

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner,

v.

BRENDA JOYCE FISCHER,

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, Brenda Joyce Fischer ("FISCHER"). 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), 1012.335, 1012.55, and 1012.585 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 FISCHER.
4. FISCHER 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 1012.335(2), Florida Statutes (2018).
5. The last known address of FISCHER is 2812 N. 46th Avenue, Unit G673, Hollywood, Florida 33021.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct occurring in the 2018-2019 school year.
7. FISCHER is an Art teacher at Western High School (hereinafter "Western").
8. The School Board hired FISCHER on November 10, 1992, pursuant to a Professional Services Contract.
9. On or about August 23, 2018, FISCHER showed a video to her first and second period art/photography classes containing inappropriate nude images.

10. FISCHER, by her own admission, had previewed the video before she played it for her first and second period classes.
11. FISCHER showed students in her first period photography class images of a topless female holding the genitals of a male who was naked from the waist down.
12. In addition, FISCHER showed students in her first period photography class images of a male kneeling and appearing to stare into the naked genitals of a female standing in front him.
13. FISCHER also showed students in her first period photography class other images, which are inappropriate for display in a high school class.
14. After showing the images to her first period class, FISCHER showed the same images again to her second period photography class.
15. According to one of FISCHER's first period students, D.V., *"as the video went playing an image popped up of a naked girl, you could see her pubic hair and her private parts"*.
16. On or about August 28, 2018, another first period student, T.P., stated, *"[i]n the video there were some inappropriate images shown. One was a male and female, both nude, and the female's hand was on the male's groin area."*

17. T.P. further stated, "[t]here was another image of a female that was again nude and showed her breasts and pelvic region."
18. Another student, A.P., stated, "[a] video was being shown of a photographer's work. The work consisted of pictures showing naked women with a male looking at her private vaginal area. Women's breasts were also shown."
19. A.P., further stated, "[t]here was one more picture of a male crouched on the floor being explained as 'submitting to a dominant sex partner.'"
20. Student A.F., also stated, "Ms. Fisher [sic] has show the class a Photography video showing a nude man on the floor and the video was explaining about how it show that he has a [d]ominant [s]exual [p]artner in his life."
21. Student L.A.H. stated, "I saw a picture of a man looking at a woman's private area."
22. According to student, D.M., "[p]ictures of women and men nude were displayed in creative photography 101 by Ms. Fischer."
23. D.M. further stated, "{a}t the sight of the images she hesitated to remove but as she saw the pictures continued, she stopped the video and gave us an alternate assignment."
24. Students in FISCHER's second period class also viewed the video containing the inappropriate images.

25. Student, S.B., stated, "she had informed us that we would be watching two short films about photography but for one of them she knew had some inappropriate images so she was going to sit by the computer to fast forward/block the images when it popped up."
26. S.B. further stated, "[a]s we were watching it some nude images started to pop up and she kinda hurried up to fast forward it."
27. Another student in FISCHER's second period class, R.B., stated, "[i]n the slide show contained nude pictures of both men and women individually and together [sic]. As I recall there was also a picture of a women holding a mans [sic] private area."
28. Student, I.T., stated, "[a]bout a few minutes into the video naked bodies were showed [sic], a man crouched down and other pictures. It then talked about sexual things but she covered the projector and skipped through it."

III. PREVIOUS DISCIPLINE AND CORRECTIVE ACTION

SUMMARY CONFERENCE LETTER

29. On or about February 8, 2017, FISCHER received a Summary of Conference letter, directing her to:
- Refrain from making physical contact with any student

- Refrain from screaming at any Western stakeholders
- Communicate with all Western stakeholders in a respectful manner
- Communicate with parents in a timely manner when students are struggling in your classes

VERBAL REPRIMAND

30. On or about June 6, 2014, FISCHER received a Verbal Reprimand to refrain from exposing a student to unnecessary embarrassment and disparagement.

WRITTEN REPRIMANDS

31. On or about February 26, 1997, FISCHER received a Letter of Reprimand regarding her use of inappropriate language with students and directing her to cease and desist from inappropriate remarks.
32. On or about April 28, 1997, FISCHER received a Written Reprimand directing FISCHER to cease and desist making inappropriate remarks to students in her classes.
33. On or about November 2, 2017, FISCHER was issued a Letter of Reprimand regarding inappropriate touching and yelling at students and engaging in unprofessional conversations.

34. On or about October 29, 2018, FISCHER received a Letter of Reprimand by the Education Practices Commission regarding inappropriate conduct with students.

3-DAY SUSPENSION

35. September 1, 2009 FISCHER received a 3-day suspension for her use of inappropriate language.

IV. ADMINISTRATIVE CHARGES

36. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through thirty-five (35) above.

37. 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.

38. "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 students;
 - c. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
 - d. Disorganization of his or her 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 her area of specialization.
- * * *
- D. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

* * *

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

IV. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

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

B. MISCONDUCT IN OFFICE

40. Respondent's actions constitute misconduct in office. The Respondent through her 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

41. 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 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.

² Emphasis added.

C. INCOMPETENCY

42. Respondent's failure to perform duties prescribed by law and to communicate appropriately with and relate to students constitutes incompetency as a result of inefficiency.
43. Respondent knowingly played a video containing inappropriate nude images and sexual content to her first and second period classes.
44. Respondent failed to keep the students in her first and second period classes from viewing the inappropriate images in the video.
45. Furthermore, Respondent's lack of adequate command of her area of specialization constitutes incapacity.
46. Respondent failed to adequately prepare her classroom assignment/lesson plan before showing the video containing inappropriate nude images and sexual content to her first and second period classes.

D. WILLFUL NEGLIGENCE OF DUTY

47. Respondent's actions constitute willful neglect of duty. Respondent knowingly played a video containing inappropriate nude images and sexual content to her first and second period classes

48. Respondent failed to properly and/or adequately review her teaching materials before showing the video containing inappropriate nude images and sexual content to her classes.

E. SCHOOL BOARD POLICY 4008

49. 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. 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.

* * *

F. SCHOOL BOARD POLICY 4.9

50. 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."

51. 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

* * *

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

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G. SCHOOL BOARD POLICY 6100

52. Respondent is in violation of School Board Policy 6100(1), titled, "Audiovisual Materials Use Policy," which requires that: "[a]ll instructional resources, including audiovisual materials, must:"

a) be consistent with School Board of Broward County policies, educational goals and the objectives of specific courses and/or activities;

* * *

- d) reflect the best teaching practices based on age appropriateness and instructional relevance.

53. Furthermore, School Board Policy 6100(3) states, "[t]he usage of audiovisual materials from inside or outside the school collection must:"

- a) meet principal or designee approval prior to use with students;

* * *

- c) be previewed in their entirety prior to being shown to students by the teacher using the resources, with special attention paid to assuring that language, theme, violence, and content are consistent with the maturity level of the students who will be viewing the material;

* * *

54. Additionally, pursuant to School Board Policy 6100(4)(a), "[t]he teacher is responsible for use [of all instructional material] within the specific classroom."

DEMAND FOR RELIEF

WHEREFORE, based upon the foregoing, Petitioner, Robert W. Runcie, Superintendent of Schools, recommends that the School Board suspend the Respondent, Brenda Joyce Fischer, for three (3)

days without pay based upon the foregoing facts and legal authority.

EXECUTED this 19th day of March, 2019.

A handwritten signature in blue ink, appearing to read "Robert W. Runcie", written over a horizontal line.

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.