

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-1264TTS

GUYETTE DUHART,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) on January 14, 2021, by Zoom video teleconference.

APPEARANCES

For Petitioner: V. Danielle Williams, Esquire
Jean Marie Middleton, Esquire
Palm Beach County School Board
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For Respondent: Nicholas Anthony Caggia, Esquire
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STATEMENT OF THE ISSUE

Whether just cause exists to suspend Respondent, a teacher, for ten days without pay for putting hand sanitizer in a student’s mouth.

PRELIMINARY STATEMENT

On February 19, 2020, at its scheduled meeting, Petitioner, the Palm Beach County School Board (“Board”), took action to suspend Respondent, Guyette Duhart, without pay for ten days from her teaching position at Polo Park Middle School (“PPMS”). Respondent timely requested an administrative hearing. The Palm Beach County Public School System (“District”) referred the matter to DOAH on March 5, 2020, to assign an Administrative Law Judge to conduct the final hearing.

After several motions for continuance were granted, the final hearing was held on January 14, 2021. At the final hearing, the Board presented the testimony of Respondent; Michael Aronson, PPMS Principal; Officer John Michaels, District Police Department; and Vicki Evans-Paré, District Director of Employee and Labor Relations. Petitioner’s Exhibits 1 through 17, 19 through 31, 33, and 37 through 41 were admitted into evidence. Respondent testified on her own behalf and called Mr. Aronson in rebuttal. In addition, students J.C. and A.G. testified via deposition. Respondent’s Exhibits 1, 2, and 4 through 6 were admitted.

The final hearing Transcript was filed on February 4, 2021. The parties requested extensions of time within which to file proposed recommended orders, which were granted. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

The Parties

1. The Board is the constitutional entity authorized to operate, control, and supervise the District. Pursuant to Article IX, section 4(b) of the Florida

Constitution, and section 1001.32, Florida Statutes, the District has the authority to discipline employees pursuant to section 1012.22(1)(f), Florida Statutes.

2. Respondent began her employment with the District in 2007. In October 2019, she was teaching at PPMS as a science teacher. Prior to the incident involved in this case, Respondent received no discipline from the Board.

3. Respondent is an experienced teacher who has been trained on the proper method of interacting with students, exercising best professional judgment, and following policies, rules, and directives. Respondent received training concerning ethics relative to her position with the District as a teacher. Respondent has been through the orientation process for new employees of the District three times.

The Incident Giving Rise to Discipline

4. On October 14, 2019, Respondent was teaching a science class of approximately 30 sixth and seventh grade students. In this class was sixth grade student X.S., who was being verbally disruptive.

5. Although X.S. was not cussing, Respondent told him that he needed to have his “mouth washed out with soap.” Respondent reached behind herself to grab a bottle on her desk which was either hand soap or hand sanitizer.

6. X.S. and Respondent walked towards each other. X.S. challenged Respondent to “Do it!” Respondent raised the bottle to X.S.’s mouth and pumped in a substance from the bottle.

7. X.S. bent over and spit on the floor. Respondent asked X.S. what he was doing, and he stated that he got hand sanitizer in his mouth. As X.S. stood up, X.S. was observed wiping his mouth and Respondent told him not to spit on the floor.

8. X.S. left the classroom to go to the bathroom and rinse his mouth. His fellow students immediately began talking about the incident while Respondent returned to her desk.

The Investigation

9. X.S. did not immediately report the incident because he did not want to anger his foster mother. However, on the day after the incident, October 15, 2019, three students approached PPMS Principal Aronson and Officer Michaels and reported that Respondent had squirted hand sanitizer into X.S.'s mouth.

10. Officer Michaels spoke to the students and X.S. individually and asked them to provide written statements regarding what they observed.¹

11. Principal Aronson and Officer Michaels questioned Respondent regarding the incident. When approached by Officer Michaels, Respondent asked, "What is this about?" He responded that, "this is about squirting hand sanitizer into a student's mouth." Respondent said, "It wasn't hand sanitizer. It was soap." Respondent did not deny squirting something into X.S.'s mouth to either Principal Aronson or Officer Michaels.

12. Principal Aronson asked Respondent to leave campus. He accompanied her to her classroom and observed a bottle of hand sanitizer on her desk. Principal Aronson also contacted Human Resources to report the incident and spoke to Human Resources Manager Jose Fred who handled overseeing the investigation from that point forward.

¹ These written statements, Exhibits 11 through 16, were admitted over Respondent's objection that they contain impermissible hearsay and are unduly prejudicial because these students refused to attend their scheduled depositions or appear for final hearing. However, their general descriptions of the incident were corroborated by the deposition of student J.C., as well as in part by Respondent. As discussed in Florida Administrative Code Rule 28-106.213(3), hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in sections 90.801-.805, Florida Statutes.

13. On October 15, 2019, Respondent was issued the one-day stay at home letter from Mr. Aronson titled “Assignment to Your Residence with Pay for October 15, 2019.” On October 15, 2019, Respondent was also issued a letter advising her that she was assigned to her residence for October 16 and October 17, 2019.

14. Mr. Fred, under the supervision of Vicki Evans-Paré, Director of Employee and Labor Relations, compiled written statement of six students, took a written statement of Respondent on October 17, 2019, and drafted an Investigative Report dated October 18, 2019, which substantiated violations of applicable rules and Board policies.

15. In her statement to Mr. Perez, Respondent claims it was X.S. who put his hand on hers and pulled the bottle to his own mouth and that she did not squirt anything. However, the remainder of her statement is consistent with the students’ reports of the incident.²

Post-Investigation Due Process

16. On October 30, 2019, Respondent was provided with a Notice of Pre-Determination Meeting, which provided her with the allegations of misconduct. Respondent was provided with a copy of the entire investigative file and time to review it with the representative of her choice.

17. Respondent attended a Pre-Determination Meeting on November 9, 2019, to give her the opportunity to provide any additional information, dispute, and explain or elaborate on any information contained in the Investigative Report.

18. The Employee and Labor Relations (“ELR”) Department enlists the Employee Investigatory Committee (“EIC”) which reviews all of ELR’s case

² At final hearing, Respondent testified that the bottle was never near the student’s mouth. This is wholly inconsistent with her prior written statement to Mr. Perez, her deposition testimony, and the statements of the students. This conflict negatively impacted Respondent’s credibility.

files, inclusive of all documents maintained by ELR, of anything that might lead to suspension or termination, to make a suggestion to the Superintendent, if the allegations are substantiated. Once the EIC decides that the allegations are substantiated and recommends discipline, Ms. Evans-Paré takes the entire employee investigative file, inclusive of the EIC's recommendations, to the Superintendent who then makes the ultimate recommendation for employee discipline.

19. On November 22, 2019, Respondent was provided with supplemental information to the investigative file and provided an opportunity to respond to the documents by December 6, 2019.

20. On December 9, 2019, Respondent requested that her response be placed in her file. She wrote "in response to the copies of the information from the District that is being used as evidence against me ..." after reviewing the case file, complained that only six of 22 students were interviewed or provided statements and it was not an ethical, random sample of the class. Respondent also alleged that the documents had been altered; however, she did not provide any evidence of such during the final hearing or within the response.

21. On December 6, 2019, Respondent again provided a response to the student witness statements to ELR wherein she stated "I have 22 students in my class, only 6 students filled out statements? You have 3 black children submitted in reporting, of which one is not accurate. Yet, they are the minority in this class, of which, 2 out of the 6 statements were from Hispanic students. It is surprising that not a single white student in my class noticed the incident."

22. On January 24, 2020, Respondent was notified that the Superintendent would recommend her a ten-day suspension without pay to the Board at its February 19, 2020, meeting. On February 19, 2020, the School Board adopted the Superintendent's recommendations to suspend Respondent without pay for ten days.

Respondent's Post-Suspension Status

23. Respondent's suspension by the Board was picked up by the Associated Press and reported across social media and traditional media platforms locally and nationwide.

24. Ms. Evans-Paré testified that typically, when a teacher is alleged to have done something inappropriate with students, the District cannot have the teacher in a classroom around students, so the teacher is reassigned to another location.

25. Respondent was reassigned to adult and community education, so she was in a no-student contact position. Respondent was then moved into Human Resources Funding 9920 status due to the press and comments from the parents received by Principal Aronson and her inability to be returned to PPMS. This allowed Principal Aronson to hire another teacher to take her place.

26. Respondent has not been back in the classroom as a teacher for the District since October 15, 2019.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction over the parties and the subject matter of these proceedings pursuant to sections 120.569 and 120.57(1), Florida Statutes (2021).

28. This is a disciplinary proceeding in which the Board, in its Administrative Complaint, seeks to suspend Respondent from her teaching position, without pay for ten days, for violating the following:

A. Inappropriate Interactions with Student in violation of School Board Policy 3.02(5)(a)(ii) and (5)(a)(viii), Code of Ethics, and rule 6A-10.081(2)(a)(1) and (2)(a)(5), Florida Administrative Code.

B. Failure to Use Best Professional Judgment in violation of School Board Policy 3.02(4)(a), (4)(b),

(4)(d), (4)(f), (4)(h), and (4)(j), Code of Ethics, and rule 6A-10.081(1)(b) and (1)(c), Florida Administrative Code.

C. Failure to Follow Policy, Rule, or Directive in violation of School Board Policy 3.10(6), and School Board Policy 1.013(1)

29. Respondent is an instructional employee, as that term is defined in section 1012.01(2). Section 1012.33(1)(a) and (6)(a) authorizes the suspension and termination of instructional personnel only for “just cause.” “Just cause” is defined in section 1012.33(1)(a) to include “misconduct in office” and “gross insubordination.”

30. To suspend Respondent’s employment, Petitioner must prove that Respondent committed the acts alleged in the Administrative Complaint; that those acts violate the laws, rules, and policies cited in the Administrative Complaint; and that the violation of these laws, rules, and policies constitute just cause for her termination. § 1012.33(1)(a) and (6), Fla. Stat.

31. Ordinarily, the evidentiary burden in disciplinary proceedings in which a school board proposes to suspend or terminate instructional personnel is a “preponderance of the evidence.” *See, e.g., McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990). However, where, as here, the Board has agreed through collective bargaining to a more demanding evidentiary standard, it must act in accordance with the applicable contract. *See Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 672-73 (Fla. 1993); *Palm Beach Cty. Sch. Bd. v. Barber*, Case No. 15-0047 (Fla. DOAH Aug. 31, 2015; PBCSB Oct. 13, 2015).

32. Article II, section M, of the applicable collective bargaining agreement (“CBA”) provides that “disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and

convincing evidence which supports the recommended disciplinary action.” Accordingly, Petitioner has the burden of proof in this proceeding by clear and convincing evidence.

33. This burden, described in *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), and later adopted by the Florida Supreme Court in *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994), requires the following:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

34. 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. 1985); *McKinney v. Castor*, 66 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

Inappropriate Interaction with Student

35. School Board Policies 3.02(5)(a)(ii) and (5)(a)(viii), Ethical Standards, Abuse of Students, provide, in pertinent part:

We are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships. Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to ... exposing a student to unnecessary embarrassment or disparagement.

* * *

Unethical conduct includes but is not limited to ...
engaging in misconduct which affects the health,
safety, and welfare of a student(s).

36. Rule 6A-10.081(2)(a)1., Principles of Professional Conduct for the Education Profession, states, in pertinent part, that “Florida educators shall be guided by the following ethical principles: 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.”

37. It is undisputed that in front of his classmates, Respondent told X.S. that he needed his mouth washed out with soap, proceeded to grab a bottle of a household cleaning substance, placed the bottle near the student’s open mouth, and that as a result, hand sanitizer was squirted into the student’s mouth. Whether the substance was soap or hand sanitizer does not matter. Respondent’s actions exposed X.S. to ridicule among his peers, as well as serious potential harm if the foreign substance was swallowed.

Failure to Use Best Professional Judgment

38. School Board Policy 3.02(4)(a), Accountability and Compliance, states, in pertinent part, “each employee agrees and pledges to provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace.” School Board Policy 3.02(4)(b), states, in pertinent part, “each employee agrees and pledges to obey local, state and national laws, codes and regulations.”

39. School Board Policy 3.02(4)(d), states, in pertinent part, “each employee agrees and pledges to treat all students and individuals with respect and to strive to be fair in all matters.” School Board Policy 3.02(4)(f), states, in pertinent part, “each employee agrees and pledges to take responsibility and be accountable for his or her acts or omissions.”

40. School Board Policy 3.02(4)(h), states, in pertinent part, “each employee agrees and pledges to cooperate with others to protect and advance

the District and its students.” School Board Policy 3.02(4)(j), states, in pertinent part, “each employee agrees and pledges to be efficient and effective in the delivery of all job duties.”

41. Rule 6A-10.081(1)(b) and (1)(c), Principles of Professional Conduct for the Education Profession in Florida, states:

Florida educators shall be guided by the following ethical principles: 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.

* * *

Florida educators shall be guided by the following ethical principles: 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.

42. Respondent was aware of her responsibilities to her students and acknowledged signing the District’s Code of Conduct.

43. Respondent did not treat X.S. with respect nor was she fair to him in all manners when she told him in front of the entire class that he needed his mouth washed out with soap and engaged with X.S. in an inappropriate manner that resulted in a substance entering his mouth and necessitating his spitting on the floor.

Failure to Follow Policy, Rule, or Directive

44. School Board Policy 3.10(6), Conditions of Employment with the District, states, in pertinent part, that “[t]he District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy.”

45. School Board Policy 1.013(1), Responsibilities of School District Personnel and Staff, states, in pertinent part, that “it shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent’s administrative directives and local school and area rules.”

46. Respondent engaged in activity that she should have known violated School Board policies and was inappropriate. Respondent does not dispute that she told X.S. that he needed his mouth washed out with soap, grabbed a bottle from her desk believing it was hand soap, approached X.S. and held the bottle close to his mouth. As a result of Respondent’s actions, X.S. ultimately had a household cleaning substance enter his mouth, which caused him to spit on the floor, and go to the restroom to clean his mouth out.

47. As described herein, Petitioner demonstrated clearly and convincingly that Respondent committed the violations alleged in the Administrative Complaint.

Progressive Discipline

48. Respondent, as a teacher, is covered under the CBA between the District and the Classroom Teachers Association (“CTA”).

49. The CTA CBA has provisions that allows for the District to skip steps in progressive discipline when there is a clear danger to the District, an

employee, and/or student, as well as when there are flagrant or purposeful violations of District rules and policies.

50. Respondent asserts that since she is a teacher with no prior disciplinary history in over 12 years' teaching in the District, the District erroneously skipped intermediate disciplinary steps such as a verbal or written warning and a suspension with pay.

51. There is no evidence that the student was, in fact, harmed physically by the incident. Although the incident could accurately be described as "battery," neither the student nor his parents or guardian wanted to pursue criminal charges. The glare of the national media spotlight, which occurred after discipline was imposed by the Board, cannot stand as a basis for increasing Respondent's penalty. Nor should the media scrutiny result in banning Respondent's ability to teach in the classroom forever when the Board only approved a ten-day suspension without pay.

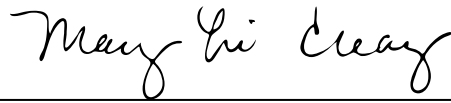
52. On the other hand, Respondent's momentary lapse in judgment is a flagrant violation of the cited rules and policies and could have led to significantly more dire consequences if the cleaning substance had been swallowed or the student had an allergic reaction. As Petitioner aptly points out, any subsequent similar violation by Respondent could expose Petitioner to significant liability for negligent retention.

53. Accordingly, just cause exists for disciplining Respondent for the incident in question and the ten-day suspension without pay is an appropriate balance between Petitioner's previously unblemished employment history and the potential seriousness of her actions.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Palm Beach County School Board uphold the ten-day suspension without pay and return Respondent to the classroom.

DONE AND ENTERED this 30th day of April, 2021, in Tallahassee, Leon
County, Florida.



MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of April, 2021.

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.