

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-4747TTS

LINDA A. MOREAU,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing on February 10, 2021, 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: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent’s employment as a teacher, without pay, for five days.

PRELIMINARY STATEMENT

By letter dated September 10, 2020, Petitioner, Miami-Dade County School Board (“School Board”), notified Respondent, Linda A. Moreau (“Respondent”), of the School Board’s intent to suspend her employment as a

teacher, without pay, for five days. On September 11, 2020, Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to DOAH to assign an Administrative Law Judge (“ALJ”) to conduct the final hearing. The case was initially assigned to ALJ Cathy M. Sellers.

The Notice of Specific Charges contains certain factual allegations, and, based on those factual allegations, the School Board charged Respondent with Misconduct in Office. The final hearing was initially set for December 16, 2020. On December 8, 2020, the School Board filed a joint motion to continue the final hearing. On December 8, 2020, ALJ Sellers entered an Order granting the motion and resetting the final hearing for February 10, 2021. On February 8, 2021, this matter was transferred to the undersigned for all further proceedings. On February 9, 2021, the School Board filed a motion to exclude testimony regarding Respondent’s character.

The final hearing was conducted on February 10, 2021, with all parties present. At the outset of the hearing, the undersigned addressed the School Board’s motion. Respondent’s counsel indicated the witnesses who were the subject of the motion would not be called to testify. Accordingly, the undersigned denied the motion as moot.

At the hearing, the School Board presented the testimony of Maria G. Zabala, Mary Kate Parton, Dr. Charlene Olicker, Elvia Nunez, and Jason Hocherman. The School Board’s Exhibits 1 through 6, 9 through 11, and 17 through 20 were received into evidence. Respondent testified on his own behalf. Respondent’s Exhibits 1, 2, 5, and 7 were received into evidence.

The one-volume final hearing Transcript was filed at DOAH on March 24, 2021. On March 30, 2021, Respondent filed an unopposed motion to extend

the deadline to file proposed recommended orders by seven days. On March 31, 2021, the undersigned entered an Order granting the motion. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

On February 1, 2021, the parties filed their Pre-Hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below. Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The School Board is a duly constituted school board charged with the duty to operate, control, and supervise the public schools within Miami-Dade County, Florida.

2. The School Board hired Respondent in 2004 as a teacher at Dr. Michael M. Krop Senior High School, a public school in Miami-Dade County. Since the 2009 school year, and at all times relevant to this case, Respondent was employed at David K. Lawrence, Jr., K-8 Center (“David Lawrence”), a public school in Miami-Dade County, pursuant to a professional services contract.¹

3. At all times relevant to this case, Respondent’s employment with the School Board was governed by Florida law, the School Board’s policies, and the collective bargaining agreement between the School Board and the United Teachers of Dade. The collective bargaining agreement provides that: “Any member of the instructional staff may be suspended or dismissed at any time during the school year, provided that the charges against him/her are based upon Florida Statutes.”

¹ Respondent is no longer a teacher at David Lawrence. However, she is still employed by the School Board as a teacher at another school.

4. The alleged conduct giving rise to the School Board's proposed suspension of Respondent occurred during the 2018-2019 school year, at which time Respondent was a special education teacher at David Lawrence, teaching fourth and fifth grade autistic students in the school's "ESE" special education program. At that time, Mary Kate Parton was principal; Dr. Charlene Olicker was assistant principal; Elvia Nunez was a classroom paraprofessional assigned to Respondent's classroom; and Jason Hocherman was a one-to-one paraprofessional assigned to another classroom.

5. The alleged conduct giving rise to the School Board's proposed suspension of Respondent is contained in paragraphs 16 and 18 of the Notice of Specific Charges.²

Allegations Involving Ms. Nunez on February 15, 2019

6. The School Board alleges in paragraph 16 of the Notice of Specific Charges that "[o]n February 15, 2019, a student under Respondent's supervision hit Ms. Nunez in the face causing her face to swell and causing Ms. Nunez to feel nauseous and dizzy." According to the School Board, the incident "occurred in Respondent's presence, however, Respondent prevented Ms. Nunez from obtaining medical treatment, did not assist Ms. Nunez with any treatment and prevented Ms. Nunez from reporting it to the administration." The School Board further alleges Respondent "failed to write a Student Case Management Form ("SCM") on the student for his actions toward Ms. Nunez."

7. On the day of the incident, Ms. Nunez wrote a statement detailing her version of the events. In her statement, Ms. Nunez explained she was in the classroom when a female student hit Ms. Nunez on her face with her elbow

² At hearing, the School Board abandoned the allegations in paragraph 17 of the Notice of Specific Charges related to a purported incident on February 22, 2019. Accordingly, no findings are made with respect to the allegations in paragraph 17 of the Notice of Specific Charges.

and fist. Ms. Nunez called the office on the radio for assistance, and Dr. Olicker and Ms. Mejia came to the room to assist her. Ms. Mejia stayed with Ms. Nunez until Respondent finished what she was doing. They all took the students to lunch. Ms. Nunez stayed outside the cafeteria and told another assistant principal what had happened. In the meantime, another student started running behind the bathroom in the cafeteria, and Ms. Nunez and other employees went to catch the student. Ms. Nunez later returned to the classroom and told another staff member she was not feeling well. Ms. Nunez then went to the library and office and told Dr. Olicker she “was feeling dizzy.” Dr. Olicker called “911,” and Ms. Nunez was transported to the hospital by fire rescue.

8. Respondent did not witness a student hit Ms. Nunez and she had no knowledge of the incident at the time. Respondent did not prevent Ms. Nunez from obtaining medical treatment and she did not prevent Ms. Nunez from reporting the incident to administration.

9. Respondent did not write an SCM referral for a student because she did not witness the incident. There is no School Board rule or policy requiring Respondent to write an SCM referral on a student for an incident she did not witness or have knowledge of at the time.³

10. In sum, the persuasive and credible evidence adduced at hearing demonstrates that Respondent did not engage in any of the conduct as alleged in paragraph 16 of the Notice of Specific Charges, which constitutes misconduct in office.

Allegations Involving J.H. on February 25, 2019

11. In paragraph 18 of the Notice of Specific Charges, the School Board alleges that “[o]n February 25, 2019, Jason Hocherman (‘Mr. Hocherman’), a

³ In any event, Dr. Olicker submitted an SCM referral on the student.

paraprofessional at Lawrence K-8 while in the school's hallway[,] observed J.H. in the hallway without Respondent.”

12. J.H. was a student in Respondent's class who frequently and spontaneously ran from the classroom. According to Respondent, J.H. would run as often as 12 to 15 times a day. J.H. was well known as a “runner” by Mr. Hocherman, other staff members, and the school's administrators.⁴

13. On February 25, 2019, Mr. Hocherman was leaving his assigned classroom for the day at around 3:00 p.m., when students were also being dismissed for the day. At that time, he observed J.H. unsupervised standing in the corner of the first floor interior hallway of the building by the doors leading into the main lobby of the school.

14. Mr. Hocherman does not know how long J.H. was standing in the hallway without adult supervision. Mr. Hocherman asked J.H. if he was alright, but J.H. did not respond. A few minutes after Mr. Hocherman first observed J.H., Respondent came upon the scene. According to Mr. Hocherman, J.H. became agitated or scared upon Respondent's arrival on the scene. Mr. Hocherman tried to calm J.H. down, but J.H. took off running towards the stairwell in the middle of the hallway.

15. J.H. often ran to the third floor. Respondent told J.H. she was not going to chase after him, hoping that would stop him from running. J.H. ignored Respondent and ran up the stairs to the third floor landing of the stairwell.

16. Respondent and Mr. Hocherman followed in pursuit of J.H. Mr. Hocherman got to J.H. first, was able to calm him down, and took him by the hand directly to the bus loop in front of the school to get on his bus to go home. The evidence presented at the hearing did not establish that J.H., a known runner, was ever in any danger.

⁴ Notably, J.H. was the student who ran behind the bathroom in the cafeteria on February 15, 2019.

17. J.H. got on the bus, went home, and did not suffer any injuries as a result of the incident.

18. Under the particular facts of this case, Respondent's conduct was not inappropriate. In sum, the persuasive and credible evidence adduced at hearing demonstrates that on February 25, 2019, Mr. Hocherman "observed J.H. in the hallway without Respondent," as alleged in paragraph 18 of the Notice of Specific Charges. However, such conduct does not constitute misconduct in office.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction of the subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

20. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes. The School Board has the authority to suspend employees for "just cause" pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

21. The School Board's allegations are limited to those contained within the Notice of Specific Charges. *MacMillan v. Nassau Cty. Sch. Bd.*, 629 So. 2d 226, 228 (Fla. 1st DCA 1993); *Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). The School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the violations alleged in the Notice of Specific Charges and that such violations constitute "just cause" for suspension. §§ 1012.33(1)(a) and (6)(a), Fla. Stat.; *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

22. 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. *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000). The preponderance of the evidence standard is less stringent than the standard of clear and convincing evidence applicable to loss of a license or

certification. *Cisneros v. Sch. Bd. of Miami-Dade Cty.*, 990 So. 2d 1179 (Fla. 3d DCA 2008).

23. 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. 1st DCA 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995).

24. Sections 1012.33(1)(a) and (6)(a) provide, in pertinent part, that instructional staff may be suspended during the term of their employment contract only for “just cause.” §§ 1012.33(1)(a) and (6)(a), Fla. Stat. “Just cause” is defined in section 1012.33(1)(a) to include “misconduct in office.”

25. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

26. Consistent with this rulemaking authority, the State Board of Education has defined “misconduct in office” in Florida Administrative Code Rule 6A-5.056(2), which provides, in pertinent 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 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.

27. Rule 6A-5.056(2)(b) incorporates by reference Florida Administrative Code Rule 6A-10.081, which is titled “Principles of Professional Conduct for the Education Profession in Florida.” Rule 6A-10.081(1)(a) and (2)(a) provides, in pertinent 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 to 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.

28. School Board Policy 3210, Standards of Ethical Conduct, provides, in pertinent 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;

* * *

17. maintain honesty in all professional dealings;

* * *

33. report any criminal act, and/or disruptive, and/or inappropriate behavior to the administrator or designee to whom the employee is responsible;

29. School Board Policy 3210.01, Code of Ethics, provides, in pertinent 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 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:

* * *

C. Fairness – Treating people impartially, not playing favorites, being open-minded, and maintaining an objective attitude toward those whose actions and ideas are different from our own;

* * *

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.

I. Responsibility – Thinking before acting and being accountable for their actions, paying attention to others and responding to their needs. Responsibility emphasizes our positive obligation to care for each other.

Each employee agrees and pledges:

A. To abide by this Code of Ethics, making the well-being of the students and 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, including but not limited to, making a report of suspected child abuse or neglect in accordance with Policy 8462;

B. shall not unreasonably restrain a student from independent action in pursuit of learning;

C. shall not unreasonably deny a student access to diverse points of view;

30. As detailed above, Respondent did not witness a student hit Ms. Nunez, and the School Board failed to prove that Respondent prevented Ms. Nunez from obtaining medical treatment or reporting the incident, as alleged in paragraph 18 of the Notice of Specific Charges. Moreover, there is no School Board rule or policy requiring Respondent to write an SCM referral on a student for an incident she did not witness or have knowledge of at the time. As such, the School Board failed to prove that Respondent engaged in

conduct which constitutes misconduct in office or a violation of School Board Policy 3210 or 3210.01.

31. As detailed above, Mr. Hocherman “observed J.H. in the hallway without Respondent,” as alleged in paragraph 18 of the Notice of Specific Charges. However, Respondent came upon the scene within a few minutes and joined in the pursuit of J.H. when he took off running towards the stairwell and up to the third floor. The evidence did not establish that J.H., a known runner, was ever in any danger, nor did he suffer any injuries as a result of the incident. Under the particular facts of this case, Respondent’s conduct was not inappropriate. In sum, the alleged conduct of Mr. Hocherman observing “J.H. in the hallway without Respondent,” as alleged in paragraph 18 of the Notice of Specific Charges, does not constitute misconduct in office or a violation of School Board Policy 3210 or 3210.01.⁵


RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Miami-Dade County School Board, enter a final order rescinding the suspension of Respondent, Linda A. Moreau, with full back pay.

⁵ In its Proposed Recommended Order, the School Board argues that Respondent violated School Board Policy 3213 by failing to “immediately report a harmful situation to the administration.” However, the alleged conduct in paragraph 18 of the Notice of Specific Charges is not based on a failure to report; rather, the alleged conduct is solely that J.H. was observed unsupervised in the hallway. Accordingly, any contention by the School Board that Respondent engaged in misconduct in office or violated School Board policies based on a failure to report J.H. being observed unsupervised in the hallway, is beyond the scope of the charge.

Even if the School Board’s contention is not beyond the scope of the charge, however, J.H. was never in any danger or harmed, and, therefore, any failure of Respondent to report the incident does not constitute a violation of School Board Policy 3213 and does not constitute misconduct in office.

DONE AND ENTERED this 21st day of April, 2021, in Tallahassee, Leon
County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
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this 21st 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.