

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-0433TTS

GEORGETTE A. LUCAS,

Respondent.

RECOMMENDED ORDER

On May 29, 2020, Administrative Law Judge (“ALJ”) Robert S. Cohen of the Florida Division of Administrative Hearings (“DOAH”) conducted a disputed-fact hearing pursuant to section 120.57(1), Florida Statutes (2019), via Zoom conference from Tallahassee, Florida.

APPEARANCES

For Petitioner: Cristina Rivera, Esquire
Miami-Dade County School Board
Office of the School Board Attorney
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761-1526

STATEMENT OF THE ISSUE

The issue for determination at hearing was whether just cause exists to sustain Respondent’s dismissal from employment with the Miami-Dade County School Board (“School Board” or “Petitioner”).

PRELIMINARY STATEMENT

On January 15, 2020, the School Board took action to suspend without pay and initiate dismissal proceedings against Respondent. Respondent timely requested a hearing pursuant to sections 120.569 and 120.57(1), and the matter was referred to DOAH for conduct of a hearing.

This case was set for a video teleconference hearing on May 29, 2020. On May 18, 2020, the undersigned's office contacted counsel for the parties to inquire whether they objected to the final hearing being conducted through a Zoom conference. On that day, Respondent's counsel notified the undersigned's office that Respondent did not agree to conduct the hearing through a Zoom conference. Due to travel restrictions and the fact that the Miami DOAH office was closed to the public for live appearances, on May 20, 2020, the undersigned issued an Amended Notice of Hearing by Zoom Conference for May 29, 2020.

On May 21, 2020, Respondent filed a Motion to Continue and Reschedule Final Hearing, objecting to conducting the hearing through a Zoom conference. Respondent expressed concerns about the ability to meaningfully cross examine witnesses through a Zoom conference. On May 22, 2020, the undersigned denied Respondent's motion to continue.

During the Zoom hearing on May 29, 2020, the ALJ, counsel for Petitioner, and Petitioner's witnesses appeared through the Zoom video conference. Respondent and her counsel appeared through the telephone, without the opportunity to observe the other participants in the Zoom conference. At no time prior to the hearing did Respondent or her counsel inform the ALJ or opposing counsel that they would not have access to a personal computer, a laptop computer, an electronic tablet, or a smart phone to allow them to participate with video in the hearing. According to counsel

for Respondent, he travelled to Miami to be with his client at her classroom teacher union's office, and found that no computers were available for video access to the Zoom conference. Respondent and her counsel did not attempt to access the Zoom conference by any video means, including a smart phone, nor did counsel for Respondent remain in his office in Clearwater which, presumably, had full computer video capability.

The final hearing was held on May 29, 2020. Petitioner presented the live testimony of students and alleged victims, C.J. and J.E.; Teacher Alisa Bennett; and Principal Pedro Cedeno. Petitioner's Exhibits 1 through 4, 6 through 10, 12, and 16 were admitted into evidence.

Respondent testified on her own behalf and offered no exhibits.

A one-volume Transcript of the final hearing was filed on July 17, 2020, and the parties timely filed proposed recommended orders. Both proposed recommended orders have been duly considered in the preparation of this Recommended Order. All references to Florida Statutes are to the version in effect at the time of the incidents giving rise to the proposed termination of Respondent's employment as a teacher.

FINDINGS OF FACT

1. At all times material hereto, Petitioner was 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 ("School District"), pursuant to article IX, section 4(b) of the Florida Constitution and section 1012.23, Florida Statutes.

2. At all times material hereto, Respondent was employed as an elementary school teacher at Van E. Blanton Elementary School ("Blanton") by the School Board and held a professional services contract. She began

working for the School District as a substitute teacher in 1994 and has been employed as a full-time teacher for 14 years.

3. On April 20, 2016, Respondent was issued a Professional Responsibilities Memorandum regarding student discipline. The purpose of the memo was to remind Respondent of how to properly treat children who are misbehaving after she was observed sending two students to stand in the corner after blurting out answers.

4. On or about April 25, 2016, Respondent hit a student with her hand on the student's arm, leaving the student's arm visibly red and welted.

5. A summary of a conference-for-the-record from May 18, 2016, was admitted into evidence. Pedro Cedeno, the principal at Blanton for the past three years, stated that he considered the current incidents similar in nature to this prior incident from 2016.

6. On May 19, 2016, Respondent was issued a written reprimand relating to the April 25, 2016, incident.

7. On April 18, 2017, the Education Practices Commission ("EPC") filed an Administrative Complaint against Respondent based on the April 25, 2016, incident under EPC Case No. 17-0457-RT.

8. On December 14, 2017, a Final Order was entered in the EPC case, adopting the parties' Settlement Agreement, which issued Respondent a letter of reprimand and placed her on one year's probation.

9. Throughout Respondent's tenure with the School Board prior to the instant matter, the only discipline she received was the reprimand described above.

10. Three incidents, occurring on March 8, 13, and May 23, 2019, respectively, gave rise to these proceedings.

11. Respondent worked at Blanton as a first-grade teacher. On March 8, 2019, Mr. Cedeno was standing near the main office when he saw Respondent and her class coming in from the hallway. Mr. Cedeno saw Respondent pull a student, C.J., who was kneeling on the ground at the back

of the line. Respondent said something to the student, but Mr. Cedeno could not hear it. Mr. Cedeno saw Respondent pull the student by the arm. He testified that Respondent was “pulling her to move her whole body over to the back of the class ... it was more of a pull, which is what caught my attention.”

12. Mr. Cedeno approached Respondent and asked, “What’s going on?” He also told Respondent that they cannot pull students like that. He advised Respondent it would be better to leave the child there and call for attention or assistance. Apparently, the video cameras were not working on March 8 because no video footage was available for Mr. Cedeno, Respondent, or the undersigned to review after the incident or at hearing.

13. On March 13, 2019, Mr. Cedeno saw via video that Respondent had her students lined up as they were coming or going into the classroom. Mr. Cedeno observed Respondent grab and pull a student into the class. That caught his attention. It was not an appropriate way for Respondent to have handled the situation. Both the March 8 and 13, 2019, incidents involved C.J.

14. The March 13, 2019, video showed that C.J. was moving slowly in the hallway while the rest of Respondent’s students were already in the classroom. Respondent waved at C.J. and said something to the effect of “let’s go.” When C.J. did not respond, Respondent went to C.J., took her by the arm, and walked her into the classroom. While the video does not show excessive force being used to pull C.J. up from the floor where she was tying her shoe, it did show more than Respondent reaching out her hand, then waiting for C.J. to take her hand to be led. There was a small amount of force involved in getting C.J. up and moving. Respondent testified she was not mad at C.J., but she was firm in telling C.J. she needed to get going and into the classroom.

15. From the video, C.J. did not seem embarrassed and was not crying when she was physically urged up and into the classroom. The video does not evidence violence, anger, or aggression. It does evidence a teacher pulling a young student up from the floor and walking her briskly into the classroom.

At hearing, however, C.J. testified credibly that she was both embarrassed and sad by the incident.

16. Following the March 13, 2019, incident, Mr. Cedeno filed a personnel investigative form with the School District's Office of Professional Standards. No action was taken to remove Respondent from her position or to impose any discipline.

17. J.E., a student, testified regarding the May 23, 2019, incident. He said Respondent was his teacher during the prior school year. He watched the video of the incident and identified both himself and Respondent in the video. J.E. had asked Respondent if he could go to the bathroom. Respondent did not allow J.E. to use the bathroom at that time. Then, J.E. tried to get into the classroom to use the bathroom and Respondent pushed J.E. The video shows Respondent push J.E. J.E. fell and then got up. His leg was hurting and it made him feel mad.

18. J.E., a large child for his age, appeared somewhat distracted while testifying, and his mother had to prompt him once or twice to pay attention to the questions being asked and to give audible answers. However, his recollection of the May 23, 2019, incident was clear. He admitted that he was acting up, which was confirmed by Respondent, but was "mad" at being pushed into the classroom where he landed on one of his classmates. He was only mildly injured and did not require first aid or medical care as a result of his fall.

19. Respondent noted that J.E. was a disruptive student who is disobedient, bigger than the rest of the students in the class, and is known for pushing and bullying the other students. Respondent testified that on May 23, 2019, rather than entering the classroom when he was supposed to, J.E. doubled back, grabbed another student, and spun the student around, which caused that student to cry. Respondent was obviously frustrated by J.E.'s behavior and gave him a push into the room. J.E. bumped into his best friend, which sent the two of them sprawling onto the ground.

20. According to Respondent, J.E. fell to the ground laughing and clowning around, after which they all sat down and started class. J.E. did not appear embarrassed or upset by the incident, Respondent testified.

21. The May 23, 2019, incident was captured on video and was personally witnessed by a teacher, Alissa Bennett, who was coming down the hall with her class at the time.

22. Ms. Bennett is a fifth-grade teacher at Blanton and was employed as such during the incidents giving rise to these proceedings. Ms. Bennett knows of Respondent but does not know Respondent personally. Ms. Bennett testified regarding the May 23, 2019, incident and reviewed the video of the incident during her testimony. On May 23, 2019, Ms. Bennett was walking her class to lunch. It was about 11:30 or 11:35 a.m. She came out of the stairwell and saw a big commotion in front of her. There was a lot of yelling and kids in the hallway. When Ms. Bennett walked closer, she saw Respondent push a student into the classroom. Ms. Bennett kept walking and heard one of her students exclaim, “[w]ow, that teacher just pushed that student.” Ms. Bennett said, “I was kinda like, oh, my God. Did that just happen? Did I just see that?” She recognized this as a serious incident. She took her students to lunch. Later that night, she told her boyfriend about the events she witnessed at school. She was a new teacher and was not sure what to do about it. Her boyfriend encouraged her to report the incident. The following day, on May 24, 2019, Ms. Bennett reported the incident via text to the counselor. She also spoke to Mr. Cedeno about what she saw.

23. Mr. Cedeno acknowledged speaking with Ms. Bennett about the incident. He explained that Respondent could have avoided the situation by using a call button, an emergency button that immediately notifies the office, or she could have asked another person in the hallway for assistance. For example, there are always security and staff in the hallway, and they are present in the video evidence submitted. The security and other staff

members have radio access. Mr. Ceden0 testified that there was no excuse, based upon what he saw in the video, for Respondent to push J.E.

24. The School Board and the United Teachers of Dade, the classroom teachers union, have agreed to be bound by the principle of progressive discipline, and that discipline imposed shall be consistent with that principle. Accordingly, they have agreed that the degree of discipline shall be reasonably related to the seriousness of the offense.

CONCLUSIONS OF LAW

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

26. In accordance with the provisions of article IX, section 4(b) of the Florida Constitution, district school boards have the authority to operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the state constitution or general law. A school board's authority extends to personnel matters and includes the power to suspend and dismiss employees. §§ 1001.32(2), 1001.42(5), 1012.22(1)(f), and 1012.23(1), Fla. Stat.

27. In Florida, the district superintendent has the authority to make recommendations for dismissal of school board employees, and the school boards have the authority to suspend, without pay, school board instructional staff with professional service contracts for "just cause." §§ 1001.42(5), 1012.22(1)(f), and 1012.33(6)(a), Fla. Stat.

28. Since the School Board seeks to terminate Respondent's employment, the School Board bears the burden of proving the allegations in its Notice of Specific Charges by a preponderance of the evidence. *See McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476 (Fla. 2d DCA 1996); *Allen v. Sch. Bd. of Dade Cty.*, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); and *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990).

29. 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. *See Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000) (citations omitted); *see also Williams v. Eau Claire Pub. Sch.*, 397 F.3d 441, 446 (6th Cir. 2005) (holding trial court properly defined the preponderance of the evidence standard as “such evidence as, when considered and compared with that opposed to it, has more convincing force and produces ... [a] belief that what is sought to be proved is more likely true than not true”).

30. “Just cause” is defined to include misconduct in office. *See* § 1012.33(1)(a), Fla. Stat.

31. The School Board’s authority to terminate a teacher requires “just cause” as defined under section 1012.33, which provides, in relevant part:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified pursuant to s. 1012.56 or s. 1012.57 or employed pursuant to s. 1012.39 and shall be 33 entitled to and shall receive a written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. 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, incompetency, two consecutive annual performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

32. As to the count concerning “Misconduct in Office,” Florida Administrative Code Rule 6A-5.056(2) defines the term as follows:

- (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.;
- (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.

33. The Principles of Professional Conduct for the Education Profession in Florida are codified in Florida Administrative Code Rule 6A-10.081, which provides, in relevant part, as follows:

- (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 a 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 community, the educator strives to achieve and sustain the highest degree of ethical conduct.

* * *

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(a) Obligation to the student requires[, in relevant part,] 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.

* * *

8. Shall not exploit a relationship with a student for personal gain or advantage.

34. 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[.]

35. Despite her protestations to the contrary, Respondent's physical and verbal actions endangered the mental and physical health and safety of her students. Her actions embarrassed them and can reasonably be seen as causing them disparagement by their peers. C.J. testified that she felt embarrassed and sad by how Respondent treated her. J.E. said Respondent's actions made him mad. Yes, C.J. was dawdling in the hallway and J.E. was acting up and clowning around, but these are elementary school students, first graders, not more toughened high schoolers. They deserve a gentler hand than Respondent exhibited here.

36. 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;

* * *

G. 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[.]

37. In this matter, Respondent failed to make a reasonable effort to protect C.J. and J.E. from conditions harmful to their physical and mental health. While both students were not cooperating with Respondent's attempts to get them into the classroom and maintain reasonable order, her actions went beyond what is expected of a teacher of first and second-grade, elementary school students. Specifically, Respondent grabbed C.J., mildly hurting C.J. physically and embarrassing C.J. Respondent's actions also made C.J. feel sad. Regarding J.E., Respondent pushed J.E., which made him mad. While the behavior of the two students was not helpful to Respondent's attempts to maintain order among her students, she is not excused from responsibility for her physical actions towards the two.

38. School Board Policy 3213, Student Supervision and Welfare, notes that "[p]rotecting the physical and emotional well-being of students is of paramount importance." Teachers are charged with "maintain[ing] the highest professional, moral, and ethical standards in dealing with the supervision, control, and protection of students on or off school property." Respondent's actions fell short of this mandate.


39. While Respondent should not be excused from discipline for her actions concerning students C.J. and J.E., the greater weight of the evidence does not support departing from the principles of progressive discipline. It is true that Respondent committed Misconduct in Office, as described in detail in paragraphs 32 through 35 above, but she should not receive the most

severe discipline available, namely, termination of her employment. Given the existence of only one prior reprimand and the fact that the three incidents giving rise to this matter occurred in such close proximity to one another, significant discipline is warranted. With a clean record prior to these incidents over a 14-year career, however, except for the reprimand, termination is not reasonably related to the seriousness of the offenses. A suspension of ten days, however, is clearly warranted here.

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 suspending Respondent for ten days without pay and awarding her back pay from the date her employment was terminated, except for the ten days of suspension.

DONE AND ENTERED this 4th day of December, 2020, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
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 4th day of December, 2020.

COPIES FURNISHED:

Cristina Rivera, Esquire
Miami-Dade County School Board
Office of the School Board Attorney
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132
(eServed)

Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
29605 U.S. Highway 19 North, Suite 110
Clearwater, Florida 33761-1526
(eServed)

Michele Lara Jones, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Room 430
Miami, Florida 33132
(eServed)

Alberto M. Carvalho, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 912
Miami, Florida 33132

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)

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.