kristi Burns, Vice Chairman

⁶ The Parties stipulated to an extension of the 90-day requirement to render a Final Order pursuant to section 120.569(2)(l) through June 24, 2019.

Filed in the official School Board records with the Clerk of the School Board of Lake County,
Florida 24th day of June, 2019.

Natalie Challenger

Natalie Challenger, Clerk
The School Board of Lake County, Florida

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Mitchell L. Davis, Esquire, Smothers Law Firm, P.A. 523 Wekiva Commons Circle, Apopka, Florida 32712 via email: mitch@smotherslawfirm.com and Stephen W. Johnson, Esquire, Johnson Turner, PLLC, 215 North 2nd Street, Leesburg, Florida 34748 via email: steve@johnsonturnerlaw.com on this 25th day of June, 2019.

Natalie Challenger

Natalie Challenger, Clerk
The School Board of Lake County, Florida

NOTICE OF RIGHT TO APPEAL

The parties are hereby advised that they are entitled to judicial review of this order pursuant to §120.68, Fla. Stat. (2018). To initiate judicial review under §120.68, a party seeking to appeal this order must file a copy of their notice of appeal on or before thirty (30) days from the date of this order with Diane Kornegay, Superintendent as Ex-Officio Secretary of The School Board of Lake County, Florida, 201 W. Burleigh Boulevard, and by filing a copy of the notice, together with the filing fee, as prescribed by law, with the Clerk of the District Court of Appeal, Fifth District, State of Florida, 300 South Beach Street, Daytona Beach, FL 32114.