

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-4682

BLANCA L. GONZALEZ,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case by video conference via Zoom on December 17, 2020, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
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STATEMENT OF THE ISSUE

Whether just cause exists to sustain Respondent's five-day suspension from employment without pay with Petitioner based on the allegations in the Amended Notice of Specific Charges.

PRELIMINARY STATEMENT

By letter dated September 10, 2020, the Miami-Dade County School Board (“Petitioner,” “School Board,” or “District”) notified Blanca Gonzalez (“Respondent” or “Gonzalez”) that on September 9, 2020, the School Board took action to suspend her without pay for five workdays.

On or about September 11, 2020, Respondent timely elected to dispute the reasons for the suspension and requested a hearing.

On October 20, 2020, the matter was referred to the Division of Administrative Hearings (“DOAH”). The matter was assigned to the undersigned administrative law judge.

On November 17, 2020, Petitioner filed its Notice of Specific Charges setting forth the factual and legal grounds for the proposed discipline.

On December 15, 2020, Petitioner filed its Amended Notice of Specific Charges.

The hearing proceeded as scheduled on December 17, 2020.

At hearing, Petitioner stipulated to proceed on the Amended Notice of Specific Charges. Petitioner presented the testimony of four witnesses: Maria G. Zabala; Janelle Fernandez-Ramos; Barbara Soler; and Damaris Medina. Petitioner’s Exhibits 1 through 11 were admitted into evidence. Respondent testified on her own behalf, and one exhibit was admitted into evidence.

At the close of the hearing, the parties stipulated that the proposed recommended orders would be due ten days after the filing of the transcript.

The Transcript of the final hearing was filed with DOAH on February 2, 2021. Both parties timely filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to the 2019 Florida Statutes version, which was in effect at the time of the alleged misconduct at issue in this proceeding.

#### FINDINGS OF FACT

1. Petitioner is a duly-constituted district school board charged with the duty to operate, control, and supervise all free public schools within Miami-Dade County, Florida. Article IX, § 4(b), Fla. Const.

2. Gonzalez started volunteering for the School Board approximately 22 years ago. Eventually, after years of volunteering, Gonzalez was offered a paraprofessional position.

3. Gonzalez worked as a paraprofessional at Sylvania Heights Elementary School (“Sylvania”) for the last seven years.

4. During the 2018-2019 school year, Gonzalez was a pre-kindergarten paraprofessional at Sylvania.

5. Gonzalez’s job duties and responsibilities include, but are not limited to, assisting with the children when needed.

6. At all times relevant to the proceeding, Respondent has been employed by the School Board pursuant to a collective bargaining agreement under the United Teachers of Dade (“UTD”).

7. The incident giving rise to this proceeding occurred August 22, 2019.

8. On August 22, 2019, Gonzalez reported to work early around 7:00 a.m. and went to the Sylvania office to help. She was assigned to morning drop-off duty and instructed to assist the parents and students in the drop-off area.

9. That morning, Gonzalez went to pick up pre-kindergarten children at the north entrance of the school.

10. One pre-kindergarten student was upset and crying when his mother dropped him off at the car line. The student continued to cry as he got out of the car. Gonzalez walked the crying student to drop-off classroom number four, after he got out of the car.

11. As Gonzalez walked the crying student to the classroom, the child continued to cry a lot.

12. Gonzalez dropped off the crying student by forcibly placing him into classroom four with a push, and then continuing to go on to assist with another child.

13. During the drop-off period, Janelle Fernandez-Ramos (“Fernandez-Ramos”), a Sylvania teacher, was in front of classroom twelve looking down the hall and saw Gonzalez drop off the child at classroom four. Fernandez-Ramos believes she saw Gonzalez tug the child by the arm. At the time, she shouted to Gonzalez, “don’t push him,” but Gonzalez did not hear her.

14. That same morning, Barbara Soler (“Soler”), a Sylvania teacher, was standing in the middle of the interior hallway with Gonzalez. Soler was turned away and a foot away from Gonzalez’s left when she placed the crying child in classroom four. Soler heard Fernandez-Ramos scream “don’t push him,” and looked right to see the little boy crying standing in the doorway of classroom four. Soler did not see anything happen between Respondent and the little boy. Soler took the crying student to the end of the hallway.

15. At the time Gonzalez dropped off the student, Damaris Medina (“Medina”) was in the classroom where the crying boy was dropped off. She stood approximately seven feet away facing Gonzalez. Medina clearly observed Gonzalez forcefully shove the crying student into her classroom, and Medina watched Gonzalez proceed on immediately after dropping him off.

16. Later that day, Fernandez-Ramos reported to administration that she thought she saw a pushing incident between Gonzalez and a child.

17. Afterwards, Principal Amor Reyes (“Reyes”) called Gonzalez to the office. Reyes informed Gonzalez that it had been reported that Gonzalez had pushed a child. Gonzalez denied the allegations.

#### Hearing

18. At the final hearing, Gonzalez admitted leaving the crying student in drop-off classroom number four and explained that she left immediately thereafter because she needed to continue helping with another child. Gonzalez credibly testified, “I did nothing.” She explained that she was neither frustrated nor upset that day and did not hear Fernandez-Ramos scream at her.

19. Fernandez-Ramos testified that Gonzalez “tugged the child from the arm into the room.” Fernandez-Ramos explained that it was the beginning of the school day, and it was chaotic in the hallway. She also described the layout and explained that between where she was standing in front of classroom twelve and drop-off classroom four, there was a bathroom and two more classrooms. Fernandez-Ramos testified that she was not sure if she saw Gonzalez push the child because “I was further away; I wasn’t sure if that’s what I really saw.”

20. Medina credibly confirmed and testified that Gonzalez shoved the crying boy into the classroom. Medina testified that her response to the incident was to look back at another teacher to see if she saw it. Medina also explained that she believed Gonzalez was either flustered or frustrated. Medina further testified, “I just think that she didn’t realize maybe the force that she used.” She also testified that the student did not fall and was not injured. She further clarified that once the crying student was in the room, Gonzalez kept going to grab another student. Medina repeated at hearing, “I don’t think she realized it.”

21. Respondent has not been the subject of any prior disciplinary action during her employment by the School Board.

CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the subject matter of, and parties to, this case, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).

23. This is a disciplinary proceeding in which Petitioner seeks to suspend Respondent from her employment, without pay, for five workdays.

24. Petitioner has the burden of proving that it has “just cause” to suspend Respondent's employment as a paraprofessional.

25. "Just Cause" is defined to include misconduct in office by section 1012.33(1)(a), Florida Statutes.

26. Petitioner's burden to prove the charges in the Amended Notice of Specific Charges against Respondent must be met by a preponderance of the evidence. *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).

27. In the Amended Notice of Specific Charges filed against Respondent in this proceeding, the School Board charged Respondent with violation of several provisions within the School Board's policies. The School Board alleges generally that Respondent pushed and/or struck a student in the classroom during morning drop-off time.

Misconduct in Office

28. Petitioner alleges Respondent committed misconduct in office as Count I in the Amended Notice of Specific Charges.

29. The State Board of Education has defined the term "Misconduct in Office" by Florida Administrative Code Rule 6A-5.056(2), which provides, in relevant part:

(2) “Misconduct in Office” means one or more of the following:

\* \* \*

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida

["Principles of Conduct"] 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.

Principles of Professional Conduct

30. Florida Administrative Code Rule 6A-10.081, Principles of Conduct, sets the standards of conduct and provides, 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) 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 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.

31. Petitioner proved by the preponderance of the evidence that Respondent committed Misconduct in Office by violating one of the Principles of Conduct, rule 6A-10.081(2)(a)1., which requires that Respondent "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." Instead of protecting the student, Respondent placed the student's health and safety at harm by pushing him in violation of rule 6A-10.081(2)(a)1., above. Therefore, Petitioner has proven that Respondent violated rule 6A-5.056(2), Misconduct in Office.

School Board Policy 4210

32. School Board Policy 4210, Standards of Ethical Conduct, establishes Petitioner's standards of employee conduct and 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. A support 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.

33. Petitioner proved that Respondent violated School Board Policy 4210 by demonstrating Respondent created a harmful situation exposing the student's physical health and safety when Respondent pushed the student.

School Board Policy 4210.01

34. School Board Policy 4210.01, Code of Ethics, applies to all employees of the District and provides, in relevant part:

**Fundamental Principles**

The fundamental principles upon which the 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.

35. Respondent violated School Board Policy 4210.01 by not adhering to the fundamental principles. By Respondent pushing a student, she failed to act kindly or gently and lacked professional responsibility in violation of the pledge and principles.

School Board Policy 4213

36. Petitioner also met its burden and demonstrated that Respondent violated School Board Policy 4213, Student Supervision and Welfare, which provides, in relevant part:

Protecting the physical and emotional well-being of students is of paramount importance. Each support 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.

37. As detailed above, Respondent's actions of forcibly placing the student in the drop-off classroom, even if it occurred as a nonintentional push, is an endangerment to the student's physical well-being. Therefore, Respondent's actions failed to protect the student's physical well-being in violation of School Board Policy 4213.

38. By Respondent violating School Board Policies 4210, 4210.01, and 4213, Respondent also violates rule 6A-5.056(2)(c), Misconduct in Office.

### Discipline

39. 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:

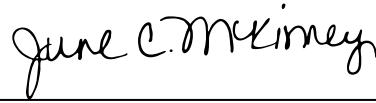
The [Miami-Dade County School] Board and Union recognize the principle of progressive discipline. The parties agree that disciplinary action may be consistent with the concept of progressive discipline when the Board deems it appropriate, and that the degree of discipline shall be reasonably related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

40. The record establishes that Respondent has never been disciplined during her 22 years with the School Board. Moreover, in the case at issue, there is no direct credible evidence demonstrating that Gonzalez's actions were purposeful or that the student fell or was injured. As such, the record does not establish that such conduct is sufficiently serious to warrant a suspension—much less a five-day suspension. Given that Respondent has not previously been subject to discipline by Petitioner, suspending Respondent for this conduct is not reasonably related to the seriousness of the offense; rather, a reprimand is a reasonable penalty under the circumstances. Therefore, it is determined that, consistent with the concept of progressive discipline, Petitioner should issue a reprimand to Respondent for her conduct.

### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is Recommended that Miami-Dade County School Board enter a final order issuing a reprimand to Respondent and awarding Respondent back pay for five workdays.

DONE AND ENTERED this 23rd day of February, 2021, in Tallahassee, Leon County, Florida.



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JUNE C. MCKINNEY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of February, 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.