

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-3001TTS

ERIC DELUCIA,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings (“DOAH”), for final hearing by video teleconference on December 1, 2020, at sites in Fort Lauderdale and Tallahassee, Florida.

APPEARANCES

For Petitioner: Andrew Carrabis, Esquire
Broward County School Board
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For Respondent: Branden M. Vicari, Esquire
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STATEMENT OF THE ISSUE

The issue is whether the district school board has just cause to dismiss an instructional employee for just cause, where it has alleged that the teacher engaged in verbal altercations with students, calling them names and attempting to provoke them to anger.

PRELIMINARY STATEMENT

On June 9, 2020, Petitioner Broward County School Board (the “School Board” or “District”) approved the issuance of an Amended Administrative Complaint against Respondent Eric Delucia (“Delucia”), charging the instructional employee with disciplinable offenses based upon allegations that, on two separate occasions in the classroom during the 2019-2020 school year, he engaged in verbal altercations with students, calling them names and attempting to provoke them to anger. The District alleges that, taken together, these alleged incidents constitute just cause for dismissal.

Delucia timely requested a formal administrative hearing. By letter dated July 1, 2020, the School Board referred the matter to DOAH for further proceedings. Upon assignment, the undersigned set the final hearing for August 6, 2020, a date which was later continued to December 1, 2020.

At the final hearing, the District called as witnesses eight students, including the alleged victims K.L. and Z.L., plus four employees: Rodney Robertson, Christina Reyes, Robert Goodwin, and Alan Strauss. Petitioner’s Exhibits 1 through 42, excluding number 24, were received in evidence without objection. Delucia testified on his own behalf and offered the testimony of Joshua Jamieson. Respondent’s Exhibits 1 through 9, excluding number 7, were admitted without objection.

The final hearing transcript was filed on December 21, 2020. Each party timely filed a Proposed Recommended Order, 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 2020, 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 Delucia's employer.

2. As an instructional employee of the School Board, for which he has worked for more than 15 years, Delucia holds a professional services contract that automatically renews each year and may be terminated only for just cause. During the relevant school year, 2019-2020, Delucia was assigned to Piper High School, where he taught Digital Information Technology.

3. In this proceeding, the School Board seeks to terminate Delucia's employment for just cause based on two similar, but unrelated classroom incidents, which occurred, respectively, on September 26, 2019, and November 14, 2019. Both situations are simple and straightforward, involving discrete teacher-student confrontations of short duration.

4. The first incident involved a ninth-grade student named K.L. Here is what the School Board alleges took place on September 26, 2019:

K.L. was out of his seat during class. Delucia approached the student and stated to K.L., "come here dummy." Confused, K.L. asked Delucia what he said and Delucia replied, "come here dummy" and "idiot" to K.L. Upon the repetition of the statements to K.L., the verbal confrontation escalated. K.L. told Delucia to "watch his mouth" while Delucia kept repeating the statement "you are a dummy" to K.L., while laughing.

5. On the day of the incident, K.L. gave the school police a written statement describing the "altercation" (as the School Board calls it) in his own words:

I was up out of my seat, and Mr. Delucia said “come here dummy.” I ask[ed] him to repeat what he said and he said the same “come here dummy.” I told him to watch your mouth and [he] kept repeating “you are a dummy” many times and I lost my temper and I said next time [you] say that I am going to knock the glasses off your face.

Comparison of K.L.’s statement¹ to the School Board’s allegations shows that the School Board not only accepted K.L.’s testimony as a credible account, but also cleaned him up as a witness, omitting the undisputed fact that K.L. threatened (in more violent language than his statement admits) to hit Delucia in the face.

6. Delucia wrote a contemporaneous description of the event, too, in a Student Referral Form accusing K.L. of committing disciplinable conduct. This account, which Delucia submitted at 10:32 a.m. on September 26, 2019, immediately after the incident occurred, reads as follows:

Student [K.L.] was out of his seat all class. He was told to sit down numerous times. He is constantly touching other students. Then student was argumentative. Then student threatened [me, saying], “I will smack the fuck out of you,” when told to sit down and be quiet Then he walked out of class. Out of assigned area, insubordination, disruptive to class and threatening teacher.

¹ K.L.’s contemporaneous statement, like that, as well, of the student involved in the other incident, Z.L., was made not only to inculcate Delucia, but also (it is reasonable to infer) to exculpate himself, for K.L. knew by then that he was in trouble over the confrontation. The student in such a situation has both the motive and the opportunity to stick it to the teacher—and he has little or nothing to lose by doing so. While these factors, of themselves, do not necessarily discredit the students’ statements, it should be recognized that K.L. and Z.L. are not disinterested eyewitnesses; to the contrary, each was well-placed to make self-serving statements to the school police, which the undersigned has kept in mind in making credibility determinations.

Delucia’s statement leaves out the undisputed fact that he (Delucia) used the word “dummy” in this transaction with K.L.² The dispute regarding Delucia’s use of this word is not over whether he uttered it—he did—but, rather, about whether Delucia intended to disparage K.L.’s intellectual abilities when he said it.

7. Based on conflicting evidence, the following findings are made. The incident involving K.L. began with K.L.’s misbehavior, i.e., being out of his seat and goofing around with classmates, instead of sitting at his desk and working on his assignment. Delucia told K.L. to sit down, which was a reasonable exercise of authority. The student refused to comply, however, choosing instead to give the teacher backtalk. Delucia directed K.L. to stop acting like a dummy. K.L. responded as if Delucia had insulted his intellect—but he had not. Based on the greater weight of the persuasive evidence, it is found that, more likely than not, Delucia merely instructed K.L. to quit playing the fool, which was the meaning of the word “dummy” in this context.³ It is likely, moreover, that K.L. was aware of this at the time but

² Delucia’s contemporaneous statements in this referral and a later one relating to the other alleged victim, student Z.L., were made not only when the respective incidents, which had occurred minutes earlier, were fresh in the teacher’s mind, but also prior to any dispute regarding whether *the teacher* had committed a disciplinable offense. It is unlikely, therefore, that Delucia wrote these statements in hopes of getting himself out of trouble. Moreover, the fact that these statements were written in the heat of the moment, before time for reflection, cuts against the inference that Delucia was launching preemptive strikes—that is, going on offense in anticipation of the students’ reporting him. Indeed, it seems more likely that a teacher in Delucia’s shoes, if he had a guilty mind about the incidents, would *not* have written the referrals, the better to let the matters drop. These factors are indicia of reliability, albeit not guarantees, which have been considered in evaluating the credibility of Delucia’s contemporaneous statements.

³ To underscore the difference, imagine a teacher telling the class that a student who has just given the wrong answer to a problem is a dummy. In that context, the remark clearly would impugn the student’s intelligence, in an insulting and embarrassing fashion to boot. Such an act of cruelty probably would warrant discipline against the teacher absent extenuating circumstances. The bottom line is that “dummy” is not so intrinsically disparaging that bad intent may be inferred without knowing how it was used; its utterance, therefore, should not result in the speaker’s termination, irrespective of motive, intent, and context.

seized on Delucia's maladroit expression⁴ as grounds for further disruption and defiance.

8. K.L. escalated the situation by advancing on the teacher's desk, leaning into Delucia's personal space, and threatening to "slap" or "smack" the teacher's "fucking" glasses off his face. While there is some slight disagreement between witnesses as to K.L.'s exact words, the evidence is overwhelming that K.L. threatened to strike Delucia in the face, and that he menacingly used the angry F-word as an intensifier in doing so. The school administration obviously believed Delucia's testimony that K.L. had dropped the F-bomb because K.L. was later suspended for two days over his use of profanity during the incident.⁵

9. After K.L. threatened to hit Delucia, the teacher called security for assistance. Before the security guard could arrive, however, K.L. left the classroom, and the incident ended. The School Board presented some evidence that, as K.L. walked out, Delucia followed him and tauntingly called him a "pussy" to provoke a fistfight. This strikes the undersigned as essentially a separate charge, which was not pleaded in the Amended Administrative Complaint. In any event, the persuasive evidence fails to establish these unpleaded allegations by the greater weight, and thus it is *not* found that Delucia tried to goad K.L. into fighting by calling him a "pussy."

⁴ Delucia has acknowledged that he should have used different language. This practically goes without saying. Obviously, to avoid unfortunate misunderstandings, teachers should refrain from using terms, like "dummy," which have shades of meaning ranging from playful to insulting depending upon a multitude of social cues.

⁵ It is curious, however, that the School Board nevertheless credited K.L.'s description of Delucia's conduct as more credible than the teacher's own testimony in this regard, given that K.L.'s threat of violence against Delucia comes close to satisfying, if it does not meet, the definition of a criminal assault. See § 784.011(1), Fla. Stat. The fact that K.L. (unlike Delucia) arguably committed a misdemeanor offense during this confrontation casts doubt on K.L.'s reliability as a witness. At hearing, Delucia vented his frustration that the administration had failed to punish K.L. for perpetrating an intimidating threat of violence against a teacher in the classroom. To this, the undersigned adds his bewilderment that the School Board would hand a potentially dangerous student like K.L. the power to cost a teacher his livelihood and possibly his career.

10. The incident of November 14, 2019, involved a student named Z.L., who came to class that day without his student identification badge, which is required for entry pursuant to school policy. The School Board alleges in its Amended Administrative Complaint the following material facts:

Delucia asked student Z.L. to put his student identification on his person. Z.L. was working on a class assignment and did not respond immediately. Delucia then stated to Z.L., "Now you brat." Delucia further stated, "If you would listen and stop being stupid you would hear me." Confused, Z.L. stated, "I'm stupid?" To which Delucia replied, "Yes, look how stupid you look, little brat."

Delucia then directed Z.L. to leave his classroom. Z.L. obliged and started to leave the classroom. As Z.L. was leaving the classroom, the argument escalated. Delucia confronted Z.L. and stated, "You're nothing but a pussy." When this was said, Z.L. confronted Delucia where further words were exchanged and Delucia dared Z.L. to hit him. Z.L. stated he would not hit Delucia. As such, while laughing, Delucia called Z.L. a "pussy" for not hitting him. Security had to be summoned to the classroom. Delucia wanted Z.L. arrested and in hand cuffs.

11. The District's allegations closely follow Z.L.'s contemporaneous account of the incident (and concomitantly reject Delucia's). In his handwritten statement for the school police, dated November 14, 2019, Z.L. recalled:

I was sitting down doing work then he said wheres your I.D. then i showed him it he said put it on I said OK then he said now you brat and i said one sec because I was typeing something and he said if you would listen and stop being stupid you would hear me and I said "im stupid?" and he said yes look how stupid you look. Then he kept arguing with me I said shut the fuck up. He said oh ok little brat then someone was talking to me then he said you wanna talk get out then i said ok when I was walking out

he said “your nothing but a pussy” I said Im a what? then he kept moving up then he said “A pussy” then I went in his face then he said, “what you wanna do” then that’s it[.]

12. At 9:35 a.m., right after the incident, Delucia submitted a Student Referral Form on Z.L., stating as grounds, the following:

Student [Z.L.] tried to come into class without an ID. Told to get one. He argued with me. Then when he came in he was told to put it on. He refused. He was told to stop whining about it and put it on. Then he said, “If you don’t shut the fuck up I will slap the fuck out of you.” [I] called for security and student kept disputing the class. I stood in the hallway and the student kept talking. Then I held the door open waiting for security and the student said, “You bitch ass nigga, I will slap the fuck out of you. You are a pussy.” I heard about you and you are on probation. Then he said, “what the fuck are you looking at?” I said, “Nothing.” He then got in my face under the camera and in front of the security guard, Rod. He kept getting in my face about two inches away and cursing and threatening me. Rod took him away.

Z.L. was given a five-day suspension for using profanity in front of a staff member.

13. Based on the conflicting evidence presented, it is found that Z.L. arrived at class on November 14, 2019, without his ID badge. Following school policy, Delucia refused to allow Z.L. to enter the classroom without identification. The teacher instructed Z.L. to leave and return with a temporary ID sticker. Z.L. grumbled about this, arguing that he would be late for class if required to obtain a temporary ID, and that his other teachers did not enforce the ID requirement. Z.L. ultimately complied, however, and departed.

14. When Z.L. returned, he held a temporary ID sticker in his hand but refused to peel off its paper backing and put the sticker on his shirt, which is how the temporary ID is supposed to be worn. Delucia directed Z.L. to wear

the temporary ID properly, but Z.L. obstinately refused to comply, forcing Delucia to repeat this reasonable command several times, to no avail. Z.L. defiantly informed Delucia that he would put the sticker on when *he* was ready, as opposed to when the teacher wanted him to do so. Delucia advised Z.L. that he would call security and have the student removed for noncompliance with the ID rule and warned Z.L. not to make a stupid decision.

15. At this point, Z.L. erupted and began threatening Delucia with violence. The undersigned finds that Delucia's statement in the Student Referral Form, as set forth above in paragraph 12, credibly records Z.L.'s abusive and vulgar language. Like K.L.'s threatening behavior in the earlier incident, Z.L.'s combative conduct arguably constituted a criminal assault. It is understandable, therefore, that Delucia wanted Z.L. to be arrested. Harder to understand is why the School Board would regard Delucia's justifiable desire to see Z.L. brought to justice as grounds for disciplining *the teacher*.

16. The persuasive evidence does *not* establish, by the greater weight, that Delucia called Z.L. a "pussy," tried to pick a fight with the student, dared Z.L. to hit him, or laughed about the situation. To the contrary, the likelihood is that Z.L. attributed his own conduct to, and projected his own motives on, the real victim (Delucia), and the School Board took the ball and ran with it.

DETERMINATION OF ULTIMATE FACT

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

CONCLUSIONS OF LAW

18. 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.

19. A district school board employee against whom a disciplinary 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).

20. Once a 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).

21. 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).

22. 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).

23. In its Amended Administrative Complaint, the District charged Delucia with Misconduct in Office and other offenses, based on the allegations of fact set forth in paragraphs 4 and 10 above.

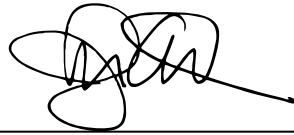
24. The School Board, however, failed to prove, by a preponderance of the evidence, that Delucia behaved as alleged. Thus, the charges against Delucia

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 Eric Delucia of all charges brought against him in this proceeding, reinstating him to his teaching position, and awarding Delucia back salary and benefits as required under section 1012.33(6)(a).

DONE AND ENTERED this 29th day of March, 2021, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
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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.