STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 19-3379TTS

AVA E. WILLIAMS,

Respondent.
_____/

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings ("DOAH"), for final hearing on October 29, 2019, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Ranjiv Sondhi, Esquire
Denise M. Heekin, Esquire
Bryant Miller Olive, P.A.
One Southeast Third Avenue, Suite 2200
Miami, Florida 33131

For Respondent: Robert F. McKee, Esquire
Robert F. McKee, P.A.
Post Office Box 75638
Tampa, Florida 33675

STATEMENT OF THE ISSUE

The issue is whether, as the district school board alleges, an elementary school teacher choked one of her students in class——an allegation which, if proved, would give the district just cause to dismiss the teacher from her position.

PRELIMINARY STATEMENT

On May 22, 2019, Petitioner Broward County School Board issued an Administrative Complaint against Respondent Ava E. Williams containing the allegation that Ms. Williams had grabbed one of her students by the neck and choked him. Petitioner seeks to terminate Ms. Williams's employment as a teacher based on this alleged conduct.

Ms. Williams timely requested a formal administrative hearing to contest Petitioner's intended action. On June 20, 2019, Petitioner referred the matter to DOAH for further proceedings. Upon assignment, the undersigned set the final hearing for August 13 and 14, 2019. Subsequent continuances postponed the hearing for a couple of months.

At the final hearing, which took place on October 29, 2019, Petitioner called the following witnesses: P.P., Detective Richard Orzech, Shereen Reynolds, and Shawony Russell. In addition, Petitioner (i) offered the deposition of Shanette Daniel, which was admitted in lieu of live testimony due to witness unavailability; and (ii) moved into evidence Petitioner's Exhibits 1 (pp. 1336, 1343-47), 2, 3, 5 through 12, 16, and 25 through 35. Ms. Williams testified on her own behalf and offered Respondent's Exhibits 1 through 4, which were received in evidence.

The final hearing transcript was filed on November 14, 2019. Each party timely filed a proposed recommended order ("PRO") on December 20, 2019, which was the deadline. The parties' PROs have been considered in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2019.

FINDINGS OF FACT

1. The Broward County School Board ("School Board" or the "district"), Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Broward County Public School System.

2. At all times relevant to this matter, Respondent Ava E. Williams ("Williams"), who holds an active Florida Educator Certificate, was employed as a third-grade teacher at Watkins Elementary School. She had taught at that school for the preceding 13 years and been an employee of the district since 1998.

3. During the 2018-2019 school year, one of the students in Williams's class was a boy named P.P. After school on Friday, September 14, 2018, P.P. told his mother that, earlier during the day, Williams had choked him in class. P.P.'s mother and sister accompanied P.P. to school later that day, or the

following Monday, to report this allegation to Assistant Principal Shereen Reynolds.

4. P.P. claims that when he returned to class after the meeting with Ms. Reynolds, Williams called P.P. a "lying, fat pig" for turning her in. The undersigned rejects this allegation, which is uncorroborated, as not credible. Sometime later, on September 17, 2018, Ms. Reynolds told Williams about P.P.'s allegation that she (Williams) had choked P.P. the Friday before.

5. The next day, Tuesday, Williams encountered her colleague, Shawony Russell, in the hallway. Williams——who was acquainted with, but not close to, Ms. Russell——knew that Ms. Russell had been P.P.'s teacher the previous school year, when P.P. was in the second grade. There is no dispute that Williams spoke briefly to Ms. Russell at this time. Ms. Russell asserts, however, that Williams admitted to her that she had choked P.P., whereas Williams adamantly denies having made such a confession. For reasons that will be discussed, the undersigned deems Williams's account of this conversation to be the more credible and thus rejects Ms. Russell's testimony to the contrary.

6. After conducting an investigation, the district determined that Williams was guilty of having choked P.P. while screaming at him, "Do you hear me?"——or words to that effect.

On this basis, the district seeks to terminate Williams's employment. Although the district advances several theories in support of its intended decision, Williams concedes that the allegations against her, if proved, would afford the district just cause for dismissal. Her defense is that the allegations are untrue.

7. At hearing, only two witnesses to the alleged incident testified, namely Williams and P.P. Their respective accounts differ in material respects. Williams was by far the more credible witness, and her testimony is accepted over P.P.'s.

8. Although, as the fact-finder, the undersigned is not obligated to explain why he has found one witness to be more believable than another, in this instance a few comments are in order, given that the School Board largely grounded its case on P.P.'s testimony. To begin——and this is undisputed——P.P. is a liar. That is a harsh word, "liar," one that the undersigned does not use lightly, especially with reference to a child witness. But here it is an accurate description. P.P. admitted under oath that he tells lies quite often, including to teachers. He has lied to get other students in trouble, among other things. This, alone, was enough to make the undersigned hesitate to take P.P.'s word about a charge that, if true, would cost a person her job——and might even end that person's professional career.

9. Beyond that, P.P.'s description of the incident makes little sense and is difficult to imagine. P.P. claims that on the morning in question, Williams lined up the students in her class to walk with them to the cafeteria for lunch, except for P.P., who stayed behind because Williams, who thought P.P. had thrown a chair, was walking quickly towards him, after telling the other students to go. According to P.P., after everyone else had left, Williams stood in front of him and touched his throat with her open hand for one second, never squeezing, pushing, or making any movement at all——nor causing any pain—— before withdrawing. The undersigned does not believe that this is likely what happened.

10. Williams's account, in contrast, is easy both to follow and to picture occurring. She recalls telling the children to clean up for lunch that morning, which all of them proceeded to do, except for P.P., who just sat at his desk and refused to move. Another student said something to P.P. that made P.P. mad, and he pushed a chair at the student. At this, Williams walked over to P.P. and asked him to get in line for lunch, but P.P. would not budge. Without touching P.P., Williams raised her voice and said to him loudly, "Do you hear me now?" She instructed the other students to leave for lunch and began walking towards the door herself. P.P. followed Williams and then exited the classroom ahead of his teacher, who

had waited at the door for him. At this point, the incident was over. The undersigned credits Williams's testimony and finds that the incident likely took place as described in this paragraph.

11. Apart from the eyewitness testimony, the only other significant evidence that the district offered was Williams's alleged admission. As mentioned above, P.P.'s second-grade teacher, Ms. Russell, testified that, during a conversation in the hallway on September 18, 2019, Williams confided to Ms. Russell that she had "choked" P.P. The undersigned does not believe that Ms. Russell's testimony is historically accurate in this regard. Credibility determinations such as this are the undersigned's prerogative to make without elaboration, but, as promised, a brief explanation will be given. There are three main reasons why the undersigned has found it unlikely that Williams said to Ms. Russell, "I choked him."

12. First, Ms. Russell was not a confidant of Williams. Ms. Russell acknowledged this, saying she was surprised that Williams would tell her such a thing and agreeing that it "[m]ade no sense." Indeed, it makes so little sense that Ms. Russell's description of the confession strains credulity. Why on earth would Williams tell someone whom she had no particular reason to trust that she had choked a student——a gratuitous confession that could have ruinous consequences,

including potentially a criminal prosecution? Stranger things happen, of course, but the odds are against an unsolicited, unexpected admission of this nature.

13. Second, Ms. Russell claims that Williams said she had *"choked"* P.P. This is the word P.P. used in making his allegation against Williams, and it is the term that the district has used in charging and prosecuting Williams. Yet, if P.P.'s testimony were true (which it probably isn't), the contact that Williams made with P.P.'s throat could not reasonably be described as "choking." The term "choke" in this context obviously denotes the application of pressure around the victim's neck or throat to impede breathing and blood flow. What P.P. described, in contrast, was a brief (one second), painless touch without any constriction about his neck whatsoever. Thus, if Williams had touched P.P. (she probably didn't), and if, further, she had confessed as much to Ms. Russell (which is unlikely), it is *highly* improbable that Williams would have admitted doing something *far worse* than that which P.P. claims happened——which was, again, that Williams merely brushed the boy's neck with the palm of her hand.[1/]

14. Finally, Ms. Russell did not act like Williams had admitted having attacked a student. Imagine that you are an elementary school teacher and that one day, out of the blue, a colleague of yours, someone whom you do not know well, tells you

that she has choked a third-grade student. Wouldn't you want to know what had happened? Ms. Russell didn't. More important, wouldn't you feel the need to report this potential child abuse to appropriate authorities for investigation, right away? Ms. Russell didn't.

15. Ms. Russell did not take *any* immediate action because "[w]e were heading out to recess. I like to go outside and get my sun and just relax." Therefore, Ms. Russell testified, "I didn't call anyone. I didn't do anything. I was going back outside to relax." In fact, Ms. Russell never reported Williams's alleged admission to the school administration or the Department of Children and Families, even though she knew that, as a teacher, she had a legal duty to report child abuse upon becoming aware of reasonable cause to suspect that such has occurred. See § 39.201, Fla. Stat. Promptly going outside to relax in the sun and forget the matter is not the response one reasonably would expect from a teacher whose co-worker has just confessed to choking a student.

16. Williams's description of the hallway encounter between her and Ms. Russell rings true. As stated, Williams knew that Ms. Russell had taught P.P., and she wanted to find out what Ms. Russell's experience with P.P. had been like. Seeing Ms. Russell in the hallway, Williams took the opportunity to inquire. There is no dispute that Ms. Russell told Williams

that P.P. performed below grade level academically, had behavioral issues, and lied a lot.[2/] Williams recalls telling Ms. Russell that, indeed, P.P. *is* a liar "because he said I choked him." The undersigned finds that the alleged "admission" is nothing but a truncated version of this statement, in which Williams described P.P.'s charge, not her own conduct.

Determinations of Ultimate Fact

17. The district has failed to prove its allegations against Williams by a preponderance of the evidence.

CONCLUSIONS OF LAW

18. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6)(a)2., 120.569, and 120.57(1), Florida Statutes.

19. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J. concurring).

20. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Lusskin v. Ag. for Health Care Admin., 731 So. 2d 67, 69 (Fla. 4th DCA 1999); Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Dep't of Prof'l Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

21. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); MacMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

22. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

23. In its Administrative Complaint, the district charged Williams with Misconduct in Office and other offenses, the gravamen of which is that, on September 14, 2018, Williams grabbed P.P. around the neck and choked him. The parties agreed that if this factual allegation were proven, the district would have just cause to dismiss Williams.

24. The district, however, failed to prove, by a preponderance of the evidence, that Williams choked P.P. as alleged. Thus, all of the charges against Williams necessarily fail, as a matter of fact. Due to this dispositive failure of proof, it is not necessary to render additional conclusions of law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Broward County School Board enter a final order exonerating Ava E. Williams of all charges brought against her in this proceeding, reinstating Williams to her pre-dismissal position, and awarding Williams back salary as required under section 1012.33(6)(a).

DONE AND ENTERED this 14th day of January, 2020, in Tallahassee, Leon County, Florida.

JOHN G. VAN LANINGHAM
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 14th day of January, 2020.

ENDNOTES

[1/] Just to be clear, the undersigned is not suggesting that choking is the only contact with a student's neck or throat which would be disciplinable. Indeed, the incidental contact that P.P. described might constitute just cause for punishment, but it was not a *choking* event. The point is, the notion that Williams would confess to perpetrating a particular type of physical attack (choking) generally regarded as both violent and life-threatening, which she had not in fact committed (if P.P.'s description of the incident is taken at face value), beggars belief.

[2/] Asked at hearing to identify the things about which P.P. had lied, Ms. Russell testified:

> A. It's many things. Little things. Just didn't make any sense. From my experience in the classroom, little things, he wanted to talk about how kids may have hit him and they didn't. Or he just lied about not doing homework or why he couldn't do it, and things of that sort.

Q. Okay. So P.P. would lie to get some other child in trouble?

A. Of course.

COPIES FURNISHED:

Ranjiv Sondhi, Esquire
Denise M. Heekin, Esquire
Bryant Miller Olive, P.A.
One Southeast Third Avenue, Suite 2200
Miami, Florida 33131
(eServed)

Robert F. McKee, Esquire
Robert F. McKee, P.A.
Post Office Box 75638
Tampa, Florida 33675
(eServed)

Katherine A. Heffner, Esquire
Robert F. McKee, P.A.
1718 East 7th Avenue, Suite 301
Tampa, Florida 33605
(eServed)

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)

Robert W. Runcie, Superintendent
Broward County School Board
600 Southeast Third Avenue, Tenth Floor
Fort Lauderdale, Florida 33301-3125

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.