

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

ROBERT W. RUNCIE,

Petitioner,

v.

HALYNA SHVANK,

Respondent.

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AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Robert W. Runcie, Superintendent of Schools of Broward County, Florida ("Petitioner"), through his undersigned counsel, files this Administrative Complaint against Respondent, Halyna Shvank ("SHVANK"). The Petitioner seeks a three (3) day suspension of Respondent's employment with the Broward County School Board ("School Board"), pursuant to Chapter 120 and Sections 1001.51, 1012.27(5), 1012.33, and 1012.335 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 Broward County School Board, 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 School Board, inclusive of SHVANK.

4. SHVANK is an employee of the Broward County School Board and is currently employed as an autism cluster teacher pursuant to an Annual Services Contract issued in accordance with Section 1012.335, Florida Statutes.
5. The last known address of SHVANK is 4020 SW 72nd Drive, Davie, Florida, 33314.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct occurring in the 2019-2020 school year.
7. SHVANK is an autism cluster teacher at Dania Elementary School (hereinafter "Dania Elementary") where she teaches first grade exceptional student education ("ESE") consisting of a class of eight (8) students.
8. The School Board hired SHVANK on or about October 21, 2004 as a teacher assistant.
9. On or about September 3, 2013, SHVANK was hired as an instructional employee.

10. In the Fall semester of 2019, a Broward College student, Mr. Diego Balin, in his final year of studying education, was placed in SHVANK's class at Dania Elementary so he could complete his practicum.
11. During his time in SHVANK's class, Mr. Balin was shocked and uncomfortable in how SHVANK treated her first grade ESE students.
12. On or about September 18, 2019, Mr. Balin witnessed SHVANK yell at student M.S., as M.S. was trying to unzip his bag. Mr. Balin was concerned about what was occurring in SHVANK's class and the behavior exhibited by SHVANK. As such, Mr. Balin took out his phone and recorded SHVANK.

INCIDENT ONE

13. In the first incident, recorded on video, SHVANK is standing by her desk looking down. A noise brings her attention to M.S. SHVANK then walks over to M.S. while yelling, "Didn't I say no?" and aggressively places her hand underneath M.S.'s chin, slapping his chin and causing M.S.'s head to whip back.
14. SHVANK can then be seen grabbing M.S. by both shoulders, and lifting M.S. and the chair he is in, off the ground while she readjusts M.S. and the chair. SHVANK continues yelling at M.S. while wagging her finger in M.S.'s face, saying "No! Close your mouth! I am going to watch you!"

INCIDENT TWO

15. In a second incident video recorded by Mr. Balin, SHVANK is working with M.S. on words or letters. At the forty-seven (47) second marker in the video, SHVANK is yelling at M.S. while her face is almost touching M.S.'s face.
16. At the fifty-two (52) second marker in the video, as M.S. is leaning away from SHVANK yelling, SHVANK reaches over M.S. and grabs his right shoulder and pulls/yanks him closer to her. SHVANK then uses her right hand to make contact and tap or slap the right side of M.S.'s head.

INCIDENT THREE

17. In a third video, SHVANK is with students as music plays and they go around in a circle. At the one minute and thirty-six (36) second marker in the video, SHVANK is holding onto a student who has stopped dancing.
18. SHVANK then puts both her hands under each side of the student's jaw and aggressively pulls up the student's head yanking it upwards.
19. SHVANK then puts her face in the student's face and yells, "No. No food. No play games. No playground." Once SHVANK releases her grip of the student, the student then puts both his hands in the same exact area SHVANK just grabbed and released.

20. The Petitioner respectfully submits SHVANK's behavior was aggressive, excessive, and not appropriate re-directive techniques and/or prompts for any student.

DUE PROCESS

21. On or about January 22, 2020 SHVANK was hand delivered a copy of her investigative report in this matter.

22. On or about May 13, 2020, SHVANK, along with her representation, attended her Professional Standards Committee meeting where just cause was found for a three (3) day suspension.

23. On August 17, 2020, SHVANK, along with representation, attended her Pre-Disciplinary Conference regarding the recommendation for a three (3) day suspension.

III. ADMINISTRATIVE CHARGES

24. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through twenty-three (23), above.

25. Just cause exists for the requested relief pursuant to Fla. Stat. § 1012.33 and 1012.335, Section 6A-5.056 F.A.C., the Respondent's employment contract, School Board rules, policies, and regulations, the Code of Ethics of the Education Profession, and the Employee Disciplinary Guidelines promulgated by the School Board.

26. "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:

- a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.¹;
- 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.

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 students²;**
- 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.

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

² Emphasis added.

IV. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

27. Respondent's actions constitute just cause to suspend her for three (3) days without pay.

B. MISCONDUCT IN OFFICE

28. Respondent's actions, as alleged in paragraphs six (6) through twenty-three (23), incorporated herein and by reference, constitute misconduct in office. The Respondent through her above-described conduct, has violated Fla. Stat. § 1012.335 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

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

(2) Florida educators **shall**³ 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.

³ Emphasis added.

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

C. INCOMPETENCY

30. Respondent's actions, as alleged in paragraphs six (6) through twenty-three (23), incorporated herein by reference, constitute incompetency. The Respondent, through her above-described conduct has violated Florida Statute §1012.335 and Rule 6A-5.056(3)(a) of the Florida Administrative Code. Her actions show a failure to perform the require 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 students⁴;**

D. SCHOOL BOARD POLICY 4008

31. Respondent's actions, as alleged in paragraphs six (6) through twenty-three (23), incorporated herein by reference, are in violation of School Board Policy 4008 titled, "Responsibilities and Duties (Principals and Instructional Personnel)," which requires all employees who have been

⁴ Emphasis added.

issued contracts to comply with the provisions of the Florida School Code, State Board Regulations and regulations and policies of the Board.

32. 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.

4. Treat all students with kindness, consideration and humanity, administering discipline in accordance with regulations of the State Board and the School Board; provided that in no case shall cruel or inhuman punishment be administered to any child attending the public schools.

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, Halyna Shvank, for three (3) days without pay based upon the foregoing facts and legal authority.

Respectfully submitted,

BY: /s/Andrew Brett Carrabis
Andrew Brett Carrabis, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 7, 2020, I forwarded this document, by email transmission, to Robert F. McKee, Esq., Katherine Heffner, Esq., Robert F. McKee, P.A., 1718 E. 7th Avenue, Suite 301, Tampa, FL, 33675, yborlaw@gmail.com; katheffner@gmail.com; bdjarnangin@gmail.com.

/s/Andrew Brett Carrabis
ANDREW BRETT CARRABIS, 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. You may also present a written statement presenting your side of the story and/or reasons why the proposed action should not be taken. 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.