

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner,

PETITION FOR FORMAL PROCEEDINGS

v.

VIVIAN LEYVA,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, Robert W. Runcie, Superintendent of Schools of Broward County, Florida (“Petitioner”), through his undersigned counsel, files this Administrative Complaint against Respondent, VIVIAN LEYVA (“LEYVA”). The Petitioner seeks termination of Respondent’s employment with the School Board of Broward County (“SBBC”), pursuant to Chapter 120 and Sections 1001.51, 1012.27(5), and 1012.33 Florida Statutes and Rule 6A-5.056 of the Florida Administrative Code. The Petitioner alleges the following:

JURISDICTIONAL BASIS

1. The agency is the School Board of Broward County, Florida, located at 600 Southeast Third Avenue, Fort Lauderdale, Broward County, Florida 33301.
2. The Petitioner is Robert W. Runcie, who is the Superintendent of Schools of Broward County, Florida.
3. The Petitioner is statutorily obligated to recommend the placement of school personnel

and to require compliance and observance with all laws, rules, and regulations. Petitioner is authorized to report and enforce any violation thereof, together with recommending the appropriate disciplinary action against any instructional personnel employed by the SBBC, inclusive of the Respondent, Vivian Leyva (hereinafter "Leyva").

4. Respondent, Leyva, is an employee of the Broward County School Board and is currently employed as a teacher at Dolphin Bay Elementary School.
5. The last known address of the Respondent, Vivian Leyva, is 150 NE 171 Terrace, North Miami, Florida 33162.

MATERIAL ALLEGATIONS

EXCESSIVE ABSENCES WITHOUT LEAVE

6. On or about Friday, November 21, 2014, Respondent Leyva, a third grade teacher, did not come into work or notify anyone of her absence.
7. At the time of this absence, Ms. Leyva had exhausted all her sick and vacation time for the year.
8. On or about Sunday, November 23, 2014, Ms. Leyva contacted her Principal, Sandra Nelson, indicating that she was sick and would not be in on Monday, November 24, 2014.
9. Ms. Leyva did not call in her absences or come into work again until the week following the Thanksgiving break on Wednesday, December 3, 2014.
10. On or about December 9, 2014, a pre-disciplinary meeting was held with Ms. Leyva regarding her absences leading up to and following the Thanksgiving break.
11. During the pre-disciplinary meeting with her Principal, Sandra Nelson, Ms. Leyva,

provided a doctor's note relating to her absence on Monday, November 24, which cleared her to return to work on Tuesday, November 25, 2014.

12. She further provided a doctor's note for Tuesday, December 2, 2014.

13. Ms. Leyva did not provide any documentation for her absences on Tuesday, November 25, 2014, the day prior to the Thanksgiving holiday, or Monday December 1, 2015, the first work day back from the Thanksgiving holiday, for which she had exhausted all her paid leave.

14. The week following the Martin Luther King Jr. holiday, January 20-23, 2015, Ms. Leyva did not come into work, despite having exhausted her sick and vacation time.

15. The following week of January 26, 2015, Ms. Leyva stopped reporting her absences and did not show up for work.

16. On February 3, 2015, Principal Nelson, sent Ms. Leyva via e-mail and overnight courier, Fed Ex, a notice directing her to submit a health care provider's certification of serious health condition if she was seeking Family and Medical Leave. Ms. Leyva failed to submit such certification.

17. Ms. Leyva did not call her school to report her absences or come to work again.

18. Ms. Leyva has been continuously absent without any type of approved leave since January 16, 2015, to the present.

19. Ms. Leyva has failed to report her absences to school personnel since January 26, 2015, to the present.

PERFORMANCE CONCERNS

20. Ms. Leyva's absences have had a drastic impact on her students' education and her performance as a teacher.

21. On January 14, 2014, Ms. Leyva received a verbal reprimand for taking a peer's lesson plans without permission for several days.

22. On or about November 7, 2014, Ms. Leyva received a summary memo regarding, in addition to her continued absences without sick leave and failure to report those absences, the following performance concerns:

- Failure to follow the grade level curriculum, textbooks, and standards, thus creating academic gaps and not preparing students for the next grade level
- Failure to enter grades in the grade book regularly and at the end of the quarter
- Failure to enter any grades in the areas of science or social studies

23. Ms. Leyva was also assigned two peer coaches at that time to assist her, Ms. Kristy Pagan and Dr. Marcus.

24. Ms. Leyva's students were well behind the curriculum and pace of other third grade classes.

25. She often did not have lesson plans and many times was not prepared to teach.

26. This lack of preparedness is reflected in Ms. Leyva's instructional practice score, which reflects a score of 2.409, or "Needs Improvement".

27. On January 26, 2015, due to her frequent absences, the need for multiple substitutes, and with her students lagging behind, Principal Nelson dismantled Ms. Leyva's third grade class.

28. In order to provide some consistency, stability, and core curriculum for the students, Principal Nelson redistributed Ms. Leyva's third graders to other teachers.

29. The redistribution increased class size for those classes from 18 to approximately 24 students.

PREVIOUS DISCIPLINE/CHRONOLOGY OF EVENTS

30. By way of background, Respondent has had a history of excessive absences stretching back to the 2010-2011 school year. On or about March 21, 2011, Ms. Leyva was issued a memo for excessive absenteeism. On or about February 6, 2012, Ms. Leyva received a verbal reprimand for excessive absenteeism. On or about December 16, 2013, Ms. Leyva received a letter addressing her excessive absenteeism as well as a referral to the employee assistance program (EAP) two days later. On or about January 14, 2014, Ms. Leyva received a verbal reprimand for failure to call in her absences. On or about February 7, 2014, Ms. Leyva received a written reprimand for failure to report her absences and excessive absenteeism beyond her accumulated sick or vacation leave. On or about May 28, 2014, Ms. Leyva served a one (1) day suspension for excessive absenteeism. On or about June 24, 2014, the Broward County School Board (hereinafter "BCSB" or "School Board") approved a five (5) day suspension based on excessive absenteeism, which Ms. Leyva served during this 2014-2015 school year. On or about January 21, 2015, the School Board approved a ten (10) day suspension due to Ms. Leyva's excessive absences.

ADMINISTRATIVE CHARGES

30. Just cause exists for the requested relief pursuant to Fla. Stat. §§ 1012.33(1)(a), Section 6A-5.056 F.A.C., the Respondent's employment contract, School Board rules and

regulations, the Code of Ethics of the Education Profession, and the Employee Disciplinary Guidelines promulgated by the School Board.

31. "Just cause" means "cause that is legally sufficient." It includes but is not limited to the following instances:

COUNT 1: MISCONDUCT IN OFFICE

32. The Respondent, through her above-described conduct, has violated Fla. Stat. §1012.33 Fla. Stat., and Rules 6A-5.056(2)(a) through (e) of the of the Florida Administrative Code, which defines "misconduct".

(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 6B-1.001, F.A.C.;
- (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, 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.

33. Respondent's acts are defined as a violation of the Code of Ethics of the Educational Profession as adopted in Rule 6A-10.080 F.A.C. and of Principles of Professional Conduct for the Educational Provisions in Florida, as adopted by Rule 6A-10.081, F.A.C., which includes the following:

(3) **Obligation to the student** requires that the individual:

- (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 unreasonably restrain a student from independent action in pursuit of learning.

34. Respondent's actions constitute misconduct in office, which is conduct so serious as to impair the individual's effectiveness in the school system. Respondent's acts are a violation of the adopted school board rules; behavior that disrupts the student's learning environment; or behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

COUNT 2: INCOMPETENCY

35. The Respondent, through her above-described conduct has violated Fla. Stat. §1012.33 and Rule 6A-5.056(3)(a) and (b) of the Florida Administrative Code. Her actions show an inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

COUNT 3: ABSENCE WITHOUT LEAVE

36. The Respondent, through her above-described conduct, violated § 1012.67 Fla. Stat., which provides that any "district school board employee who is willfully absent from duty without leave . . . shall be subject to termination by the district school board."

COUNT 4: WILLFUL NEGLECT OF DUTY

37. Respondent is in violation of Rule 6A-5.056(5) which provides that “willful neglect of duty means intentional or reckless failure to carry out required duties.” Ms. Leyva’s conduct as well as her failure to appear to work or contact her employer evinces a willful neglect of her duties as an educator.

DEMAND FOR RELIEF

WHEREFORE, based upon the foregoing, Petitioner, Robert W. Runcie, Superintendent of Schools, recommends that the School Board terminate the Respondent, VIVIAN LEYVA, from her employment, based upon the foregoing facts and legal authority.


NOTICE

If you wish to contest the charges, you must, within 15 days after receipt of the written notice, submit a written request for a hearing to Robert W. Runcie, Superintendent, Broward County School District, 600 S.E. Third Ave., Ft. Lauderdale, FL, 33301. If timely requested, such hearing shall be conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120, Florida Statutes.

FAILURE TO TIMELY REQUEST A HEARING WILL RESULT IN A WAIVER OF THE RIGHT TO CONTEST THE CHARGES.

IF YOU WANT TO HIRE AN ATTORNEY, YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY IN THIS MATTER.

EXECUTED this 20th day of March, 2015.


ROBERT W. RUNCIE,
Superintendent of Schools, Broward County

Respectfully submitted:
Tria Lawton-Russell, Esq.
Administrative Counsel