

OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-0431TTS

VERDELL L. JACKSON,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge (“ALJ”) Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings (“DOAH”) on September 16, 2020, by Zoom conference.

APPEARANCES

For Petitioner: Michele Lara Jones, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

For Respondent: Branden M. Vicari, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether just cause exists to suspend Respondent’s employment for the reasons set forth in Petitioner’s Notice of Specific Charges.

PRELIMINARY STATEMENT

In correspondence dated January 16, 2020, Miami-Dade County School Board (“Petitioner” or “School Board”) issued a letter informing Verdell L. Jackson (“Respondent”) that the School Board had taken action at its January 15, 2020, meeting to suspend her employment for ten (10) workdays without pay. On the same day, Respondent requested a hearing. Because the initial letter from the School Board lacked sufficient detail, the undersigned ordered Petitioner to file a Notice of Specific Charges (“Notice”), which Petitioner did on February 14, 2020. The basis for the School Board’s action, as stated in the Notice, was that just cause existed for Respondent to be disciplined for Misconduct in Office pursuant to violations of Florida Administrative Code Rules 6A-5.056(2) and 6A-10.081; and School Board Policies 3210, 3210.01, 3213, and 5630.

The final hearing took place on September 16, 2020. At the hearing, Petitioner offered the testimony of J.A., who was a student in Respondent’s kindergarten class. Petitioner’s Exhibits 1 through 6 and 8 through 10 were admitted into evidence. Respondent testified on her own behalf and did not introduce any exhibits. Both parties submitted proposed recommended orders, which have been duly considered in this Recommended Order.

All references to the Florida Statutes are to the 2018 version which was in effect at the time of the matters relevant to these proceedings.

FINDINGS OF FACT

1. Petitioner is a duly constituted School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Miami-Dade County, Florida.
2. At all relevant times, Respondent was employed by Petitioner as a teacher at Brentwood Elementary School (“Brentwood”) and was subject to

the Florida Statutes, the regulations issued by the Florida State Board of Education, and the policies and procedures of the School Board.

3. On March 8, 2013, prior to the events that are the subject of this case, it was reported that Respondent took the arm of a second-grade student who was not following directions and scratched the student's face. As a result, on April 18, 2013, Respondent was issued a Reprimand and given directives to prevent this type of behavior from recurring, specifically, to refrain from engaging in inappropriate physical contact of any kind with students and to provide close supervision to students in order to maintain a safe learning environment.

4. During the 2018-2019 school year, J.A. was a kindergarten student in Respondent's class at Brentwood. At the time of the final hearing, J.A. was an eight-year-old second grader.

5. A linear narrative of what transpired leading up to Respondent's actions in this case was not established. The material facts were, however, clearly established based on J.A.'s credible testimony. J.A. testified consistently and credibly that he was crawling on the floor when Respondent pulled his shirt and scratched him on the right side of his face. He then sat at his desk, put his book bag over his face, and cried.

6. J.A. was accompanied by his mother when he testified. J.A.'s mother offered guidance during J.A.'s testimony, but not as to any material fact that is in dispute. J.A.'s mother did not interfere or lead him to make any statements during his substantive testimony about the events of the incident involving Respondent. J.A. maintained eye contact with the undersigned in the video monitor during the pertinent portions of his testimony. He displayed a high level of intelligence and a mature demeanor for his age. J.A.'s testimony that he was crawling on the floor when Respondent pulled his shirt and scratched his face was credible and is accepted.

7. In Respondent's retelling of events, she denied grabbing J.A.'s shirt or scratching his face at all, whether intentionally or by accident. Respondent's

credibility was undermined by her claim that she never struck J.A., or any other student, in any manner. On cross-examination, however, she acknowledged that “there was a scratching incident” involving a student in 2013. Respondent’s general denial of the incident was not credible and is rejected to the extent that it conflicts with J.A.’s testimony.

8. When Respondent has a student in class who is not focused or is being disruptive, she sometimes asks the student to stand in a corner or doorway to regroup until the student is ready to return to his or her desk and participate. Respondent has required J.A. to stand in the corner based on his behavior and has yelled at him.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 1012.33(6)(a)2., Florida Statutes.

10. The School Board is responsible for the operation, control, administration, and supervision of all free public schools within the district. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.32, Fla. Stat. The School Board’s powers and duties include providing for the suspension of employees. § 1012.22(1)(a), (f), Fla. Stat.

11. Petitioner bears the burden of proving its charge of Misconduct in Office against Respondent by a preponderance, or greater weight, of the evidence. *See McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

12. Section 1012.01(2) classifies Respondent as “instructional personnel.”

13. Section 1012.33(6)(a) states that, “[a]ny member of the instructional staff ... may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a).”

14. Rule 6A-5.056(2) defines Misconduct in Office as one or more of the following:

- (a) A violation of the Code of Ethics of the Education Profession in Florida adopted in Rule 6A-10.080, F. A. C.;
- (b) A violation of the Principles of Professional conduct for the Education Profession 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.

15. Rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida, states, in relevant part:

(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.

(c) 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.

* * *

(2)(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.

16. School Board Policy 3210, Standards of Ethical Conduct, provides, in relevant 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;

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

17. School Board Policy 3210.01, Code of Ethics, provides, in relevant part:

All members of the School Board, administrators, teachers and all other employees of the District, regardless of their position, because of their dual

roles as public servants and educators are to be bound by the following Code of Ethics. Adherence to the Code of Ethics will create an environment of honesty and integrity and will aid in achieving the common mission of providing a safe and high quality education to all District students.

* * *

Application

This Code of Ethics applies to all members of the Board, administrators, teachers, and all other employees regardless of full or part time status. It also applies to all persons who receive any direct economic benefit such as membership in Board funded insurance programs. Employees are subject to various other laws, rules, and regulations including but not limited to The Code of Ethics for the Education Profession in Florida and the Principles of Professional Conduct of the Education Profession in Florida, F.A.C. Chapter 6A-10.081, the Code of Ethics for Public Officers and Employees, found in F.S. Chapter 112, Part III, and Policy 3129, which are incorporated herein by reference and this Code of Ethics should be viewed as additive to these laws, rules and regulations. To the extent not in conflict with any laws, Board policies or governmental regulations, this Code of Ethics shall control with regard to conduct. In the event of any conflict, the law, regulation or Board policy shall control.

Fundamental Principles

The fundamental principles upon which this Code of Ethics is predicated are as follows:

E. Integrity - Standing up for their beliefs about what is right and what is wrong and resisting social pressures to do wrong.

F. Kindness - Being sympathetic, helpful, compassionate, benevolent, agreeable, and gentle toward people and other living things.

H. Respect - Showing regard for the worth and dignity of someone or something, being courteous and polite, and judging all people on their merits. It takes three (3) major forms: respect for oneself, respect for other people, and respect for all forms of life and the environment.

* * *

Each employee agrees and pledges:

A. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

B. To obey local, State, and national laws, codes and regulations.

C. To support the principles of due process to protect the civil and human rights of all individuals.

D. To treat all persons with respect and to strive to be fair in all matters.

E. To take responsibility and be accountable for his/her actions.

F. To cooperate with others to protect and advance the District and its students.

* * *

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.

18. School Board Policy 3213, Student Supervision and Welfare, provides, in relevant part: "Protecting the physical and emotional well-being of students is of paramount importance. Each instructional staff member shall maintain the highest professional, moral, and ethical standards in dealing with the supervision, control, and protection of students on or off school property."

19. Petitioner proved by a preponderance of the evidence that Respondent's conduct constitutes Misconduct in Office as contemplated by rule 6A-5.056(2). Petitioner proved that Respondent engaged in conduct directly proscribed by rule 6A-5.056(2) as well as violations of the incorporated provisions of rule 6A-10.081; and School Board Policies 3210, 3210.01, and 3213.

20. Respondent's conduct violated rule 6A-5.056(2)(a)-(d) based on a plain and ordinary reading of the rule. When Respondent pulled J.A.'s shirt and scratched his face, she violated the Code of Ethics of the Education Profession in Florida; the Principles of Professional Conduct for the Education Profession in Florida; the adopted school board rules; and displayed behavior that disrupted J.A.'s learning environment.

21. Respondent's actions violated rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida, based on a plain and ordinary reading of the rule. When Respondent pulled J.A.'s shirt and scratched his face, she failed to meet her obligation to 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." Respondent's inappropriate contact with J.A. created a condition harmful to his physical safety. School Board Policy 3210, Standards of Ethical Conduct,

and School Board Policy 3210.01, Code of Ethics, both include an identical provision, which Respondent also violated.

22. Respondent's conduct violated School Board Policy 3213, Student Supervision and Welfare, based on a plain and ordinary reading of the Policy. When Respondent pulled J.A.'s shirt and scratched his face, she failed to observe the directive to place paramount importance upon the protection of his physical and emotional well-being. She also failed to maintain the highest professional standard with respect to the protection of J.A. in violation of the Policy.

23. Additionally, Petitioner alleges that Respondent's actions exposed J.A. to unnecessary embarrassment. However, the record lacks evidence to support that claim. The record is also devoid of sufficient evidence of Misconduct in Office as it relates to Respondent's disciplinary practice with J.A. and other students whereby Respondent directed them to stand in a doorway or corner following disruptive behavior. Similarly, there is insufficient detail in the record to find any violation with respect to J.A.'s testimony that Respondent yelled at him.

24. As to the appropriate discipline for Respondent's violations, the Progressive Discipline Policy set forth in Article XXI of the UTD Contract, Employee Rights and Due Process, section 1, Due Process, paragraph A.1., states, in pertinent part:

The [Miami-Dade County School] Board and Union recognize the principle of progressive discipline. The parties agree that disciplinary action may be consistent with the concept of progressive discipline when the Board deems it appropriate, and that the degree of discipline shall be reasonably related to the seriousness of the offense.

25. The record evidence substantiates that the School Board has followed progressive discipline regarding Respondent's prior incident of inappropriate contact with a student, and Respondent received a written reprimand for

such conduct in 2013. Accordingly, the seriousness of Respondent having a second incident of inappropriate contact with a student, and the specific misconduct of pulling a kindergarten student's shirt and scratching his face, warrants imposing a ten-workday suspension from employment as reasonable discipline for the offense at issue.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that The School Board of Miami-Dade County, Florida, enter a Final Order suspending Respondent's employment with the School Board for ten (10) workdays without pay.

DONE AND ENTERED this 20th day of November, 2020, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
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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.