

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5134TTS

HALAINE A. JAMES,

Respondent.

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RECOMMENDED ORDER

Pursuant to the notice of hearing, a disputed-fact hearing pursuant to section 120.57(1), Florida Statutes (2020), was conducted by Zoom teleconference, on January 14, 2021, before Administrative Law Judge (“ALJ”) Robert S. Cohen of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Michele Lara Jones, Esquire  
Miami-Dade County School Board  
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 ten-workday suspension from employment with the Miami-Dade County School Board (“School Board” or “Petitioner”).

### PRELIMINARY STATEMENT

On September 9, 2020, the School Board took action to suspend Respondent without pay for ten workdays. Respondent timely requested a hearing pursuant to sections 120.569 and 120.57(1), and the matter was referred to DOAH to conduct a hearing.

The final hearing was held on January 14, 2021. Petitioner presented the live testimony of students I.N. and D.J., Crystal Reyes, and Assistant Principal Steven Rojas. Petitioner's Exhibits 1 through 6 and 8 through 10 were admitted into evidence.

Respondent testified on her own behalf and offered no exhibits.

A one-volume Transcript of the hearing was filed on February 2, 2021, and the parties timely filed proposed recommended orders.

References to the Florida Statutes are to the 2020 version, which was in effect at the time the incidents giving rise to this matter are alleged to have occurred.

### 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. Respondent was hired as a full-time teacher at Mandarin Lakes K-8 Center Academy (“Mandarin Lakes”) and was employed there as a teacher of emotionally behavior disabled (“EBD”) students when all events material to this case took place. She has been employed in the School District for

14 years and, prior to that, for two years in the School District of Broward County, Florida. She has been an EBD teacher throughout her career.

3. As a teacher, Respondent was subject to School Board policies and the collective bargaining agreement under United Teachers of Dade, as well as the Florida State Board of Education.

4. During the 2019-2020 school year, D.J. and I.N. were students in Respondent's classroom. D.J. was in the EBD class, which is a class for students with an emotional disability. No evidence of record concerning whether I.N. is an EBD student, as well, was presented.

5. I.N. was a student along with D.J. in Respondent's class who is currently in the fourth grade, however, they are not friends he said. I.N. had heard Respondent yell at D.J. prior to this incident.

6. On October 10, 2019, D.J. asked Respondent to use the bathroom and Respondent said, "No." D.J. said he was going to pee on himself. This was known by Respondent as behavior she had seen often after the lunch period when the students were not eager to return to school work.

7. Respondent did not allow D.J. to use the bathroom. Respondent called D.J. "pissy," and it caused the students in the class, including I.N., to laugh.

8. After that, D.J. started to get mad or angry, and D.J. started to hit his head with his hand. Also, D.J. felt "bad" about the situation.

9. Respondent did nothing to stop the students from laughing at D.J.

10. Respondent then asked D.J. if he wanted to be Baker Acted after she observed him picking a scab, which caused it to bleed, and hitting himself on the head.

11. When he got home later that day, D.J. was still upset, so he told his mother what happened at school and asked her what a Baker Act was.

12. D.J.'s siblings have severe mental health issues and have been Baker Acted before; therefore, it was concerning to C.R. (D.J.'s mother) that Respondent made the Baker Act comment to D.J.

13. D.J. told his mother that Respondent called him “pissy” because he went to the bathroom a lot. D.J. was taking medication at the time, of which Respondent was aware, that caused him to have to use the bathroom a lot.

14. D.J. was seven years old when he testified at hearing and was recalling an incident that happened when he was five to six years old.

15. After the incident, D.J. started to say that he wanted to be Baker Acted so he could be with his brother, who at the time was subject to a Baker Act commitment. At that time, C.R. wrote a statement detailing the incident from her perspective, which was consistent with her testimony at hearing.

16. Respondent admitted to using the word “pissy.”

17. Respondent also admitted to making a comment about Baker Acting D.J. because D.J. pulled at a scab and rubbed the blood on himself and also because he smacked himself on the head. Later, Respondent admitted during cross-examination that the scab incident did not occur on the same day as the Baker Act comment and was unrelated. She further admitted that she is not qualified to Baker Act someone and was not serious about D.J. being Baker Acted. This was an “unfortunate incident,” and Respondent apologized for it.

18. D.J. has remained Respondent’s student for nearly a year and a half since the two incidents occurred in 2019. Respondent has maintained a good relationship with both D.J. and his mother.

19. 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

20. DOAH has jurisdiction over the subject matter and the parties to this cause pursuant to sections 120.569, 120.57(1), and 1012.33(6)(a).

21. 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 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.

22. In Florida, the district superintendent has the authority to make recommendations for discipline of school board employees, and the school board has 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.

23. Since the School Board seeks to suspend Respondent's employment for ten workdays, 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, 477 (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, 884 (Fla. 3d DCA 1990).

24. "A 'preponderance' of the evidence is defined as the 'the greater weight of the evidence,' *Black's Law Dictionary* 1201 (7th ed. 1999), 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) (relying on *American Tobacco Co. v. State*, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997), quoting *Bourjaily v. U.S.*, 483 U.S. 171, 175 (1987)).

#### Count I: Misconduct in Office

25. Petitioner's Notice of Specific Charges, dated December 9, 2020, set forth a one-count violation of Petitioner's rules and policies, which constitutes misconduct in office and, it argued, justifies its ten-workday suspension without pay from employment.

26. Under Florida Administrative Code Rule 6A-5.056(2), “Misconduct in Office,” means one or more of the following:

- (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.

27. Florida Administrative Code Rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida, states, 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)(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 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[.]

29. Respondent's actions violated both rule 6A-10.081, Principles of Professional Conduct for the Education Profession in Florida, and School Board Policy 3210, Standards of Ethical Conduct. Respondent should never have called D.J. "pissy" or said he could be Baker Acted. These comments made to any student would violate both the Principles of Professional Conduct and School Board policy, but to make them to an EBD student is particularly harmful. Under the Principles of Professional Conduct, Respondent is required to have great concern for her students; to strive to use her best professional judgment; and to act with integrity. In this case, despite her years of experience teaching EBD students, Respondent's behavior fell short of these goals. No evidence admitted or presented at hearing justified an educational professional making comments such as these to a student with emotional disorders, who was also a member of a family with severe mental health disorders. Whether Respondent knew of D.J.'s family history is inconsequential. Her comments caused D.J.'s fellow students to laugh at him, therefore embarrassing him, making him feel bad, and exposing him to further embarrassment by his peers. Respondent knew her actions did not conform with the standards required of instructional staff members, which is why she apologized and stated it would not happen again.

30. 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 [in pertinent part] 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.

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 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;

B. shall not intentionally expose a student to unnecessary embarrassment or disparagement;

C. shall not intentionally violate or deny a student's legal rights.

31. In responding to D.J.'s request and actions by taunting him, calling him names, and saying he could be Baker Acted, Respondent did not act with kindness or show respect to D.J. Further, adding to her lack of judgment in making those comments to D.J., when the class began to laugh at D.J. for being called "pissy," Respondent did nothing to stop them, further causing harm to D.J. Stating that D.J. could be Baker Acted led to issues with D.J. at home actually trying to get himself Baker Acted. There is no view that can be taken of Respondent's words or actions during this incident that comply with School Board Policy 3210.01, Code of Ethics.

32. School Board Policy 3213, Student Supervision and Welfare, provides, in relevant part:

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

33. Respondent failed to protect the mental health and safety of D.J., not only by making the comments she made and calling D.J. a name, but also by allowing the other students to laugh at him. This had enough of an impact on D.J. that he was still upset by it when he got home that evening and

continued to talk to his mother about being Baker Acted after this incident. It is clear Respondent had no intention of Baker Acting D.J. and was, apparently, just making a joke. That joke, however, made by an authority figure who was his only teacher, made D.J. angry and feel bad. That is the opposite of what a relationship between a teacher and student should be. Thus, Respondent's actions violated School Board Policy 3213, Student Supervision and Welfare.

34. Respondent's conduct, as set forth herein, constitutes conduct not in conformance with provisions of the Florida Administrative Code and School Board policies cited above.

35. Respondent's actions here constitute misconduct in office. The issue here is not whether Respondent called D.J. "pissy," refused him use of the bathroom, or said he could be Baker Acted. Respondent admitted to making those comments, both at the hearing and in her previously written statement, as well as during the Conference for the Record. It is uncontroverted that Respondent made those statements to D.J. The issue here is whether it is ever appropriate for a teacher of EBD students to call students names or make comments like this. It is not. Respondent knows that it is not. As such, there is just cause for discipline to be imposed on Respondent.

36. There are two mitigating factors concerning what discipline should be imposed in this matter. First, D.J. has remained Respondent's student for nearly a year and a half since the incident complained of in these proceedings. During this time, Respondent has maintained a good relationship with both D.J. and his mother, so any damage done by the incident has lessened, if not faded away over time, with no reported (at least at the time of hearing) further damage to D.J.'s emotional or physical well-being. Second, the only previous discipline ever received by Respondent from Petitioner was a ten-day suspension due to a violation of the Safe Driver Plan when she served as a bus driver back in 1997. That discipline was not based upon any classroom behavior and is so distant in time as not to be

appropriate for counting against Respondent for purposes of progressive discipline in her lengthy role as a classroom teacher.

37. Accordingly, while some discipline is warranted in this matter, because Respondent's comments were hurtful and embarrassing to D.J., one of her EBD students, and because joking about Baker Acting someone is never a laughing matter, a written reprimand from Petitioner will serve the purpose of reminding Respondent that her words and actions matter. When dealing with special needs students, harsh words and actions can have lasting and far reaching consequences. Fortunately, it appears in this matter that D.J. has not suffered any long-term adverse effects from her actions. Her apology shortly after the incident and her continuing positive relationship with D.J. and his mother lead the undersigned to believe that this lesser penalty than that sought to be imposed by Petitioner is justified.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Miami-Dade County School Board issue a written reprimand to Respondent.

DONE AND ENTERED this 1st day of April, 2021, in Tallahassee, Leon County, Florida.



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ROBERT S. COHEN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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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.