

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5137TTS

KATHLEEN D. QUARLES,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing on March 22, 2021, by Zoom conference.

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

For Respondent: Branden M. Vicari, Esquire
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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 ten days.

PRELIMINARY STATEMENT

By letter dated November 19, 2020, Petitioner, Miami-Dade County School Board (“School Board”), notified Respondent, Kathleen D. Quarles (“Respondent”), of the School Board’s action to suspend her employment as a

teacher, without pay, for ten days. Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing.

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 January 15, 2021. On December 21, 2020, Respondent filed an unopposed motion to continue the final hearing. On December 22, 2020, the undersigned entered an Order granting the motion and resetting the final hearing for February 1, 2021. On January 26, 2021, the parties filed a joint motion to continue the final hearing. On January 26, 2021, the undersigned entered an Order granting the motion and resetting the final hearing for March 22, 2021.

The final hearing was conducted on March 22, 2021, with all parties present. At the hearing, the School Board presented the testimony of Paul Pfeiffer, Z.J., C.G., and A.H. The School Board's Exhibits 1 through 5 and 7 were received into evidence based on the stipulation of the parties. Respondent testified on her own behalf. Respondent did not offer any exhibits into evidence.

The one-volume final hearing Transcript was filed at DOAH on June 3, 2021. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

On March 19, 2021, the parties filed their Joint 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 version 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. Respondent has been employed by the School Board as a teacher for approximately 29 years. Since the 2006 school year, and at all times relevant to this case, Respondent was employed at Young Women's Preparatory Academy ("YWPA"), an all-female grades 6-12 public school in Miami-Dade County, pursuant to a professional services contract.

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.

Disciplinary History

4. On August 22, 2019, the principal at YWPA, Concepcion I. Martinez, issued Respondent a letter of reprimand, concerning an alleged incident in which Respondent "failed to report [a] concern regarding [an] incident to administration and instead discussed the incident with inaccurate consequences [to] the student." Also, Respondent allegedly "encouraged [the] student to have her parents call the school demanding answers from the administration." The reprimand directed Respondent to: (1) adhere to all School Board policies, specifically, School Board Policies 3210, Standards of Ethical Conduct, and 3210.01, Code of Ethics; (2) conduct herself in a manner that will reflect credit upon herself and the School Board and exercise professional judgment and integrity to sustain the highest degree of ethical conduct; and (3) protect students from mental, physical, or emotional harm.

The principal informed Respondent that failure to comply with the directives may result in further disciplinary action.

Respondent's Use of the "N-word" in Class

5. The alleged conduct giving rise to the School Board's proposed suspension of Respondent occurred on September 27, 2019, during the 2019-2020 school year, at which time Respondent was a social studies teacher at YWPA, teaching 11th grade Advanced Placement United States History ("AP History"). At that time, Z.J., C.G., and A.H., were African American female students in Respondent's class.

6. The School Board alleges that Respondent repeatedly used the word "nigger" during an AP History class on September 27, 2019, which upset several of the African American students in the classroom.¹

7. On the day of the incident, Respondent was teaching an AP History class to a group of 11th grade students. A white female student (C.G.), was reading to the class a passage from a textbook on the topic of the American Revolution that contained the word "negro." C.G. was hesitant to say the word "negro" out loud because she did not want to offend any of the African American students. Some of the African American students assured her it was okay to say the word "negro," but not "the other word."

8. At this point, Respondent interjected and stated to the class: "I don't understand how black people can use the word "N-word," but yet get upset when other people do it." C.G. tried to explain to Respondent why using the "N-word" is inappropriate.

9. Nevertheless, Respondent proceeded to tell the class an anecdotal story about being in a Target department store and witnessing a father call his son a "little N-word."

¹ Throughout this Recommended Order, the actual racially charged word shall also be referred to as the "N-word."

10. Respondent's cavalier and repeated use of the racially charged "N-word" during the class, despite objection, was inappropriate, disparaging, and reduced Respondent's ability to effectively perform duties. Respondent could certainly have provided a "teachable moment," without resorting to the repeated use of the highly offensive "N-word." As a result of Respondent's repeated use of the "N-word," Z.J. and C.G. left the classroom upset and crying.

11. Prior to this incident, Z.J., C.G., and A.H. enjoyed Respondent's AP History class. After the incident, they refused to return to Respondent's classroom, and, instead, were placed in another classroom and dual enrolled in U.S. History through Miami-Dade College.

12. The persuasive and credible evidence adduced at hearing demonstrates that Respondent is guilty of misconduct in office in violation of Florida Administrative Code Rules 6A-5.056(2)(b) through (e) and 6A-10.081(2)(a)1., 5., and 7. Respondent's cavalier and repeated use of the "N-word" during class, despite objection, violated rules 6A-5.056(2)(b) through (e), and 6A-10.081(2)(a)1., 5., and 7., by disrupting the students' learning environment; reducing Respondent's ability to effectively perform duties; failing to make reasonable effort to protect the students from conditions harmful to learning and/or to the students' mental and/or physical health and/or safety; intentionally exposing the students to unnecessary embarrassment or disparagement; and creating a harassing and offensive environment for the students based on race. Respondent also violated School Board Policy 3210, Standards of Ethical Conduct, sections A.3., and 7., which mirror rules 6A-10.081(2)(a)1., and 5., and School Board Policy 3210, section A.21., which requires that teachers not use "abusive and/or profane language or display unseemly conduct in the workplace." Respondent also violated School Board Policy 3213, Student Supervision and Welfare, which requires that teachers protect the physical and emotional well-being of students by maintaining the highest professional, moral, and ethical standards in dealing

with the supervision, control, and protection of students on or off school property.

13. The persuasive and credible evidence adduced at hearing fails to establish that Respondent is guilty of conduct in violation of rule 6A-10.081(2)(c)4., which specifically relates to a teacher's obligation "to the profession of education," not to conduct involving students.

CONCLUSIONS OF LAW

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

15. 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).

16. 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).

17. 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).

18. 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).

19. 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.”

20. 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.

21. Consistent with this rulemaking authority, the State Board of Education has defined “misconduct in office” in rule 6A-5.056(2), which provides:

(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.

22. Rule 6A-10.080, titled “Code of Ethics of the Education Profession in Florida,” was repealed, effective March 23, 2016, and reenacted in rule 6A-10.081(1)(a) through (c). Rule 6A-10.081(1)(a) through (c) provides:

(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.

23. While rule 6A-5.056(2)(a) still provides that violation of the Code of Ethics, "as adopted in [r]ule 6A-10.080," constitutes "misconduct," it has been frequently noted that the precepts set forth in the "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." *Broward Cty. Sch. Bd. v. Miller*, Case No. 20-1335TTS (Fla. DOAH Nov. 10, 2020; Fla. BCSB Feb. 9, 2021); *Broward Cty. Sch. Bd. v. Beckham*, Case No. 19-4589TTS (Fla. DOAH Mar. 9, 2020; Fla. BCSB Apr. 30, 2020). School Board Policy 3210.01, titled "Code of Ethics," mirrors the precepts set forth in rule 6A-10.081(1)(a) through (c).

24. Rule 6A-5.056(2)(b) incorporates by reference rule 6A-10.081, which is titled "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081(2)(a) provides, in pertinent part:

(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.

* * *

7. Shall not harass or discriminate against any student on the basis of race, color ... and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

25. Rule 6A-10.081(2)(c)4. provides, in pertinent part:

(c) Obligation to the profession of education requires that the individual:

* * *

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

26. Rule 6A-10.081(2)(c)4., specifically relates to a teacher's obligation "to the profession of education," not to conduct involving students.

27. 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;

* * *

21. not use abusive and/or profane language or display unseemly conduct in the workplace;

28. School Board Policy 3213, Student Supervision and Welfare, provides, in pertinent 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.

29. Turning to the present case, the School Board proved by a preponderance of the evidence that Respondent is guilty of misconduct in office in violation of rules 6A-5.056(2)(b) through (e) and 6A-10.081(2)(a)1., 5., and 7. As detailed above, Respondent failed to make reasonable effort to protect her students from conditions harmful to learning and intentionally exposed her students to unnecessary embarrassment or disparagement and discrimination and harassment based on race. Respondent also engaged in conduct which disrupted the students' learning environment and reduced Respondent's ability to effectively perform her duties. Respondent also violated School Board Policy 3210, Standards of Ethical Conduct, sections A.3., and 7., which mirror rules 6A-10.081(2)(a)1. and 5., and School Board Policy 3213, Student Supervision and Welfare.

30. The School Board failed to prove that Respondent violated rule 6A-10.081(1)(c)4.

31. In her proposed recommended order, Respondent contends her use of the “N-word” in class involved a “teachable moment,” and, therefore, she should not be subject to discipline. The undersigned rejects any contention by Respondent that her use of the “N-word” in class involved a “teachable moment.” As detailed above, Respondent could certainly have provided a “teachable moment,” without resorting to the repeated use of the highly offensive “N-word.” Even if it could be seriously contended, however, that Respondent’s conduct involved a “teachable moment,” which it did not, Respondent would not be shielded from discipline. *See Brown v. Bd. of Educ. of the City of Chicago*, 84 F. Supp. 3d 784, 789 (N.D. Ill. 2015); *aff’d*, 824 F.3d 713 (7th Cir. 2016)(involving suspension of public teacher for use of the “N-word” in classroom and rejecting contention that the teacher is not subject to discipline because comment was made during a “teachable moment.”).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order upholding the suspension of Respondent’s employment as a teacher, without pay, for ten days.

DONE AND ENTERED this 23rd day of June, 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 23rd day of June, 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.