

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-5158TTS

PAMELA D. BEAL,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings (“DOAH”), for final hearing by Zoom teleconference on October 15, 2020.

APPEARANCES

For Petitioner: Maya A. Moore, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether, as the district school board alleges, an elementary school teacher slapped a student’s face in class—an allegation which, if proved, would give the district just cause to suspend the teacher without pay for five days.

PRELIMINARY STATEMENT

At a meeting on September 17, 2019, Petitioner Broward County School Board (the “School Board”) voted to suspend Respondent Pamela D. Beal (“Beal”) for a period of five days without pay from her employment as a teacher. The reasons for that action were spelled out in an Administrative Complaint dated August 22, 2019. The crux of the complaint is that Beal allegedly slapped a student in the face on December 7, 2018.

Beal timely requested a formal administrative hearing by letter dated September 6, 2019. The School Board referred the matter to DOAH for further proceedings, and this file was opened on September 26, 2019. Upon assignment, the undersigned set the final hearing, which eventually took place on October 15, 2020.

At the final hearing, Petitioner called as witnesses Martha Quesada, Allen Roberts, Maria Henao, and Denise Lizano, and it offered Petitioner’s Exhibits 1 through 9 and 11, which were received in evidence. Official recognition was taken of School Board Policy 4008 (marked for identification as Petitioner’s Exhibit 10). Beal testified on her own behalf and presented the testimony of Nichole Sanders. Respondent’s Exhibits 1C, 1F, 5A, 5B, and 5C were admitted as well.

The final hearing transcript was filed on November 5, 2020. Each party timely filed a Proposed Recommended Order within the 30-day deadline established at the end of the hearing, and these submissions were 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, except that all references to statutes or rules defining disciplinable offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

#### FINDINGS OF FACT

1. The School Board is the constitutional entity authorized to operate, control, and supervise the Broward County Public School System. At all times relevant, it was (and remained as of the final hearing) Beal's employer.

2. Beal is an elementary school teacher who, during the relevant school year (2018-19), taught a first-grade class comprising four special education students with autism, one of whom is named R.S.

3. The incident giving rise to this action occurred on Friday, December 7, 2018. Throughout the morning that day, R.S. had been coughing intermittently, prompting Beal to admonish R.S., multiple times, about the need to cover his mouth.

4. At some point, R.S. left his desk and approached Beal, who was sitting behind a table at the front of the classroom. R.S. positioned himself near Beal and proceeded to cough in her face. Because R.S. did not testify, there is no direct evidence regarding his intentions. It is reasonable to infer from R.S.'s conduct (and is hereby found), however, that—for whatever reasons—R.S. was deliberately directing respiratory jets towards Beal, using uncovered coughs to invade the teacher's personal space.

5. Beal continued to implore the student to cover his mouth and to move away from her, but to no avail.

6. What happened next is in dispute. There were two adults in the classroom at this crucial moment—Beal and Martha Quesada, a paraprofessional who had been assigned to work one-on-one with one of Beal's students (not R.S.). A second paraprofessional assigned to Beal's

classroom, Jeffrey Roberts, was having lunch in the media center when this incident took place.

7. Beal testified that she began waving her hands back and forth in front of her face, to fan away the respiratory droplets from R.S.'s uncovered coughs. Beal's testimony in this regard is credited as truthful, for the act she described is a spontaneous, self-protective response to being coughed on.

8. Ms. Quesada testified that Beal did more than wave. She claims that Beal committed a battery upon R.S., slapping the boy across the cheek, hard enough to make a clapping sound, which she says she heard. Ms. Quesada testified that R.S. exclaimed, "Ms. Beal, you hit me!" as he began screaming loudly and inconsolably. This is obviously a serious accusation, which, if true, constitutes just cause for a five-day suspension.

9. Although the possibility that Beal slapped R.S. cannot be ruled out, nevertheless, based upon the evidence presented, it cannot be found that, more likely than not, an attack occurred such as that described by Ms. Quesada. Her testimony is insufficiently persuasive to carry the School Board's burden of proof.

10. Given that the School Board's case rests almost entirely on Ms. Quesada's shoulders, an explanation is in order as to why her testimony comes up short. To begin, in her written statement prepared for the School Board on December 10, 2018, just a few days after the events at issue, Ms. Quesada described what she had seen as follows: "I saw Ms. Beal touching (like slapping) the left side of [R.S.'s] face and he screams and start screaming uncontrollably." Touching is *not* like slapping, and yet here, in this important document, knowingly tendered as evidence during the investigation of the incident, Ms. Quesada conflated the two. This is not a minor matter, either. It is *the* material fact in dispute. Did Ms. Quesada see Beal merely touch R.S. and equate *that* with a slap?

11. Then there are the little corroborating details about which Ms. Quesada testified, but which she failed to mention in her (nearly)

contemporaneous written statement. Ms. Quesada wrote nothing about having heard the alleged slap, nor did she record R.S.'s supposed excited utterance accusing Beal of hitting him. While these are not necessary facts, they tend to make the essential allegation that Beal slapped R.S. somewhat more believable, and the School Board relies upon them. Their absence from the written statement, however, makes these seem like later embellishments, which, in turn, calls into question Ms. Quesada's reliability as a witness.

12. Next, a third corroborating detail contained in Ms. Quesada's testimony is affirmatively disproved by the greater weight of the evidence. There is no dispute that after being coughed on by R.S., who was disobeying Beal's instructions to stop, Beal left the classroom to ask Mr. Roberts to return and help her redirect R.S. (Mr. Roberts had known R.S. for a couple of years and had a good rapport with him.) Beal found Mr. Roberts in the media center, and he accompanied her back to the classroom.<sup>1</sup>

13. Everyone agrees that Beal was out of the classroom for about three minutes. According to Ms. Quesada, R.S. continued to scream the entire time and was still screaming when Beal and Mr. Roberts returned to the classroom. Ms. Quesada testified that Mr. Roberts tried to get the boy to calm down, failed, and thus had to remove the student, who was still screaming as he exited the room. Such behavior on R.S.'s part would be consistent with having been slapped by Beal, which is why the School Board draws attention to this aspect of Ms. Quesada's testimony.

14. Both Beal and Mr. Roberts, however, testified that R.S. was calm and quiet when they entered the classroom. Mr. Roberts recalled that R.S. was his usual self, exhibiting ordinary behavior. Mr. Roberts brought R.S. back to

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<sup>1</sup> The School Board emphasizes Mr. Roberts's testimony that Beal was a "little upset" or "frustrated" when Beale approached him in the media center, as if this implies guilt. Beal's reported mood, however, comports with the circumstances as she recounts them. Indeed, it would be surprising if Beal were not at least somewhat upset, since being coughed on at close range is annoying, as nearly everyone who has had the experience can attest. The undersigned regards Beal's apparent frustration in that moment as a neutral fact.

the library where he let the student watch a movie while he (Mr. Roberts) finished eating his lunch. During the 15 minutes remaining in Mr. Roberts's lunch break, R.S. acted normally, and when it was time to go back to class, R.S. expressed no fear or reluctance, returning to Beal's room without incident.

15. In addition to these chinks in Ms. Quesada's credibility armor are her immediate responses—or rather nonresponses—to Beal's alleged abuse of R.S. It is undisputed that after Beal left the classroom, leaving Ms. Quesada in charge, Ms. Quesada did not use the telephone at her disposal to call security or request other help. Nor did she try to calm or examine R.S., whom she claims had just been slapped and was screaming. Ms. Quesada did not tell Mr. Roberts about the alleged attack when he returned to the classroom. Indeed, Ms. Quesada did not rush to inform anybody about what she allegedly had witnessed, including R.S.'s mother, whom she knew and could have approached when R.S. was picked up after school.

16. Instead of promptly reporting the alleged incident, Ms. Quesada waited until after her shift had ended to call Maria Henao, the autism coach, who happened to be traveling at the time and unable to come to the phone right away. The two did speak the next day (Saturday), which was when Ms. Quesada first notified the School Board that she had seen Beal slap R.S. Ms. Quesada's unhurried reaction to the alleged slap seems incommensurate with relative urgency of the situation. One would expect an adult eyewitness to classroom child abuse by a teacher to respond with a bit more vigor. Had Ms. Quesada intervened with alacrity, a timelier, and perhaps more fruitful, investigation would have been possible.

17. Finally, there is some reason to believe that Ms. Quesada might be biased. At hearing, Ms. Quesada implied that a son of hers had died as a consequence of unreported child abuse, and she forthrightly acknowledged that, because of this personal tragedy, her "jobs" are to "protect the kids" and "to come forward no matter what" if she sees someone hurt a child. In light of

these facts, it is reasonable to discount Ms. Quesada's testimony somewhat to account for the possibility that she might assume the worst when it comes to uncommon adult-child interactions, such as the one at issue, and to resolve doubts and uncertainties in favor of the child and against the adult.

18. Of course, none of the foregoing necessarily means that Ms. Quesada is not telling the truth, at least as she perceived the incident. Taken together, however, these considerations negatively affect the weight of her testimony, which to repeat is essentially, albeit not entirely, uncorroborated. The corroborating evidence, such as it is, consists of two hearsay declarations by R.S. One is the excited utterance, which was mentioned above. The other is R.S.'s alleged reaction to being asked by Ms. Henao, on the Monday following the alleged incident, why he had coughed in Beal's face. According to Ms. Henao, R.S. answered this question by placing his hand on his cheek, becoming upset, and saying, "ow." It should be added that this alleged communication occurred while Ms. Henao was walking R.S. back to class after his formal interview in connection with the investigation of Beal stemming from Ms. Quesada's accusation, during which R.S. had said nothing about being slapped.

19. These hearsay declarations were deemed admissible and considered.<sup>2</sup> The undersigned considers R.S.'s alleged hearsay statements to be of little probative value because there is persuasive evidence that, at the time of the incident, R.S. was prone to exaggerating the effects of ordinary, harmless physical contact. Nichole Sanders, a teacher who was not involved in the subject incident, testified credibly that on several occasions around that time, R.S. declared that Ms. Sanders was hurting him, when in fact she was merely

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<sup>2</sup> R.S.'s excited utterance is admissible under an exception to the hearsay rule. § 90.803(2), Fla. Stat. The nonverbal conduct described by Ms. Henao (which the undersigned has treated as having been intended by R.S. as an assertion) is admissible to "supplement" Ms. Quesada's testimony. § 120.57(1)(c), Fla. Stat. This case serves as a reminder that *admissibility* and *credibility* are not synonymous.

holding his hand.<sup>3</sup> This tendency to exaggerate, coupled with the fact that R.S.'s statements are only *hearsay*, after all, is enough for the fact-finder to give this evidence very little weight.

20. The bottom line is that Ms. Quesada's thinly corroborated testimony, which is compromised by the several credibility defects described above, is insufficiently persuasive to support a finding that Beal slapped R.S. as charged.

21. That said, Beal was not an especially effective witness, either. She was at times overly defensive and a little evasive. To be fair, however, being accused of child abuse, the undersigned imagines, is likely to negatively affect a party's demeanor on the stand. Therefore, these factors do not compel a significant credibility discount. More troubling, in contrast, is Beal's equivocation regarding whether her hand or fingers made contact with R.S. during the incident.

22. Beal at times has denied that she touched R.S. and at other times allowed that her fingertips might have made contact with him inadvertently. Mr. Roberts testified that, on the next Monday after the incident (which was by then under investigation), Beal told him that she "might have" slapped R.S. on the hand, or even in the face. At hearing, Mr. Roberts emphasized that "might" was the "key word."

23. While Beal has expressed uncertainty about whether she touched R.S. that morning, she has consistently denied slapping the student. In this regard, Mr. Roberts's testimony conflicts with Beal's. Arguably, Mr. Roberts's

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<sup>3</sup> The School Board argues that Ms. Sanders's testimony does not establish that R.S. lied about being touched, as opposed to exaggerating the effects of the physical contact. This is true as far as it goes. But Beal is not charged with merely "touching" R.S. She is accused of intentionally slapping the student. Ms. Sanders's testimony establishes that R.S. was capable of dramatizing a nonharmful touch and, in fact, did so several times in her presence. If, as is possible, Beal had made incidental, harmless contact with R.S. while waving her hands in defensive response to his purposeful, uncovered coughing in her personal space, it would be consistent with R.S.'s known behavior for him to have screamed "Ouch, you're hurting [or hitting] me," or words to that effect.



testimony concerning Beal’s qualified “admission” corroborates Ms. Quesada’s testimony about the incident.

24. As the fact-finder, the undersigned considers the “admission,” as recounted by Mr. Roberts, to be insufficiently probative to tip the scale in the School Board’s favor. There are two reasons for this. First, the “admission” is hearsay,<sup>4</sup> and, hence, the possibility exists that Beal’s words lose some subtlety of the speaker’s intended meaning when filtered through a third party, even a relatively friendly one such as Mr. Roberts. Second, the “key word”—*might*—softens the “admission” to the point that it is not really an “admission” in the sense of being a concession to the truth of the matter.

25. Regarding Beal’s credibility, the bottom line is this: she failed to prove her innocence. Fortunately for Beal, however, she was not required to do so. Beal has consistently denied having slapped R.S., which is the gravamen of the charges against her. The School Board failed to prove by a preponderance of the evidence that Beal did, in fact, slap the student. Beal’s shortcomings as a witness do not make the School Board’s evidence more persuasive; the result, rather, is that the entire record, including Beal’s testimony, is insufficient to support a finding that, more likely than not, Beal slapped (or did not slap) R.S. on December 7, 2018.

#### DETERMINATION OF ULTIMATE FACT

26. The School Board has failed to prove its allegations against Beal by a preponderance of the evidence.

#### CONCLUSIONS OF LAW

27. 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.

28. A district school board employee against whom a disciplinary

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<sup>4</sup> To be sure, Beal’s own statement is admissible against her under the “admissions” exception to the hearsay rule. § 90.803(18), Fla. Stat.

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 Cty.*, 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983) (Jorgenson, J. concurring).

29. 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. den.*, 576 So. 2d 295 (Fla. 1991).

30. 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 Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Sublett v. Sumter Cty. Sch. Bd.*, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); *MacMillan v. Nassau Cty. Sch. Bd.*, 629 So. 2d 226 (Fla. 1st DCA 1993).

31. 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).

32. In its Administrative Complaint, the district charged Beal with Misconduct in Office and other offenses, the essential factual grounds of which is that, on December 7, 2018, Beal intentionally slapped R.S. across

the face. The parties agreed that, if this factual allegation were proven, the School Board would have just cause to suspend Beal for five days without pay.

33. The School Board, however, failed to prove, by a preponderance of the evidence, that Beal slapped R.S. as alleged. Thus, all the charges against Beal 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 Pamela D. Beal of all charges brought against her in this proceeding, rescinding the suspension, and awarding Beal back salary and benefits as required under section 1012.33(6)(a).

DONE AND ENTERED this 4th day of January, 2021, in Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
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Filed with the Clerk of the  
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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.