

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5179TTS

CECILIA M. ZUMETA,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing on March 19, 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  
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 ten days.

PRELIMINARY STATEMENT

By letter dated November 19, 2020, Petitioner, Miami-Dade County School Board (“School Board”), notified Respondent, Cecilia M. Zumeta (“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 and Gross Insubordination. The final hearing was initially set for January 20, 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 5, 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 19, 2021.

The final hearing was conducted on March 19, 2021, with all parties present. At the hearing, the School Board presented the testimony of Barbara Leveille Brown, S.M., and T.S. The School Board's Exhibits 1 through 4 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 May 21, 2021. On May 26, 2021, Respondent filed an unopposed motion to extend the deadline for the parties to file proposed recommended orders. On May 27, 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 March 15, 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 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 1995 as a teacher. Since the 2014 school year, and at all times relevant to this case, Respondent was employed at Laura C. Sanders Elementary School (“Laura Sanders”), a public school in Miami-Dade County, pursuant to a professional services contract.<sup>1</sup>

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 November 26, 2018, the principal at Laura Sanders, Barbara Leveille-Brown, issued Respondent a letter of reprimand concerning an alleged incident in which Respondent pulled a student’s jacket and the hair of another student during class. The reprimand directed Respondent to: (1) adhere to all School Board policies, specifically, School Board Policy 3210, Standards of Ethical Conduct; (2) conduct herself in a manner that will reflect credit upon herself and the School Board; and (3) cease and desist from placing her hands on any student in an inappropriate manner. The

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<sup>1</sup> Respondent is no longer a teacher at Laura Sanders. However, she is still employed by the School Board as a teacher at another school.

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

The March 11, 2019, Incident Involving S.M.

5. The alleged conduct giving rise to the School Board's proposed suspension of Respondent occurred on March 11, 2019, during the 2018-2019 school year, at which time Respondent was a third-grade English language arts ("ELA") teacher at Laura Sanders. At that time, S.M. and T.S. were female students in Respondent's class.

6. On March 11, 2019, Respondent announced to the class it was time to start getting ready for lunch. Respondent lined up her students at the front door of her classroom for the students to exit the classroom and go to the cafeteria for lunch. As the students lined up, some of them moved back and forth in the line, causing S.M. to move backward and accidentally step on Respondent's bare toes.

7. At the time, Respondent was wearing open toe "flats" shoes with a "rhinestone buckle on the tip." In response to S.M. stepping on Respondent's toes, Respondent lost control. Respondent screamed very loud in pain, grabbed S.M.'s arm, pinched her hard on the arm, and pushed her. Respondent's pinch on S.M.'s arm was so hard that it left a mark on S.M.'s arm. As a result of Respondent's conduct, S.M. became upset and cried.

8. Respondent's conduct on March 11, 2019, was inappropriate, reflected poorly upon herself and the School Board, and reduced Respondent's ability to effectively perform her duties. Respondent could certainly have responded to S.M. accidentally stepping on her foot through means other than losing control and resorting to inappropriate physical contact with S.M.

9. 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 6. By engaging in inappropriate physical contact with S.M. on March 11, 2019, Respondent violated rules 6A-5.056(2)(b) through (e) and

6A-10.081(2)(a)1., 5., and 6., by disrupting the student's learning environment, thus reducing Respondent's ability to effectively perform her duties; failing to 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; intentionally exposing the student to unnecessary embarrassment; and intentionally violating or denying the student's rights. 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, Standards of Ethical Conduct, section A.21., which requires that teachers not "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.

10. The persuasive and credible evidence adduced at hearing demonstrates that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority. By failing to comply with the specific directives detailed above to "cease and desist from placing her hands on any students in an inappropriate manner," Respondent intentionally refused a direct order, reasonable in nature, and given by and with proper authority.

#### CONCLUSIONS OF LAW

11. DOAH has jurisdiction of the subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2019).

12. 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 instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

13. 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 dismissal. §§ 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).

14. 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).

15. 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).

16. 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” and “gross insubordination.”

17. 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.

18. 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.

19. 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.

20. 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); *Miami-Dade Cty. Sch. Bd. v. Lantz*, Case No. 12-3970 (Fla. DOAH July 29, 2014). School Board Policy 3210.01, titled “Code of Ethics,” mirrors the precepts set forth in rule 6A-10.081(1)(a) through (c).

21. 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.

6. Shall not intentionally violate or deny a student’s legal rights.



22. Consistent with its rulemaking authority, the State Board of Education has defined “gross insubordination” in rule 6A-5.056(4), which provides:

(4) “Gross insubordination” means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

23. 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;

24. 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.


25. 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 6. As detailed above, Respondent failed to make reasonable effort to protect her student from conditions harmful to learning and intentionally exposed her student to unnecessary embarrassment or disparagement. Respondent also engaged in conduct which disrupted the student's 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., 7., and 21., and School Board Policy 3213, Student Supervision and Welfare.

26. The School Board proved by a preponderance of the evidence that Respondent is guilty of gross insubordination in violation of rule 6A-5.056(4) by intentionally refusing to obey a direct order, reasonable in nature, and given by and with proper authority.

#### 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 16th day of June, 2021, in Tallahassee, Leon  
County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 16th 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.