

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-3616TTS

SHAVONNE L. ANDERSON,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing on September 23, 2019, in Miami, Florida.

APPEARANCES

For Petitioner: Cristina Rivera, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 430  
Miami, Florida 33132-1308

For Respondent: Shavonne L. Anderson, pro se  
2868 Northwest 197th Terrace  
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend without pay and terminate Respondent's employment as a teacher.

PRELIMINARY STATEMENT

On June 19, 2019, at its scheduled meeting, Petitioner, Miami-Dade County School Board ("School Board"), took action to

suspend Respondent, Shavonne L. Anderson ("Respondent"), without pay and initiate proceedings to terminate her employment as a teacher. By letter dated June 20, 2019, the School Board notified Respondent of her right to request an administrative hearing within 15 days.

On July 2, 2019, Respondent timely requested an administrative hearing. On July 5, 2019, the School Board referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing. The final hearing was initially set for August 16, 2019.

On August 1, 2019, the School Board filed a Notice of Specific Charges. The Notice of Specific Charges contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with misconduct in office (Count I) and gross insubordination (Count II).

On August 2, 2019, the School Board filed a motion to continue the final hearing. On August 5, 2019, the undersigned entered an Order resetting the final hearing for September 23, 2019.

On September 18, 2019, Respondent filed a motion in limine and/or objection to the School Board's Exhibits 4 through 14 and witness, Dr. Carmen Jones-Carey. On September 18, 2019, the School Board filed a motion to strike Respondent's exhibits or, in the alternative, motion in limine and/or objections to

Respondent's exhibit list. On September 19, 2019, a telephonic hearing was held on the motions with Respondent and counsel for the School Board participating in the hearing. On September 20, 2019, the undersigned entered an Order denying Respondent's motion and reserving ruling on the School Board's motion.

The final hearing was held on September 23, 2019, with both parties present. At the outset of the hearing, the undersigned readdressed the School Board's motion filed September 18, 2019. After hearing argument and reviewing Respondent's proposed exhibits, the undersigned granted the School Board's motion as to those documents within Respondent's Exhibit 1 pertaining to student referrals other than to D.A. Otherwise, the motion was denied. At the outset of the final hearing, the School Board also made an unopposed ore tenus motion for official recognition of the documents within the School Board's Exhibits 1 through 3, 13, and 14, which was granted.

The School Board presented the testimony of Dr. Carmen Jones-Carey, Maria Rodriguez, R.B., Joanna Semeniuk, Ariel Edwards-Shinoster, K.B., and D.A. The School Board's Exhibits 4 through 8, 10, and 11 were received into evidence. Respondent testified on her own behalf and presented the additional testimony of Joanna Semeniuk. Respondent's Exhibits 1 through 3 were received into evidence.

The one-volume final hearing Transcript was filed on October 29, 2019. The parties timely filed their proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

#### FINDINGS OF FACT

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. At all times material to this case, Respondent was employed by the School Board as a teacher pursuant to a professional services contract. Respondent was initially hired by the School Board in July 2006 and assigned to teach at Horace Mann Middle School ("Horace Mann").

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law, the School Board's policies, and the collective bargaining agreement between the School Board and the United Teachers of Dade ("UTD").

#### The 2010-2011 School Year

4. During the 2010-2011 school year, Respondent was a teacher at Horace Mann. Dr. Carmen Jones-Carey, the principal at Horace Mann, was authorized to issue directives to her employees, including Respondent.

5. Dr. Jones-Carey issued Respondent a letter of reprimand on May 23, 2011, concerning an alleged incident that occurred on April 27, 2011, involving Respondent "yelling," "throwing things around" in her classroom, and making an inappropriate comment to another employee. The reprimand directed Respondent to refrain from inappropriate emotional outbursts, losing control, and making inappropriate comments to or about staff members that may be interpreted as offensive or threatening. The reprimand further directed Respondent to: (1) strictly adhere to all School Board rules and regulations, specifically, School Board Rules 6Gx13-4A-1.21 and 6Gx13-4A-1.213; (2) refrain from using inflammatory language in her role as a teacher; and (3) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board. Dr. Jones-Carey informed Respondent that failure to comply with the directives may result in further disciplinary action.

6. On May 25, 2011, Dr. Jones-Carey held a conference for the record with Respondent regarding the April 27, 2011, incident, at which time Respondent was directed to: (1) strictly adhere to all School Board rules and regulations, specifically, School Board Rules 6Gx13-4A-1.21 and 6Gx13-4A-1.213; (2) refrain from using inflammatory language in her role as a teacher; and (3) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School

Board. Dr. Jones-Carey informed Respondent that failure to comply with the directives will be deemed as insubordination which may result in disciplinary action.

The 2011-2012 School Year

7. On April 13, 2012, Dr. Jones-Carey and Paul J. Greenfield, administrative director for North Regional Center, held a conference for the record with Respondent concerning an alleged incident in the cafeteria involving Respondent yelling at and pulling a student by the bottom of her shirt, slinging the student around, and causing the student to fall into a metal counter. During the conference, Respondent was directed to, among other things: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) refrain from using physical means as a form of discipline; and (3) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board. As a result of the alleged incident, Respondent was suspended without pay for 17 days and informed that failure to comply with the directives may result in further disciplinary action.

The 2012-2013 School Year

8. On November 16, 2012, Dr. Jones-Carey held a conference for the record with Respondent concerning an alleged incident in Respondent's sixth-period class involving a verbal altercation

between Respondent and a student during which Respondent used inappropriate language when addressing the student and the entire class. During the conference, Respondent was directed to, among other things: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board; (3) refrain from exposing a student to unnecessary embarrassment or disparagement; and (4) refrain from using abusive and/or profane language or displaying unseemly conduct in the workplace. During the conference, Respondent was also informed of the issuance of a letter of reprimand and that failure to comply with the directives will result in disciplinary action.

9. Dr. Jones-Carey issued Respondent a letter of reprimand on November 28, 2012, concerning the alleged incident that occurred in Respondent's sixth-period class. The reprimand directed Respondent to immediately refrain from getting involved in verbal confrontations with students, berating, taunting, and/or embarrassing students in class and/or in any public area. The reprimand further directed Respondent to: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) conduct herself, both in her employment and in the community,

in a manner that will reflect credit upon herself and the School Board; (3) refrain from exposing a student to unnecessary embarrassment or disparagement; and (4) refrain from using abusive and/or profane language or displaying unseemly conduct in the workplace. Dr. Jones-Carey informed Respondent that any recurrences of the above infraction would constitute gross insubordination and may result in further disciplinary action, up to and including dismissal from further employment with the School Board.

10. On March 21, 2013, Dr. Jones-Carey held a conference for the record with Respondent concerning an alleged incident that occurred in Respondent's fifth-period class on February 8, 2013, in which Respondent yelled at the entire class and forcefully moved desks, which caused another desk to hit a student causing the student to lose her balance and injure her arm. During the conference, Respondent was directed to, among other things: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board; (3) refrain from exposing a student to unnecessary embarrassment or disparagement; and (4) refrain from using abusive and/or profane language or displaying unseemly conduct in the workplace. During



the conference, Respondent was also informed that failure to comply with the directives will constitute gross insubordination and result in disciplinary action.

11. Dr. Jones-Carey issued Respondent a letter of reprimand on April 9, 2013, concerning the alleged incident that occurred in Respondent's fifth-period class on February 8, 2013. The reprimand directed Respondent to immediately refrain from losing her temper in class, getting involved in verbal confrontations with students, berating, taunting, and/or embarrassing students in class and/or in any public area. The reprimand further directed Respondent to: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board; (3) refrain from exposing a student to unnecessary embarrassment or disparagement; and (4) refrain from using abusive and/or profane language or displaying unseemly conduct in the workplace. Dr. Jones-Carey informed Respondent that any recurrences of the above infraction would constitute gross insubordination and may result in further disciplinary action, up to and including dismissal from further employment with the School Board.

12. On June 19, 2013, at its scheduled meeting, the School Board took action to suspend Respondent without pay and terminate

her employment as a teacher. Respondent timely requested a formal administrative hearing, and, on June 26, 2013, the School Board referred the matter to DOAH. The matter was styled Miami-Dade County School Board v. Shavonne Anderson, DOAH Case No. 13-2414TTS, and assigned to Administrative Law Judge Todd P. Resavage.

#### 2013-2014 School Year

13. On January 14, 2014, following an evidentiary hearing, Judge Resavage issued a Recommended Order finding Respondent guilty of gross insubordination. Judge Resavage recommended that the School Board enter a final order finding Respondent guilty of gross insubordination, suspending her employment without pay for a period of 180 school days, and placing her on probation for a period of two years. On February 12, 2014, the School Board entered a Final Order adopting Judge Resavage's Recommended Order, imposing the suspension without pay for a period of 180 days. Respondent received credit for time served and was reinstated for the 2014-2015 school year.

#### 2018-2019 School Year

14. Respondent was re-assigned to Miami Beach Senior High School for the 2018-2019 school year, where she taught physical science.

15. The proposed discipline is based on conduct occurring on January 31, 2019, during Respondent's fourth-period inclusion

physical science class, co-taught by Respondent and another teacher, Joanna Semeniuk.

16. On January 31, 2019, D.A. was a ninth-grade male special education student in the class. During class, D.A. questioned Respondent about the quality of his written work. Displeased with Respondent's answer, a verbal confrontation ensued between D.A. and Respondent. The argument escalated after D.A. stood up, threw his paper on the floor of the classroom, used profane language toward Respondent, and attempted to leave the room.

17. In response to D.A.'s conduct, Respondent became irate, grabbed the paper off the floor, used profane language toward D.A., grabbed D.A. by his shirt, and shoved the piece of paper down his shirt. The incident was witnessed by Ms. Semeniuk and other students in the classroom.

18. Respondent's conduct on January 31, 2019, was inappropriate, disparaging, reflected poorly upon herself and the School Board, and reduced Respondent's ability to effectively perform duties. Respondent could certainly have projected authority and addressed the student's behavior without escalating the situation and resorting to the profane and disparaging verbal attack and initiating inappropriate physical contact with D.A.

19. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of misconduct in office in violation of Florida Administrative Code Rule 6A-5.056.

20. Through the profane and disparaging verbal tirade and inappropriate physical contact upon the student on January 31, 2019, Respondent violated Florida Administrative Code Rules 6A-10.081(2)(a)1., 5., and 6., by failing to 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, intentionally exposing the student to unnecessary embarrassment or disparagement, and intentionally violating the student's rights. Respondent also violated School Board Policy 3210, Standards of Ethical Conduct, sections A.3., 7., and 8., and School Board Policy 3210.01, Code of Ethics, Conduct Regarding Students, sections A., E., and F., which mirror rules 6A-10.081(2)(a)1., 5., and 6.

21. The persuasive and credible evidence adduced at hearing establishes that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority. By failing to comply with the specific directives detailed above to refrain from exposing a student to unnecessary embarrassment or disparagement; refrain from using abusive and/or profane language or displaying unseemly conduct in the workplace;

refrain from inappropriate emotional outbursts, losing control, and using inflammatory language in her role as a teacher; and conduct herself, both in her employment and in the community, in a manner that will reflect credit upon herself and the School Board, Respondent intentionally refused a direct order, reasonable in nature, and given by and with proper authority.

22. At hearing, Respondent acknowledged that her language and use of profanity toward her student in the classroom on January 31, 2019, was inappropriate. Specifically, Respondent acknowledged that during the incident she called D.A. a "faggot" and directed the word "shit" toward him.

23. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of violating rule 6A-10.081(2)(c)4., or School Board Policy 3210, Standards of Ethical Conduct, sections A.9. and 22.

#### CONCLUSIONS OF LAW

24. DOAH has jurisdiction of the subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2019).

25. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes. The School Board has the authority to suspend and terminate instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

26. The School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the violations alleged in the Notice of Specific Charges and that such violations constitute "just cause" for dismissal.

§§ 1012.33(1) (a) and (6) (a), Fla. Stat.; Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

27. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000). The preponderance of the evidence standard is less stringent than the standard of clear and convincing evidence applicable to loss of a license or certification. Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

28. 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. 1st DCA 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995).

29. Sections 1012.33(1) (a) and (6) (a) provide, in pertinent part, that instructional staff may be terminated during the term of their employment contract only for "just cause." §§ 1012.33(1) (a) and (6) (a), Fla. Stat. "Just cause" is defined

in section 1012.33(1) (a) to include "misconduct in office" and "gross insubordination."

30. 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.

31. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), which provides:

(2) "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.;

(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.

32. Rule 6A-5.056(2) (b) incorporates by reference rule 6A-10.081, which is titled "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081(2) (a) provides, in pertinent part:

(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.

6. Shall not intentionally violate or deny a student's legal rights.

\* \* \*

(c) Obligation to the profession of education requires that the individual:

\* \* \*

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly process of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

33. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), which provides:

(4) "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance



as to involve failure in the performance of the required duties.

34. School Board Policy 3210, Standards of Ethical Conduct, provides, in pertinent part:

All employees are representatives of the District and shall conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

A. An instructional staff member shall:

\* \* \*

3. make a 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;

\* \* \*

7. not intentionally expose a student to unnecessary embarrassment or disparagement;

8. not intentionally violate or deny a student's legal rights;

9. not harass or discriminate against any student on any basis prohibited by law or the School Board and shall make reasonable efforts to assure that each student is protected from harassment or discrimination;

\* \* \*

21. not use abusive and/or profane language or display unseemly conduct in the workplace;

22. not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating,

abusive, offensive, or oppressive environment; and, further, shall make reasonable efforts to assure that each individual is protected from such harassment or discrimination;

35. School Board Policy 3210.01, Code of Ethics, provides, in pertinent part:

Conduct Regarding Students

Each employee:

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 a student to unnecessary embarrassment or disparagement;

F. shall not intentionally violate or deny a student's legal rights.

36. Turning to the present case, the School Board proved by a preponderance of the evidence that Respondent is guilty of misconduct in office in violation of rule 6A-5.056(2). As detailed above, Respondent failed to make reasonable effort to protect her student from conditions harmful to learning and intentionally exposed her student to unnecessary embarrassment or disparagement. Respondent also engaged in conduct which disrupted the student's learning environment and reduced Respondent's ability to effectively perform her duties.

37. Respondent also violated School Board Policy 3210, Standards of Ethical Conduct, sections A.3., 7., and 8., and School Board Policy 3210.01, Code of Ethics, Conduct Regarding Students, sections A., E., and F., which mirror rules 6A-10.081(2)(a)1., 5., and 6.

38. The School Board proved by a preponderance of the evidence that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

39. The School Board failed to prove by a preponderance of the evidence that Respondent is guilty of violating rule 6A-10.081(2)(c)4. and School Board Policy 3210, Standards of Ethical Conduct, sections A.9. and 22. Rule 6A-10.081(2)(c)4. makes no mention of students, in contrast to rule 6A-10.081(2)(a), which specifically refers to a teacher's obligation "to the student." Moreover, the conduct proscribed by rule 6A-10.081(2)(c)4. and School Board Policy 3210, Standards of Ethical Conduct, sections A.9. and 22., must be predicated on an intentional underlying discriminatory animus (i.e., subjecting one to a hostile environment or discrimination because of sex, race, disability, or age), which was not proven.

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 upholding the suspension and terminating Respondent's employment.

DONE AND ENTERED this 26th day of November, 2019, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of November, 2019.

COPIES FURNISHED:

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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.