

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 ten (10) days without pay of Respondent's employment with the Broward County School Board ("BCSB") 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 (2017).
5. The last known address of MAGANA is 4028 SW 156 Court, Miami, FL 33185.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct occurring during the 2017-2018 and continuing into the 2018-2019 school years.
7. MAGANA is a Math teacher at Miramar High School.
8. The School Board hired MAGANA on August 14, 2007, pursuant to a Professional Services Contract.
9. MAGANA made a series of embarrassing or disparaging comments and exhibited unfair grading practice to his Math students at Miramar High School (hereinafter "Miramar").

10. On February 7, 2017, in addition to other corrective actions outlined below, MAGANA received a five (5) day suspension for making racially insensitive and inappropriate comments to students.
11. On or about March 23, 2017, in addition to the other corrective actions outlined below, MAGANA received a Cease and Desist Letter regarding his continued use of embarrassing and disparaging language toward students.
12. On or about December 7, 2017, in addition to other corrective actions outlined below, , MAGANA was issued a Meeting Summary regarding his use of embarrassing and disparaging language towards students. Among other things, Magana referred to an African American male student as "boy", claiming he was unaware of the racial implications;, threatened to remove students who talked from his class; graded students for their behavior rather than their work product, and failed to grade student work in a timely manner.
13. On or about April 27, 2018, in addition to other corrective action outlined below, , MAGANA was issued a Meeting Summary regarding his failure to contact parents of failing students and unfair grading practices.
14. Despite repeated directives by his administration, and extensive history of discipline for similar issues, MAGANA

has continued during the 2018-2019 school year with his pattern of inappropriate and unprofessional statements to students, racially insensitive treatment of students and inappropriate grading practices.

15. During the 2018-2019 school year, MAGANA also failed to follow proper testing protocols and failed to maintain an environment conducive to learning.
16. On or about September 6, 2018, student B.D. stated that *"[t]he Hispanic kids was [sic] play a hand game and still the teacher didn't say stop on the day of the Code Red."*
17. Student B.D. further stated, *"[o]n many other days the teacher always messes with me and other African American kids but when the Hispanics talk or laugh he doesn't say a word."*
18. Another student N.W. stated *"[t]he white kids was playing hand game in the class and we was talking in the class and the man tell us to stop talking and he pass the white kid in class."*
19. Student T.W. also stated, *"[d]uring the Code Red Drill Mr. Magana gave us a referral because we were laughing."* However, T.W. went on to state, *"other kids were playing pattycake and listening to music loudly and singing along"* with impunity.

20. MAGANA was so disengaged from his students and teaching, that during a Code Red Drill when a student disrupted the Drill, he wrote a referral for the wrong student because he did not know his student's name.
21. Student J.L. recounted an incident on or about October 1, 2018, where "[t]he whole class is raising their hand saying 'can you slow down' and 'we don't get it' and [Magana] ignores the class and proceeds to finishing the problem."
22. The same student went on to describe how Magana embarrassed him in front of the entire class, he indicated, "I raised my hand, he called on me, and I said 'I don't understand,' and he said 'I know because you understand 5th grade level math.' That's when the [entire class] starting [sic] laughing."
23. J.L. further stated, "I'm getting D's in participation for talking."
24. Student I.A. stated that on or about October 1, 2018, MAGANA "[w]rote down math problems on the board such as '1+1' possibly to mock the kids."
25. Another student M.C. stated that MAGANA "[s]poke to a [B]lack girl who is Jamaican in Creole because he assumes she is Haitian."
26. Several students stated that on or about October 5, 2018, MAGANA embarrassed and degraded student, J.L., who asked for

- further explanation of a math problem, by retorting "[y]ou don't get it because it's not 5th grade math", causing the entire class to break out in laughter.
27. According to C.V, MAGANA frequently demeaned students by saying "*slick stuff*," such as math is "*simple and we are used to 2nd or 5th grade math.*"
 28. On or about October 9, 2018, MAGANA deducted ten (10) points from student, N.D.'s grade telling her that she and several students were on his "watch list" of students who would have their grades lowered for talking.
 29. Additionally, the whole class started to laugh when he responded to her inquiry about his grading practices by stating, "*You ask too much questions.*"
 30. On or about October 10, 2018, school administration received a parent complaint concerning the PSAT testing environment in MAGANA's class. According to the parent, her daughter told her students were talking so loudly during the test that two teachers had to stop by to quiet the class down while MAGANA did nothing.
 31. Further, MAGANA never collected cell phones or book bags during the PSAT testing as directed in proctor training, the PSAT script and by the principal, and a phone went off during the test.

32. According to Alicia Carl, School Assessment Specialist, MAGANA was confused about his testing location and while the students had to be in their testing location by 7:30 A.M., MAGANA still had not picked up his testing materials by 7:45 A.M.
33. Consequently, MAGANA started the testing late and neglected to read all the directions.
34. On or about October 11, 2018, R.D. stated that MAGANA was *"[t]aking points off my grade when I am already done with my work for talking."*
35. On or about October 18, 2018, MAGANA refused to give two band students, D.J. and A.P., make up work from a recent band trip when they asked, replying *"[n]o, no no."* *"Don't care"* and *"[n]o, I don't care. I'm busy."*
36. On or about October 26, 2018, two students D.J., and A.P., reported to administration that MAGANA made comments about their writing telling them, *"[s]o if you don't know this, at least you know how to write."*
37. Student, D.A., stated, *"[h]e makes us feel like we are dumb or stupid."* *"He used the word horrible to describe our previous teachers."*
38. Student B.H. stated, *"[h]e doesn't know how to talk to people."* She also stated, MAGANA was *"disrespectful and sarcastic"* and he *"takes off participation points for*

talking or even when somebody goes up and ask for a sheet of paper or pencil."

39. On or about October 29, 2018, student, D.G., stated, "Mr. Magana talks to us as if we are a lower class and like we learn too slow." D.G. further stated, "[h]e once told us that he thinks the Chinese are smarter than us Americans."
40. Another student B.D. stated, "[h]e always say how students in China learn quicker then [sic] us so why we can't understand the work. He also takes off points for talking in his class."
41. Student, N.G., stated that "Mr. Magana speaks really low of students in our class," and she further states, "[h]e also speaks badly about us in his 1st spoken language and how there [sic] handwriting is bad."

III. PREVIOUS DISCIPLINE AND CORRECTIVE ACTION

MEETING SUMMARY MEMOS

42. On or about October 31, 2012, MAGANA received a Meeting Summary regarding his unfair grading scale.
43. On January 23, 2015, MAGANA received a Meeting Summary regarding unfair grading criteria and embarrassing remarks to students.

44. On November 5, 2015, MAGANA received a Meeting Summary regarding lateness to parent/teacher conference, not being prepared, making culturally insensitive and embarrassing comments during the conference.
45. On October 14, 2016, MAGANA received a Meeting Summary regarding his use of embarrassing language towards students and his failure to contact parents regarding grades and/or behavior.
46. On or about December 7, 2017, MAGANA received a Meeting Summary regarding his use of embarrassing and disparaging language towards students. Among other things, Magana referred to an African American male student as "boy", claiming he was unaware of the racial implications;, threatened to remove students who talked from his class; graded students for their behavior rather than their work product, and failed to grade student work in a timely manner.
47. On or about April 27, 2018, MAGANA received a Meeting Summary regarding his failure to contact parents of failing students and unfair grading practices.

VERBAL REPRIMANDS

48. On or about February 13, 2013, MAGANA received a Verbal Reprimand regarding his failure to grade students fairly.

49. On November 8, 2016, MAGANA received a verbal reprimand regarding his failure to take attendance, and to provide accommodations to his ESE students, his grading inaccuracies, failure to provide feedback to students and failure to grade student work.

WRITTEN REPRIMANDS

50. On or about May 30, 2013, MAGANA received a written reprimand for not contacting parents, arriving late to work, leaving students unsupervised, failing to follow proper procedures.

51. On or about October 27, 2017, MAGANA received a letter of reprimand from the District's Professional Standards Committee for the following behavior:

- Unfair grading practices
- Embarrassing remarks to students
- Failure to provide feedback to students
- Grading inaccuracies
- Refusal to accept work
- Negative reinforcement/participation grades for misbehavior
- Failure to contact parents
- Failure to follow a discipline plan

- Failure to check work in a timely manner
- Entering incorrect grades
- Failure to provide ESE accommodations
- Making disparaging remarks about colleagues

FIVE (5) DAY SUSPENSION

52. On February 7, 2017, MAGANA received a five (5) day suspension for making racially insensitive and inappropriate comments to students.

CEASE AND DESIST LETTER

53. On or about March 23, 2017, MAGANA received a Cease and Desist Letter regarding his continued use of embarrassing and disparaging language toward students.

IV. ADMINISTRATIVE CHARGES

54. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through fifty-three (53) above.

55. 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 policies promulgated by the School Board.

56. "Just cause" means cause that is legally sufficient. "Just cause" includes, but is not limited to:

* * *

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 6A-10.080, F.A.C.¹;
2. A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, 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.

¹ Repealed 3-23-16. Now included in 6A-10.081 F.A.C., Principles of Professional Conduct for the Education Profession in Florida.

- 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.

* * *

V. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

57. Respondent's actions constitute just cause to suspend his employment for a period of ten (10) days without pay.

B. MISCONDUCT IN OFFICE

58. 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".

RULE 6A-10.081 F.A.C., PRINCIPLES OF PROFESSIONAL CONDUCT FOR THE EDUCATION PROFESSION IN FLORIDA

59. Pursuant to the Principles of Professional Conduct for the Education Profession in Florida,

- (2) Florida educators **shall**² comply with the following disciplinary principles. Violation of any of these principles **shall subject the individual to revocation**

² Emphasis added.

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, . . . national or ethnic origin, . . . , handicapping condition, . . . , or social and family background and shall make reasonable effort to assure each student is protected from harassment or discrimination.

* * *

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

* * *

5. Shall not make malicious or intentionally false statements about a colleague.

* * *

C. INCOMPETENCY

60. Respondent's actions constitute incompetency. The Respondent, through his above-described conduct has violated Florida Statute §1012.33 and Rule 6A-5.056(3)(a) of the Florida Administrative Code. His actions show a failure to perform the required duties as a result of inefficiency.

- (a) "Inefficiency" means one or more of the following:
1. Failure to perform duties prescribed by law;
 2. Failure to communicate appropriately with and relate to students;
 3. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;

* * *

D. GROSS INSUBORDINATION

61. Respondent's actions constitute gross insubordination. Pursuant to Rule 6A-5.056(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.

62. Respondent violated prior directives relating to his failure to follow proper procedures, continuing use of embarrassing and disparaging remarks to students, and his unfair grading practice and failure to follow directives.

E. WILLFUL NEGLIGENCE OF DUTY

63. Respondent's actions constitute willful neglect of duty. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.
64. Respondent failed to perform his duties as an educator and instructor when he violated prior directives relating to his failure to cease making disparaging and embarrassing comments to students in front of the entire class.

F. SCHOOL BOARD POLICY 4008

65. Respondent is in violation of School Board Policy 4008 titled, "Responsibilities and Duties (Principals and Instructional Personnel)," 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.
66. 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.
4. Treat all students with kindness, consideration and humanity, administering discipline in accordance with regulations of the State Board and the School Board; providing that in no case shall cruel or inhuman punishment be administered to any child attending the public schools.
5. Enforce the Broward County Schools Code of Conduct.

* * *

7. Accurately maintain appropriate student records and documentation and prepare and submit such reports as may be required by regulations of the state board of the District. No teacher shall be entitled to receive any salary unless all such records and reports have been properly maintained and submitted according to requests.
8. Conform to all rules and regulations that may be prescribed by the State Board and by the School Board.

* * *

G. SCHOOL BOARD POLICY 4.9

67. Pursuant to School Board Policy 4.9, "[e]mployees are expected to comply with workplace policies, procedures and regulations, local, state and federal laws; and State Board Rules, both in and out of the work place."

68. Respondent is also in violation of various Section II, Category B Offenses which prohibit the following:

* * *

m) Any violation of The Code of Ethics of the Education Professional in the State of Florida-State Board of Education Administrative Rule.

* * *

p) Insubordination, which is defined as a continuing or intentional failure to obey a direct order, reasonable in nature and given by and with proper authority.

* * *

r) Failure to comply with School Board policy, state law, or appropriate contractual agreements.

* * *

H. SCHOOL BOARD POLIY 6314

69. School Board Policy 6314 proves that achievement testing "SHALL BE CONDUCTED ANNUALLY IN A PROFESSIONAL AND ETHICAL MANNER TO MONITIOR THE STATUS OF STUDENT ACHIEVEMENT".

70. The Policy further provides that the "INDIVIDUAL NEEDS OF EXCEPTIONAL AND BILINGUAL STUDENTS SHALL BE CONSIDERED IN PROVIDING MODIFICAIONS OF TEST INSTRUMENTS AND/OR PROCEDURES".

I. Florida Statute §1008.24 Test Administration and Security

71. Respondent's actions described above violate §1008.24 Florida Statutes addressing test administration and security, which states in part:

(1) A person may not knowingly and willfully violate test security rules adopted by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by school districts pursuant to s. 1008.22, or, with respect to any such test, knowingly and willfully to:

* * *

(e) Fail to follow security rules for distribution and return of secure test as directed, or fail to account for all secure test materials before, during, and after testing;

(f) Fail to follow test administration directions specified in the test administration manuals;

72. The statute further provides for the following penalty:

(2) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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 for ten

(10) days without pay, based upon the foregoing facts and legal authority.

EXECUTED this 14th day of February, 2019.



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 calendar 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.