

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner,

v.

DAGOBERTO MAGANA-VELASQUEZ,

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, Dagoberto Magana-Velasquez ("MAGANA"). The Petitioner seeks a suspension of five (5) days without pay of Respondent's employment with the Broward County School Board ("BCSB") and completion of sensitivity training 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:

I. 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 BCSB, inclusive of MAGANA.
4. MAGANA is an employee of the Broward County School Board and is currently employed as a teacher pursuant to a Professional Services Contract, issued in accordance with Section 1012.33(3)(a), Florida Statutes (2016).
5. The last known address of 4028 SW 156 Court, Miami, FL 33185.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct occurring during the 2015-2016 school year.
7. MAGANA is a Math teacher at Miramar High School.
8. MAGANA was first hired by the district on July 1, 2007.
9. MAGANA made a series of inappropriate and offensive comments to his Math students at Miramar High School (hereinafter "Miramar").
10. MAGANA made inappropriate comments about students who receive food stamps.

11. MAGANA also called the students dummies and compared their learning abilities to that of exceptional student education (hereinafter "ESE") children.
12. In addition, MAGANA made racial slurs.
13. MAGANA also made fun of Haitian students.
14. MAGANA indicated that some students, "are from the hood."
15. SSG, a former student, transferred out of MAGANA's class because he was racist and unhelpful.
16. Furthermore, MAGANA did not adequately teach his lessons, but rather spoke more about his personal life.
17. MAGANA also becomes upset when the students do not understand the work.
18. MAGANA was arbitrary in his grading.
19. When discussing the meaning of PEDMA, an abbreviation for the order of operations for Math problems, MAGANA indicated that the abbreviation stood for "Please excuse my dumb ass students."

III. PREVIOUS DISCIPLINE

20. On or about June 14, 2002, MAGANA received a written reprimand from Miami Springs Senior High School for making an inappropriate question/comment to a female student during class.

IV. ADMINISTRATIVE CHARGES

21. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through twenty (20) above.
22. 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.
23. "Just cause" means cause that is legally sufficient. "Just cause" includes, **but is not limited to:**
 - A. "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.
 - B. "Misconduct in Office" means one or more of the following:
 1. A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;
 2. A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;
 3. A violation of the adopted school board rules;
 4. Behavior that disrupts the student's learning environment; or
 5. Behavior that reduces the teacher's ability or his or his colleagues' ability to effectively perform duties.

- C. "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.
1. "Inefficiency" means one or more of the following:
 - a) Failure to perform duties prescribed by law;
 - b) Failure to communicate appropriately with and relate to students;
 - c) Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
 - d) Disorganization of his or his classroom to such an extent that the health, safety or welfare of the students is diminished; or
 - e) Excessive absences or tardiness.
 2. "Incapacity" means one or more of the following:
 - a) Lack of emotional stability;
 - b) Lack of adequate physical ability;
 - c) Lack of general educational background; or
 - d) Lack of adequate command of his or his area of specialization.
- D. "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.
- E. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.
- F. Multiple annual performance ratings of unsatisfactory or needs improvement as specified in Section 1012.33(1)(a)., F.S.
- G. "Crimes involving moral turpitude."

V. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

24. Respondent's actions constitute just cause to suspend his employment without pay for a period of five (5) days.

B. MISCONDUCT IN OFFICE

25. Respondent's actions constitute misconduct in office. The Respondent through his above-described conduct, has violated Fla. Stat. §1012.33 Fla. Stat., and one or more of Rules 6A-5.056(2)(a) through (e) of the Florida Administrative Code, which defines "misconduct". Respondent's acts are a violation of the adopted school board rules and a violation of the Code of Ethics of the Education Profession in Florida.

C. INCOMPETENCY

26. Respondent's actions constitute incompetency as a result of inefficiency and/or incapacity. Respondent's actions constitute a failure to perform duties prescribed by law and failure to communicate appropriately with and relate to students.

D. SCHOOL BOARD POLICY 4008(B)

27. Respondent is in violation of School Board Policy 4008(B) which requires all employees who have been issued contracts to comply with the provisions of the Florida School Code, State Board Regulations and regulations and policies of the Board.

28. Furthermore, School Board Policy 4008(B) requires that "members of instructional staff shall perform the following functions:"

1. Comply with the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.
2. Teach efficiently and effectively using the books and materials required by the District or the State following the prescribed courses of study and employ sound teaching practices and methods.
3. Infuse in the classroom, the District's adopted Character Education Traits of Respect, Honesty, Kindness, Self-control, Tolerance, Cooperation, Responsibility and Citizenship.
8. Conform to all rules and regulations that may be prescribed by the State Board and by the School Board.

DEMAND FOR RELIEF

WHEREFORE, based upon the foregoing, Petitioner, Robert W. Runcie, Superintendent of Schools, recommends that the School Board suspend the Respondent, Dagoberto Magana-Velasquez without pay for five (5) days, and require completion of sensitivity training based upon the foregoing facts and legal authority.

EXECUTED this 9th day of January, 2017.



ROBERT W. RUNCIE,
Superintendent of Schools,
Broward County

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

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 3rd 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.

THIS HAS BEEN ISSUED AT THE REQUEST OF:
Tria Lawton-Russell (754) 321-2050

RECEIVED THIS NOTICE AND ADMINISTRATIVE COMPLAINT ON:

January 18, 2017, at 2:00 o'clock,
P.m., and served the same on 1/18/2017,
2017, at 2:00 o'clock, P.m., by delivering a

true copy thereof (together with the fee for one day's

attendance and the mileage allowed by law*)

to: DAQOBERTO MAGANA - VELASQUEZ

COMPLETE IF SERVED BY SWORN LAW ENFORCEMENT OFFICER

January 18, 2017, at 2
o'clock, P.m.

By: Det. Berwyn Canellos #116

Title: Detective