

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 22-0160TTS

WARNELL GREEN,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge Todd P. Resavage of the Division of Administrative Hearings (DOAH) for final hearing on May 13, 2022, by Zoom video teleconference.

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
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 20 days.

PRELIMINARY STATEMENT

At a meeting on January 12, 2022, Petitioner, Miami-Dade County School Board, voted to suspend Respondent, Warnell Green, from her position as a teacher at Norma Butler Bossard Elementary School (NBB) for 20 workdays

without pay. On January 13, 2022, Maria G. Zabala, Petitioner's administrative director, issued Respondent a written notification of the decision, and informed Respondent she could contest the suspension by requesting a hearing in writing within 15 workdays of receipt of the notice. Respondent timely requested an administrative hearing to challenge Petitioner's proposed action, and the matter was referred to DOAH to conduct a hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes.

A Notice of Hearing by Zoom Conference was entered, scheduling a final hearing on April 7, 2022. On March 23, 2022, the parties' Joint Motion to Continue and Reschedule Final Hearing was filed. The parties requested a continuance to allow for additional discovery. Finding good cause for the requested continuance, on March 25, 2022, the continuance was granted, and the matter was rescheduled for May 13, 2022.

The hearing proceeded as scheduled. At the hearing, Petitioner presented the testimony of minors, D.A., J.G., S.S., L.M., as well as the testimony of D.A.'s mother; NBB principal, Concepcion Santana; and Helen Pina, director in the Office of Professional Standards. Petitioner's Exhibits 1 through 14 and 16 through 18 were admitted into evidence. Respondent testified on her own behalf at the hearing. Respondent's Exhibit 1 was admitted into evidence.

A one-volume Transcript of the final hearing was filed on July 18, 2022. On July 20, 2022, Respondent filed a motion for extension of time (to August 17, 2022) to file proposed recommended orders, which was unopposed. Finding good cause for the requested extension of time, the motion was granted on July 21, 2022. The parties timely filed proposed recommended orders, which have been duly considered in the preparation of this Recommended Order. All references to Florida Statutes are to the version

in effect at the time of the incidents giving rise to the proposed suspension of Respondent's employment as a teacher.

FINDINGS OF FACT

1. Petitioner is the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. Respondent has been a teacher for approximately 32 years and has been employed by Petitioner for approximately 22 years.

3. At all times relevant, Respondent was employed with Petitioner as a physical education (PE) teacher at NBB and her employment was governed by the collective bargaining agreement (CBA) between Petitioner and the United Teachers of Dade, Petitioner's policies, and Florida law.

4. During the 2020-2021 school year, two fifth-grade students, J.G. (male) and A.G. (female), had been instructed by NBB administrative staff to avoid contact with each other. This directive resulted from a complaint previously filed by A.G. that J.G. was inappropriately communicating with her electronically. J.G., as a result of the complaint and subsequent investigation, received discipline. Specifically, he was required to serve a five-day in-school suspension (ISS).

5. As J.G. and A.G. were enrolled in Respondent's fifth-grade PE class, Ms. Santana had notified Respondent of the no contact directive between J.G. and A.G.

6. On February 18, 2021, the PE class was engaged in a game of softball. J.G. was not participating due to a prior injury and was sitting by a tree in the shade. A.G. was also not participating in the game and was in the same general location as J.G. One of J.G.'s friends, D.A. (male), was also enrolled in the same PE class. For all that appears from the evidentiary record, D.A. had been granted permission by Respondent to sit out of the softball game and was with J.G. in the same location.

7. Towards the end of the class period, the balance of the class was moving towards the tree to retrieve their water bottles. At this time, Respondent observed J.G. and A.G. interacting with each other, in contravention of the no contact directive. Respondent's reaction to the contact and the subsequent conversation between Respondent, J.G., and D.A. is at the heart of the instant dispute.

8. J.G., who is currently 13, conceded that due to the passage of time, he did not have a perfect memory of the incident; however, he recalls some parts. J.G. contends that he accidentally hit A.G. with his water bottle as he was passing by her. J.G. recalls that he apologized to A.G.; however, then Respondent appeared and called him an "idiot," "stupid," and a "dumbass." He testified that Respondent also called D.A. a "follower" and, as an example, said that if J.G. jumped off a building, so would he, or that if J.G. stepped in "dog poop," so would he.

9. Prior to this incident, J.G. testified that he had a good relationship with Respondent and liked her. J.G. credibly testified that he "looked at her" as "a different mother." As a result of the incident, however, he felt frustrated and confused.

10. D.A., who is currently 12, testified that J.G. and A.G. were close to each other and they "started telling each other stuff." He believes they were arguing. D.A. then testified that Respondent "started coming at us and saying the words that she said to us." Specifically, he testified that "[s]he called us a dumbass, she said we were going to get beat up in middle school, she called us stupid. She also said we were going to go to prison, and she said I was a follower." D.A. credibly testified that the comments hurt his feelings and that he felt disrespected and embarrassed. He further testified that "I felt like I wanted to cry." He did not want to return to her class.

11. S.S., who is currently 13, was a fellow student in the PE class. S.S. testified that the incident began because J.G. was not supposed to be around A.G.—which was well known and "like, a class rule." S.S. conceded that she

just recalled Respondent use the term “dumbass”; however, she does not know if this comment was directed to D.A. or J.G. She further recalled Respondent telling J.G. and D.A. that “you guys keep doing whatever you’re doing, you guys are going to end up in jail.” During the incident, S.S. testified that she felt scared and nervous.

12. Respondent’s version of events is in conflict with the above testimony. Her testimony, in pertinent part, is as follows:

They were all sitting under a tree. [A.G.] was under the tree, I want to say she had a girl problem and I let her sit out as well. As I look over, [A.G.] was walking over towards [J.G.] and she kind of spanked him on his butt. So I was like wait, hold up. We got all this stuff going on and here you are, you’re doing this. And I kind of scolded her.

* * *

Because I was explaining to them that “you all had just went down to the principal’s office and wrote all these statements on these guys and here you are, I see you with my own two eyes, you’re making the inappropriate moves on him.” And I saw her, she either patted him on his butt, you know, on his rear-end. And I said “That’s not appropriate either. I mean, you just left the office writing statements and here you are.”

And I explained to [J.G.], you know, “Hey, don’t let those girls play with you like that, because when you do that to them, you know you’re going to be in trouble, because they’re going to believe them and you’re going to be in a whole lot of trouble.” Because [J.G.] was the kind of kid that I could talk to. He said, “Okay, Coach, I understand.” Because he knew I was helping him, he knew anything I said to him was for the better of him.

13. Respondent denied that she called these students a “dumbass” or “idiot,” and denied the use of any profanity.

14. With respect to D.A., Respondent described him as a “big baby” in the sense that at approximately 11 years old, he was tall for his age (approximately 5’11”). She conceded that “[s]he had conversations with him” and would advise D.A. to “stop being a follower, you don’t wanna follow J.” She opined that D.A. would do things that he should not just to please his friend J.G.

15. Petitioner further denies that she ever advised the students that they would go to jail. Her testimony on this point can be fairly summarized as providing that, on this occasion, she was attempting to explain to the students that when they matriculate to middle school, the consequences of inappropriate behavior, if not corrected, are greater and can progress from ISS, to placement in a resource center, and ultimately to the Juvenile Assessment Center.

16. Following this incident, J.G. and D.A. discussed the incident, and J.G. credibly testified that he “didn’t want to say anything because I’m not like that.” D.A., however, did want to report the incident, and, therefore, J.G. agreed to do so. It appears that the boys reported the incident to a homeroom teacher, who then referred the students to Ms. Santana.

17. Ms. Santana testified that the boys came to her office and reported that Respondent had cursed at them, called them stupid, dumbasses, and that they would end up in jail one day. Because the school day was ending at that time, Ms. Santana only obtained their verbal statements. She also contacted the boys’ parents to advise them of the complaint.

18. In response, D.A.’s mother requested that D.A. be removed from the PE class. Thereafter, for approximately two weeks, in lieu of attending Respondent’s PE class, D.A. presented to Ms. Santana’s office or the library media center to access his educational content. He then returned to Respondent’s PE class. J.G. was never removed from Respondent’s PE class.

19. The following day, Ms. Santana requested the boys to return to her office. Once there, the boys were asked to, and did, provide separate written

statements setting forth their recollection of the events. Ms. Santana further obtained written statements from those students in the PE class who purportedly had knowledge of the incident.

20. After obtaining statements, Ms. Santana forwarded information to Petitioner's incident review team, who then forwarded the matter to Petitioner's civilian investigative unit. Ultimately, Petitioner proposed discipline of 20 workdays without pay. Ms. Pina testified that because Respondent has previously received multiple directives and reprimands, and continues to have issues, the next step in progressive discipline is a suspension.¹

21. On February 23, 2022, Ms. Santana hand-delivered Respondent a written notification that she had been named as the subject in a complaint arising from the above-described incident. The complainants were identified as "JUVENILE CONFIDENTIAL." This notice provided, *inter alia*, that Respondent was "not to discuss this matter with any witnesses, parents, staff, students, or the complaining party to avoid interference with the investigation." Respondent refused to sign the document acknowledging receipt.

22. Petitioner presented the testimony of L.M., who, at the time of hearing, was ten years old and in fourth grade. L.M. was in one of Respondent's PE classes. According to L.M., Respondent, at some time, advised the class that Ms. Santana had Respondent suspended for something she did not do and that "[if] you say the truth, you will always win." Finally, he testified that Respondent told that class that she went to court to keep her record clean. When questioned about this testimony, Respondent testified that while she did have a conversation about "standing on your truths," she never spoke to the class about the subject incident.

¹ The undersigned has been unable to locate, from the evidentiary record, any document or record addressing the progressive discipline policy.

23. S.S. testified that, approximately one week after the incident, Respondent told her, but cannot recall who else (if anyone), that “she never, like, tried to insult them or anything, that she was just trying to talk to them serious so they could, like, you know, mature up. And that was basically it.”

Ultimate Factual Findings:

24. The persuasive and credible evidence adduced at hearing establishes that Respondent used inappropriate, abusive, or profane language during the interaction on February 18, 2021, with J.G., D.A., and A.G. Despite their minority, the undersigned finds J.G. and D.A.’s testimony regarding the language directed towards them by Respondent to be consistent. There was no evidence presented that J.G. or D.A. had any prior negative interactions with Respondent. To the contrary, at least from J.G.’s perspective, this was a trusted adult—one he considered as a second mother. Their subsequent action of reporting a teacher with whom they had a positive relationship lends significant support to their version of events. The undersigned finds Respondent’s absolute denial of the stated language to be lacking in credibility.

25. The persuasive and credible evidence establishes that, as a result of the inappropriate, abusive, or profane language during the interaction, J.G. and D.A. were exposed to unnecessary embarrassment and disparagement. The persuasive and credible evidence establishes that the inappropriate, abusive, or profane language used by Respondent during the interaction with J.G. and D.A. was intentional.

26. Petitioner failed to present sufficient evidence to establish that Respondent intentionally refused to obey a direct order or that Respondent made malicious or intentionally false statements about a colleague. The undersigned finds the testimony of L.M. and S.S. on these points to be lacking in sufficient specificity or detail to support these allegations, and the balance of the evidentiary record insufficient.

Prior Disciplinary History:

27. On or about May 17, 2012, Respondent received a written reprimand for her alleged conduct related to two incidents. The first was making inappropriate comments to a student regarding his sexuality, and the second concerned taking a student on an unauthorized field trip. Respondent was directed, among other things, to refrain from making inappropriate statements about students.

28. On April 18, 2013, Respondent received a professional responsibilities memorandum regarding alleged claims of unprofessionalism in her performance as an athletic coach. Specifically, the students complained of demeaning, abusive, and unprofessional conduct. Following a school-site inquiry, Respondent was directed not to display inappropriate behavior that insults or degrades others, directly or indirectly. She was further advised to be aware of her surrounds when speaking in her capacity as a professional.

29. On April 9, 2014, Respondent received a written reprimand for allegedly engaging in a verbal confrontation with a coworker in the presence of students. It was alleged that both were engaged in inappropriate language and demeaning each other. Respondent was directed to conduct herself in a manner that will reflect credit upon herself and Petitioner and to refrain from engaging in inappropriate activities.

30. Respondent received a written reprimand on December 11, 2014, stemming from incidents dated April 17 and September 2, 2014. With respect to the April incident, it was alleged that during PE class, Respondent embarrassed, disclosed personal information, and threatened the students. The September incident included allegations that Respondent was selling folders for a fee to students during class. It was further alleged that during the investigation, Respondent proceeded to confront the students regarding the allegations despite being warned to have no further contact with the potential witnesses. Among other directives, Respondent was directed to refrain from making disparaging comments to students and colleagues;

refrain from embarrassing students and disclosing their personal information; to cease and desist from threatening students, staff, and/or parents; and to communicate appropriately with and relate to administrators, colleagues, students, and parents in a professional manner.

31. On June 2, 2015, a conference-for-the-record was held with Respondent to address two administrative review investigations that related to two separate incidents. The first incident, in April 2015, allegedly involved Respondent using explicit language to insult the victims' athletic abilities, respective teams, family members, coaches, and the athletic director. The victims alleged Respondent would call them stupid, sorry, and use ethnic insults to describe them and the school. The second incident, in May 2015, concerned allegations that Respondent advised students to protest an upcoming Superintendent's Town Hall Meeting. Respondent was directed to refrain from making disparaging comments to students and colleagues; refrain from embarrassing students and disclosing their personal information; to cease and desist from threatening students, staff, and/or parents; and to communicate appropriately with and relate to administrators, colleagues, students, and parents in a professional manner.

32. On January 21, 2016, Respondent received a written reprimand regarding allegations that that she was campaigning and distributing flyers to faculty members during school hours to vote for Respondent to be a union steward. *Inter alia*, she was directed to refrain from engaging in political activities during school work hours; cease and desist from making disparaging and/or threatening comments to colleagues and administration; adhere to all directives given by the administrative staff; and to communicate appropriately with and relate to administrators and colleagues in a professional manner.

33. Respondent received a written reprimand on August 24, 2016, regarding an allegation that, on March 16, 2016, she walked through the boys' locker room while male students were changing clothes. She received

several directives including to cease and desist from all behavior which has the appearance of impropriety and from going into the boys' locker room.

34. Finally, on December 6, 2016, Respondent received a written reprimand regarding an allegation that, on September 22, 2016, Respondent removed several items, without permission, from another teacher's classroom. Among several directives, she was directed to adhere to all school site policies and procedures, specifically as they relate to entering a school building after hours or outside her assigned location.

CONCLUSIONS OF LAW

35. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6)(a)2., 120.569, and 120.57(1), Florida Statutes.

36. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." *Jacker v. Sch. Bd. of Dade Cnty.*, 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983) (Jorgenson, J., concurring).

37. Respondent is an instructional employee, as that term is defined in section 1012.01(2). Petitioner has the authority to suspend instructional employees pursuant to sections 1012.22(1)(f), 1012.33(1)(a), and 1012.33(6)(a).

38. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). *See McNeill v. Pinellas Cnty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Sublett v. Sumter Cnty. Sch. Bd.*, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); *MacMillan v. Nassau Cnty. Sch. Bd.*, 629 So. 2d 226

(Fla. 1st DCA 1993). 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).

39. The instructional staff member’s guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

40. Section 1012.33(1)(a) and (6)(a), provides, in pertinent part, that instructional staff may be terminated 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.” 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.

Misconduct in Office:

41. Petitioner, in Count I of Petitioner’s Notice of Specific Charges, contends that Respondent committed “Misconduct in Office.” This term is defined in Florida Administrative Code Rule 6A-5.056(2) as 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.

42. Petitioner first contends that Respondent committed misconduct in office by violating rule 6A-5.056(2)(b), the Principles of Professional Conduct for the Education Profession in Florida, which are set forth in Florida Administrative Code Rule 6A-10.081. Specifically, Petitioner cites the following provisions of rule 6A-10.081:

(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.

* * *

7. Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

43. Petitioner next argues that Respondent committed misconduct in office by violating rule 6A-5.056(2)(b) and (c), in her violation of adopted school board rules. Specifically, Petitioner cites to School Board Policies 3210, 3210.01, and 3213.

44. School Board Policy 3210, entitled Standards of Ethical Conduct, provides, in pertinent part (and as alleged by Petitioner), as follows:

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;

* * *

9. not harass or discriminate against any student on any basis prohibited by law or the School Board and shall make reasonable efforts to assure that each student is protected from discrimination and harassment, including but not limited to, making a report of discrimination, harassment, or retaliation for reporting discrimination and/or harassment, to the administrator or designee to whom the employee is responsible and/or the District's Office of Civil Rights Compliance (CRC);

* * *

23. not make malicious or intentionally false statements about a colleague[.]

45. School Board's Policy 3210.01, entitled Code of Ethics, provides, in pertinent part (and as alleged by Petitioner), as follows:

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.

As stated in the Code of Ethics of the Education Profession in Florida (State Board of Education F.A.C. 6A-10.081):

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, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

Further, nonacademic and elected officials are bound to accept these principles since these groups reflect critical policy direction and support services for the essential academic purpose.

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:

* * *

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 obligations 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;

F. To avoid conflicts of interest or any appearance of impropriety;

G. To cooperate with others to protect and advance the District and its students;

H. To be efficient and effective in the performance of job duties.

46. School Board Policy 3213, entitled Student Supervision and Welfare, provides (and as alleged by Petitioner) as follows: “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.”

47. Based on the Findings of Fact above, the undersigned concludes that Respondent is guilty of misconduct in office. Specifically, Petitioner met its burden of establishing Respondent’s violation of rule 6A-10.081(5) and School Board Policy 3210(7). The balance of the alleged violations fail either as a matter of fact or law.

Gross Insubordination:

48. Petitioner, in Count II of Petitioner’s Notice of Specific Charges, contends that Respondent committed “Gross insubordination.” This term is defined in rule 6A-5.056(4) as “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 required duties.”

49. Based on the Findings of Fact above, the undersigned concludes that Petitioner failed to meet its burden of establishing that Respondent committed gross insubordination, as alleged.


Discipline to Be Imposed:

50. The undersigned finds and concludes that Respondent's actions do constitute misconduct in office and is, therefore, worthy of discipline. The undersigned further finds and concludes that Respondent has earned a suspension, the next step in progressive discipline. It is recommended, however, that the suspension should be for a period of ten days, which the undersigned is confident will convey a sufficient message to Respondent that her actions here have serious consequences.

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 finding that "just cause" exists to discipline Respondent by suspending her, without pay, for ten days.

DONE AND ENTERED this 2nd day of September, 2022, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of September, 2022.

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.