

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-2915TTS

CLAUDE A. PAUL,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference with locations in Miami and Tallahassee, Florida, on August 29, 2019.

APPEARANCES

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For Respondent: Claude A. Paul, pro se  
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STATEMENT OF THE ISSUES

Whether Respondent, Claude Paul ("Respondent" or "Ms. Paul") committed the violations as alleged in the November 18, 2018,

Petitioner's, Miami-Dade County School Board ("the School Board") action letter; and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On November 20, 2018, at its scheduled meeting, the School Board took action to suspend Ms. Paul from her teaching position at Miami Park Elementary School ("Miami Park") and initiate termination proceedings. Ms. Paul timely requested an administrative hearing. The matter was referred to the Division of Administrative Hearings ("DOAH") on December 5, 2018, to assign an Administrative Law Judge to conduct the final hearing. The case was initially assigned DOAH Case No. 18-6379TTS and set for hearing for February 12, 2019. Upon receipt of an Agreed Motion to Hold Case in Abeyance and Continue Hearing, a telephonic hearing was held on February 1, 2019, and the parties agreed to have the file closed and jurisdiction relinquished pending the criminal case against Ms. Paul for the same action giving rise to the instant dispute.

The School Board filed a Motion to Re-Open the case on May 30, 2019. The final hearing was held as scheduled on August 29, 2019. The School Board presented the testimony of the following: Craig Siegel, District Chairperson for the Clinical Art Therapy Department and lead trainer for Safe Crisis Management; Linda Carter, grandmother of student J.B; Sergeant Bernise Charley, Miami-Dade Schools Police Department; J.B.,

former student of Ms. Paul at Miami Park; Claribel Garcia, former Assistant Principal at Miami Park; Antranique Andrews, Security Monitor at Miami Park; and Yvonne Perry, former Principal at Miami Park. School Board Exhibits 1 through 18 were admitted into evidence.

Ms. Paul testified on her own behalf. Respondent's Exhibits 1 through 6 were admitted into evidence.

The final hearing Transcript was filed on October 9, 2019. The parties requested an extension of time within which to file their proposed recommended orders, which was granted. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

#### FINDINGS OF FACT

##### The Parties

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise the public schools within Miami-Dade County, Florida.

2. Ms. Paul began her employment with the School Board in 2008 as a substitute teacher. Since then, she was employed at several different schools. Starting in February 2016, she was assigned to Miami Park. Prior to the instant case, Ms. Paul had no prior discipline.

3. Ms. Paul's employment with the School Board is governed by Florida law, the School Board's policies, and the collective bargaining agreement between the School Board and the United Teachers of Dade.

Circumstances Giving Rise to Ms. Paul's Discipline

4. The proposed discipline is based upon conduct occurring on September 5, 2018, as a result of an altercation between an 11 year-old student, J.B., and Ms. Paul while he was an Emotional and Behavior Disturbed (EBD) student in her fifth grade class.

5. Ms. Paul had J.B. as a student the prior year for fourth grade. Due to his frequent disruptiveness, Ms. Paul placed J.B. at a desk in the back of the class facing a wall during most of his fourth grade year (2017-2018 school year).

6. September 5, 2018, was at the beginning of the 2018-2019 school year. On that date, J.B. was talking to another student and did not stop when asked to do so repeatedly by Ms. Paul. Ms. Paul told J.B. she was moving his desk to the back of the class.

7. As Ms. Paul approached his desk, J.B. dropped his pencil case and bent down to pick it up. Believing Ms. Paul was going to physically restrain or move him, as he stood up, J.B. slapped Ms. Paul once or twice on the face and called Ms. Paul a "bitch."

8. The witnesses' recollections of what happened next diverge. According to J.B., Ms. Paul grabbed his arms and

twisted them up high behind his back. It hurt immediately and he was "sad and mad at the same time." She then took him to the adjacent room of Clinician Kawine Clermont where Ms. Paul then slapped J.B. in the face after sending Ms. Clermont to check on the students in Ms. Paul's class. J.B. laid on a mat in Ms. Clermont's classroom. He had difficulty getting up and complained that his arms hurt. He was then escorted from Ms. Clermont's room by Antranique Andrews, Miami Park Security Monitor, and Claribel Garcia, Assistant Principal, to the main office. J.B. was also given a bag of ice for his wrist while his grandmother, Linda Carter, who was called by Ms. Paul to come pick up J.B., spoke to school staff.

9. According to Ms. Paul's final hearing testimony, she grabbed both of J.B.'s arms to keep from falling after he slapped her. He struggled to get away and they both fell to the ground. She also testified that she did not pull J.B.'s arms behind his back but rather laid him down on the floor and held his arms. This is inconsistent with her written statement given the day of the incident in which she stated, "Then he punched me. Several time [sic] in the face. I almost fell to the ground . . . I ask [sic] another student to get the mat. I hold one arm in the back, the other on the side. He lay [sic] down crying." Ms. Paul denies being alone in Ms. Clermont's room with J.B. or that she slapped him. Ms. Paul testified that she sent another

student to get Ms. Clermont who then escorted J.B. to the clinician's room.

10. The best person to corroborate Ms. Paul's recollection is Ms. Clermont, who did not testify. However, she provided a written statement in which she recited her version of the events. The statement is oddly written in the third person wherein she refers to herself as "Clinician." It states in part:

Clinician was in her classroom when two students came over and reported J.B. slapped Ms. Paul. Clinician rushed over and J.B. was laying [sic] on a mat in a ball crying. Clinician had J.B. go over to her classroom. When J.B. went over to clinician classroom he layed [sic] back on mat balled up crying.

The statement does not say that she, Ms. Clermont, brought J.B. over, but that she "had" him go to her classroom. This does not preclude the possibility that Respondent escorted J.B. to her room as J.B. claims.

11. Security Monitor, Antranique Andrews, was directed by Assistant Principal Garcia to respond to Ms. Clermont's room. There she observed J.B. curled up and crying on the floor. When J.B. did not get up as directed by Ms. Andrews, she asked teacher's aide, Mr. Flowers (first name unknown) to assist. Together Ms. Andrews and Mr. Flowers got J.B. to stand up and wash his face before they took him to the office. Ms. Andrews observed red marks on J.B.'s arms and that he was upset. Ms. Andrews testified, "His arms were a little reddish. I guess

you could say bruised, but red, like if you had an imprint from pressing, but that was it."

12. When Ms. Carter arrived at school to pick up J.B., she was told that J.B. slapped Ms. Paul. She was not informed that J.B. was hurt during the altercation, although she was aware J.B. was given an ice pack because he complained of pain in his wrist. She also observed that the side of his face was red, which she first attributed to him being upset or crying. Video from a school security camera shows J.B. exiting the school while holding the ice pack on his wrist.

13. When Ms. Carter and J.B. reached Ms. Carter's vehicle, J.B. asked for help to open the car door. J.B. was physically unable to open the door. When they arrived home, J.B. asked his grandmother to take him to the hospital because he thought his arms were broken. Ms. Carter, who was not feeling well herself, told J.B. to take a bath and go to bed. However, J.B. needed assistance with undressing because he could not use his arms.

14. The next morning, J.B. still complained that he could not use his arms. Ms. Carter took J.B. to the emergency room at North Shore Hospital. J.B. received x-rays that revealed fractures in both arms. He was asked why he had red marks on his face and what happened to his arms. This was the first time Ms. Carter heard from J.B. what happened at school.

15. Detective Bernise Charley, Miami-Dade Schools Police Department, was dispatched to the hospital where she interviewed J.B. and his grandmother. J.B. described how he had been slapped and physically abused by Ms. Paul while at school. She also spoke with the medical staff and took photos of J.B.'s face and arms. She personally observed red marks on the side of J.B.'s face consistent with a handprint.

16. J.B. was transported to Joe DiMaggio Children's Hospital ("Joe DiMaggio") for further evaluation and treatment. X-rays were repeated at Joe DiMaggio and revealed that J.B. suffered a spiral fracture to his right humerus (upper arm), a distal radial and buckle fracture to his left forearm, and a buckle fracture to his left wrist. The injuries were determined to be consistent with the incident with Ms. Paul as described by J.B.

17. J.B. and Ms. Carter were subsequently asked to meet with the Department of Children and Families ("DCF") and the University of Miami Child Protection Team on September 13, 2018, to review the incident. J.B. and his grandmother were interviewed separately and each described the incident. Dr. Joan V. Alvaranga's report states:

J. is an 11 year old boy with fractures of the right humerus and left wrist which are consistent with the report he provided. In addition, J. had red marks on his face, which had resolved by the time of the CPT



evaluation, which he reported he sustained when the teacher slapped him on the face. In my medical opinion, this case represents child physical abuse.

Deviation from Appropriate De-Escalation Techniques

18. Craig Siegel, District Chairperson for the Clinical Art Therapy Department and lead trainer for Safe Crisis Management, testified that teachers are provided training by the school district in a variety of techniques to safely de-escalate a potentially violent situation and to protect themselves and others.

19. Ms. Paul completed Safe Crisis Management training in December 2016. Teachers are taught that they are to use non-physical intervention strategies first to de-escalate a threatening situation. These include, but are not limited to: talking; evading; blocking; escaping to a "safe zone;" and summoning help. Physical restraint is to be used only as a last resort if the student poses an imminent risk of serious injury or death to themselves or others.

20. The physical techniques taught to teachers are designed to contain the student in the safest manner possible and reduce the risk of injury. Only the least amount of force necessary is to be used. The approved restraint methods do not include twisting a child's arms behind their back or slapping them in the face.

21. Although Ms. Paul certainly had the right to protect herself when slapped in the face by J.B., it strains credulity to assert that a slap from a then 75-pound, 11 year-old boy, posed an imminent risk of serious harm or death such that it was necessary to apply enough force to break this child's arms in multiple places.

22. No other adult witnessed the altercation, but they all saw J.B. curled up on the floor crying. J.B. was hurt badly enough that he was initially unable to get up off the floor without assistance, red marks were immediately seen on his arms and face, and he needed an ice pack for his wrist while still at school. J.B.'s story, that Ms. Paul twisted his arms behind his back and forced him to the floor, has remained consistent. No evidence was presented to suggest that J.B. received his injuries at the hands of anyone other than Ms. Paul. Regardless of whether Ms. Paul slapped J.B. or not, it is clear that she exceeded all bounds of reasonableness in her initial restraint of J.B. in reaction to him slapping her.

#### CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties and the subject matter of these proceedings pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

24. Because the School Board, acting through the superintendent, seeks to terminate Respondent's employment, which

does not involve the loss of a license or certification, the School Board has the burden of proving the allegations in its Amended Notice of Specific Charges by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

25. Section 1012.33(1)(a), Florida Statutes, includes the following definition of just cause to terminate a teacher's professional services contract:

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 or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

26. The Notice of Specific Charges alleges the following: Respondent committed misconduct in office in violation of Florida Administrative Code Rule 6A-5.056(2); a violation of School Board Policy 3210, the Standards of Ethical Conduct; and a violation of School Board Policy 3210.01, Code of Ethics.

27. 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); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

28. 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.

29. Consistent with its rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), which reads in pertinent part as follows:

(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.

Code of Ethics and Principles of Professional Conduct

30. Florida Administrative Code Rule 6B-1.001, renumbered without change as rule 6A-10.080, Code of Ethics, 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.

31. Rule 6B-1.006, renumbered without change as rule 6A-10.081, sets forth the Principles of Professional Conduct. The School Board alleges that Respondent violated subsections (3)(a) and (e) of the rule, which read as follows:

(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 student to unnecessary embarrassment or disparagement.

32. As was stated in Miami-Dade County School Board v. Brenes, Case No. 06-1758, 2007 Fla. Div. Adm. Hear. LEXIS 122, at \*42-43 n.12 (Fla. DOAH Feb. 27, 2007; Miami-Dade Cnty. Sch. Bd. Apr. 25, 2007):

Rule [6B-4.009(3)] plainly requires that a violation of both the Ethics Code and the Principles of Professional Education be shown, not merely a violation of one or the other. The precepts set forth in the Ethics Code, however, are so general and so obviously aspirational as to be of little practical use in defining normative behavior. It is one thing to say, for example, that teachers must "strive for professional growth." See Fla. Admin. Code R. 6B-1.001(2). It is quite another to define the behavior which constitutes such striving in a way that puts teachers on notice concerning what conduct is forbidden. The Principles of Professional Conduct accomplish the latter goal, enumerating specific "dos" and "don'ts." Thus, it is concluded that while any violation of one of the Principles would also be a violation of the Code of Ethics, the converse is not true. 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 the Ethics Code be proved, whereas it is both necessary and sufficient that a violation of a specific rule in the Principles of Professional Conduct be proved. It is the necessary and sufficient condition to which the text refers.

33. Ms. Paul clearly did not exercise her "best professional judgment" during the incident in question and her actions violated the Principles of Professional Conduct. Ms. Paul's actions caused J.B. and his grandmother to be

questioned by law enforcement and DCF resulting in unnecessary embarrassment.

34. Ms. Paul failed "to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety." Ms. Paul caused serious and significant harm to J.B. by slapping his face, twisting his arms behind his back, breaking both arms, and forcing him to the floor.

35. Ms. Paul's argument, that J.B. was a volatile student and that she was merely trying to protect herself from further harm, is not credible. If Ms. Paul was concerned for her physical safety, she could have moved away, blocked his blows, moved to the safety zone, or called for help. She did none of these things.

#### School Board Rules

36. The obligations of the teacher towards a student contained in School Board Policy 3210.01, Code of Ethics, mirror the language of the Principles of Professional Conduct for the Education Profession in Florida, rule 6A-10.081. For the reasons discussed above, the School Board demonstrated by a preponderance of the evidence that Respondent violated School Board Policies 3210 and 3210.01.

37. While teachers, particularly those who teach EBD students, are unfortunately periodically placed in stressful and

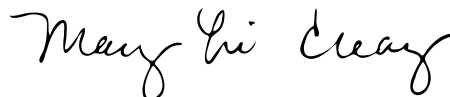
threatening situations, the evidence presented at hearing leads to the conclusion that the serious physical injury sustained by J.B. was the direct result of the wholly inappropriate and unprofessional actions of Ms. Paul. As such, it constitutes misconduct in office and just cause for termination.

38. This penalty takes into account that although Ms. Paul has no prior disciplinary history, she unnecessarily caused serious physical harm to her student.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order finding Claude Paul guilty of misconduct in office and terminating her employment.

DONE AND ENTERED this 20th day of November, 2019, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of November, 2019.



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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.