

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	Case No. 03-0186
)	
NEIL D. LEFKOWITZ,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 21, 2003, by video teleconference, with the parties appearing in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Melinda L. McNichols, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue
Suite 400
Miami, Florida 33132

For Respondent: Neil D. Lefkowitz, pro se
1635 Northeast Miami Gardens Drive
Number 235
North Miami Beach, Florida 33179

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the letter from the Petitioner dated January 16, 2003, and in

the Notice of Specific Charges filed February 27, 2003, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In a letter dated January 16, 2003, the Miami-Dade County School Board ("School Board") notified Neil D. Lefkowitz that the School Board had suspended him and initiated dismissal proceedings against him at its January 15, 2003, meeting. The School Board asserted in the letter that the action was taken against Mr. Lefkowitz because he allegedly was guilty of immorality, misconduct in office, violation of School Board Rules 6Gx13-4-1.09 and 6Gx13-4A-1.21, and Rule 6B-1.001 and 6B-1.006, Florida Administrative Code. Mr. Lefkowitz timely requested an administrative hearing, and the matter was transmitted to the Division of Administrative Hearings for assignment of an administrative law judge.

In a three-count Notice of Specific Charges filed with the Division of Administrative Hearings on February 27, 2003, the School Board, in Count I, charged that Mr. Lefkowitz had committed misconduct in office by violating Rule 6B-1.001(1), (2), and (3), Florida Administrative Code, the Code of Ethics of the Education Profession, and by violating Rule 6B-1.006(3)(a), (e), and (h), Florida Administrative Code, the Principles of Professional Conduct for the Education Profession; the School Board, in Count II, charged that Mr. Lefkowitz had violated

School Board Rule 6Gx13-4-1.09, which governs employee-student relationships; and the School Board, in Count III, charged that Mr. Lefkowitz had violated School Board Rule 6Gx13-4A-1.21, governing a teacher's responsibilities and duties. The charges were based on the School Board's allegations that, from January through April 2002, Mr. Lefkowitz dated two 11th-grade students who attended North Miami Beach Senior High School ("North Miami Beach High"); that Mr. Lefkowitz engaged in sexual intercourse with one of the students; that Mr. Lefkowitz invited the two female students and several male students who attended North Miami Beach High to his apartment; that the students participated in a video project with several of Mr. Lefkowitz's college friends; that Mr. Lefkowitz transported these students in his car; and that, on or about April 21, 2002, Mr. Lefkowitz telephoned one of the female students he had allegedly dated, used profanity, and threatened to kill her.¹

At the hearing, the School Board presented the testimony of Allyn Bernstein; Victor Hernandez; J.D.²; Y.L.D.; Glamour Yveline Legros; and Raymond Fontana. Petitioner's Exhibits 1 through 4 were offered and received into evidence. Mr. Lefkowitz testified in his own behalf and presented the testimony of Carol Lefkowitz; Alvaro Gutierrez; Solomon Neisloss; M.D.; and M.T.R. Respondent's Exhibits 1 and 2 were offered and received into evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings on June 9, 2003, and the parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Miami-Dade County, Florida. Article IX, Florida Constitution; Section 230.03, Florida Statutes (2002).³

2. At the times material to this proceeding, Mr. Lefkowitz taught emotionally handicapped and seriously emotionally disturbed students in North Miami Beach High's Bertha Abbess exceptional student education program. He has been employed by the School Board since 1993, and is currently employed under a professional services contract.

3. At the times material to this proceeding, Mr. Lefkowitz and at least one other person were making a music video for a course they were taking at Florida International University. Alvarro Gutierrez was working with Mr. Lefkowitz on the video,

and Mr. Gutierrez had chosen the girl who would sing and would choreograph the dances for the video. Mr. Gutierrez did not, however, have any dancers, and Mr. Lefkowitz told Mr. Gutierrez that he knew some girls "from school" who were dancers and that he would ask them if they wanted to dance in the video.

4. J.D. was, at the times material to his proceeding, an 11th-grade student at North Miami Beach High, although she was not a student of Mr. Lefkowitz. Rather, J.D. met Mr. Lefkowitz in a school hallway, while she was selling candy for her French class, and they apparently had several conversations during school hours.

5. In one of these conversations, Mr. Lefkowitz mentioned that he was filming a music video for a college class. J.D. asked if she could be in the video, and Mr. Lefkowitz agreed and asked J.D. if she had any friends who could also dance in the video.

6. J.D. introduced Mr. Lefkowitz to her friend N.F. N.F. was, at the time, an 11th-grade student at North Miami Beach High, but she did not know Mr. Lefkowitz until J.D. introduced them. Mr. Lefkowitz did not know at the time he met her that N.F. was a student at North Miami Beach High.

7. J.D. also introduced Mr. Lefkowitz to Glamour Legros, whom she knew because she and Ms. Legros attended the same church. Prior to introducing Mr. Lefkowitz to Ms. Legros, J.D.

had told him on a number of occasions how much Ms. Legros wanted to meet him.⁴

8. Ms. Legros and N.F. shared an apartment. Ms. Legros was not a student at the times material to this proceeding, and she was older than N.F. and J.D.

9. J.D., N.F., and Ms. Legros agreed to dance in the music video and went to Mr. Lefkowitz's apartment several times to discuss, rehearse, and shoot the video.

10. Mr. Lefkowitz picked up J.D., N.F., and Ms. Legros and drove them to his apartment on the occasions when they were working on the video. Mr. Lefkowitz also took J.D. and her friends home on these occasions.

11. M.D., J.D.'s brother and a student at North Miami Beach High at the time, went to Mr. Lefkowitz's apartment once, and H.D., another student at North Miami Beach High, was at Mr. Lefkowitz's apartment on at least one occasion, when she danced for the music video. These two students also rode with Mr. Lefkowitz in his car on at least one occasion.

12. In addition to her visits to Mr. Lefkowitz's apartment and her rides in his car, J.D. spoke with Mr. Lefkowitz numerous times on the telephone.

13. When working on the video, J.D. went to Mr. Lefkowitz's apartment with her friends. She was alone with

Mr. Lefkowitz once, after her friends left Mr. Lefkowitz's apartment; Mr. Lefkowitz took her home after about an hour.

14. Mr. Gutierrez did not observe Mr. Lefkowitz engage in any improper behavior with J.D. or her friends at Mr. Lefkowitz's apartment during the time they were discussing, rehearsing, and shooting the music video.

15. On April 21, 2003, Ms. Legros called the police and she and N.F. reported that Mr. Lefkowitz had come to their apartment, beat on the door, and threatened them verbally. According to the police incident report, the police were dispatched at 10:09 p.m. and arrived at Ms. Legros's and N.F.'s apartment at 10:12 p.m.

16. Mr. Lefkowitz had outpatient surgery on April 18, 2002. Mr. Lefkowitz's mother was with him at his apartment from April 18 through the morning of April 22, 2002, the day he returned to work. According to Ms. Lefkowitz, Mr. Lefkowitz was in bed, asleep, on the night of April 21, 2002.

17. On April 22, 2002, Raymond Fontana, the principal of North Miami Beach High, received a telephone call from a woman who identified herself to Mr. Fontana's secretary as J.D.'s aunt and who told Mr. Fontana that an exceptional student education teacher named "Neil" was having a relationship with J.D., a student at North Miami Beach High; the caller also reported that

the teacher had been involved in an "incident" that had been reported to the police.

18. Ms. Legros was the person who called Mr. Fontana.⁵

19. Mr. Fontana called Allyn Bernstein, an assistant principal at North Miami Beach High, into his office and asked her to look into the allegations made by the caller.

20. Dr. Bernstein called Mr. Lefkowitz into her office and, before she could say anything, Mr. Lefkowitz told her that he knew why she had summoned him, that an ex-girlfriend had threatened to make trouble for him because he wouldn't give her money. When Dr. Bernstein questioned Mr. Lefkowitz about his relationship with the student J.D., Mr. Lefkowitz denied knowing her.

21. Dr. Bernstein also called J.D. into her office. In response to Dr. Bernstein's questions, J.D. denied knowing Mr. Lefkowitz. She stated that she did not have a social relationship with any teacher outside of school and that she had never met any staff member outside school.

22. After Dr. Bernstein reported to Mr. Fontana that she believed that there might be "something there,"⁶ Mr. Fontana reported the matter to the school district personnel, who referred the matter to the Miami-Dade School Police Department, and an investigation was initiated.

23. Once the investigation was initiated, Mr. Lefkowitz was placed on alternate assignment at his home effective May 3, 2002.

24. The investigator, Detective Victor Hernandez, interviewed N.F., Ms. Legros, J.D., H.D., M.D., and Mr. Lefkowitz. During the course of his investigation, Detective Hernandez was told that Mr. Lefkowitz and N.F. had dated and that they had had sexual intercourse. When Detective Hernandez interviewed Mr. Lefkowitz, Mr. Lefkowitz denied that he knew either J.D. or N.F.

25. In a report dated September 2, 2002, Detective Hernandez described his investigation and set forth the substance of the statements given by the witnesses. Detective Hernandez concluded that the charges that Mr. Lefkowitz had violated Rules 6B-1.001 and 6B-1.006, Florida Administrative Code, and School Board Rules 6Gx13-4.109 and 6Gx13-4A-1.21 were substantiated.

26. A Conference-for-the-Record was held on October 2, 2002, with Paul Greenfield, District Director, presiding. Mr. Lefkowitz attended the Conference-for-the-Record, together with the School Board's Director of Region II and Mr. Fontana. Mr. Lefkowitz requested that his attorney be allowed to attend, but this request was denied.⁷

27. Mr. Greenfield reviewed Mr. Lefkowitz's history with the Miami-Dade County public school system and presented the results of the investigation. Mr. Lefkowitz denied having met J.D. and N.F. and denied that they were ever in his apartment.

28. After the Conference-for-the-Record, Mr. Fontana recommended to the Superintendent of Region II that Mr. Lefkowitz's employment be terminated.

29. Mr. Lefkowitz lied to Dr. Bernstein, to Detective Hernandez, and to the participants in the Conference-for-the-Record about his relationships with J.D. and N.F. because he knew it was improper for the students to be in his apartment and for him to associate with students outside of school. Mr. Lefkowitz expressed remorse at his behavior and acknowledged that his conduct was not appropriate.

30. J.D. testified that she and Mr. Lefkowitz never dated or had sexual intercourse. Ms. Legros testified that she did not know whether Mr. Lefkowitz and J.D. had had sexual intercourse. She claimed, however, to have observed Mr. Lefkowitz and J.D. at Mr. Lefkowitz's apartment hugging and kissing and acting like "boyfriend and girlfriend to me."⁸

31. Ms. Legros has no personal knowledge that Mr. Lefkowitz had sexual relations with N.F., but testified that N.F. told Ms. Legros that she had had a relationship with Mr. Lefkowitz.

32. An 11th-grade student testified at the hearing that he considered Mr. Lefkowitz to be a good teacher, a role model, and a teacher that he would remember after high school.

33. Mr. Fontana testified that he thought Mr. Lefkowitz's effectiveness as a teacher had been impaired because of the "manner in which he dealt with students, having students come to his apartment, dealing with students that are out of the realm of his teaching responsibilities." Mr. Fontana observed that "once you breach that student/teacher relationship and you lose that professionalism I don't think you can ever go back and have the same degree of effectiveness as a teacher."⁹

34. In making his decision to recommend that Mr. Lefkowitz be terminated from his employment as a teacher, Mr. Fontana considered Mr. Lefkowitz's employment history with the Miami-Dade County public school system. Mr. Lefkowitz was twice referred for evaluation as to his medical fitness to perform his duties as a teacher and was twice found fit to perform these duties. Mr. Lefkowitz was the subject of three allegations of battery on a student, one in February 1995, one in February 1999, and one in March 1999; the February 1995 charge was substantiated,¹⁰ and Mr. Lefkowitz was given a verbal warning; the remaining two charges were unsubstantiated. Finally, in August 1995, Mr. Lefkowitz had an unacceptable annual evaluation, was given a TADS Category VII prescription in

the area of Professional Responsibility, and successfully completed the prescription within the specified time.

Summary

35. The greater weight of the credible evidence presented by the School Board is insufficient to establish that Mr. Lefkowitz dated either J.D. or N.F. or that Mr. Lefkowitz had sexual intercourse with N.F. The School Board presented no direct evidence establishing that J.D. and Mr. Lefkowitz had a romantic relationship or that N.F. and Mr. Lefkowitz had a sexual relationship. The School Board relied exclusively on Ms. Legros's testimony to establish that these relationships existed,¹¹ and most of her testimony was based on hearsay, not personal knowledge. Ms. Legros had no personal knowledge that N.F. had sexual relations with Mr. Lefkowitz, and the only behavior that Ms. Legros testified that she personally observed was Mr. Lefkowitz and J.D. in Mr. Lefkowitz's apartment hugging and kissing and, in Ms. Legros's estimation, acting like boyfriend and girlfriend.

36. Ms. Legros is found not to be a particularly credible witness, and her uncorroborated testimony is not sufficiently persuasive to establish that Mr. Lefkowitz and J.D. more likely than not were dating or that the hugging and kissing, if she indeed observed such behavior, was sexual in nature. Both J.D. and Mr. Lefkowitz denied having a romantic relationship, but it

is difficult to credit fully their testimony, given that both J.D. and Mr. Lefkowitz lied to School Board personnel about knowing one another and that Mr. Lefkowitz lied to School Board personnel about being acquainted with N.F. However, on reflection and after a careful review of the evidence, the testimony of J.D. and Mr. Lefkowitz is credited over that of Ms. Legros.

37. The greater weight of the credible evidence presented by the School Board is not sufficient to establish that Mr. Lefkowitz telephoned N.F. on April 21, 2002, and threatened her or that he went to the apartment shared by Ms. Legros and N.F. on the night of April 21, 2002, and made threats to harm them. Mr. Lefkowitz's mother testified unequivocally that she was with Mr. Lefkowitz from April 19 through the morning of April 22, 2002, and that he was recovering from surgery and sleeping on the night of April 21, 2002. The School Board presented no evidence that Mr. Lefkowitz telephoned N.F. and threatened her, and Ms. Legros was the only witness to testify that Mr. Lefkowitz came to her apartment and made threats. The testimony of Mrs. Lefkowitz is credited over that of Ms. Legros.¹²

38. The evidence presented in this case is sufficient to establish that Mr. Lefkowitz failed to exercise the best professional judgment, failed to maintain the highest ethical

standards, and used his position as a teacher to his personal advantage by recruiting young women students to perform as dancers in the music video he was filming as part of a college assignment. Mr. Lefkowitz admitted that he had engaged in inappropriate conduct: He had had a personal relationship outside of school with both J.D. and N.F.; J.D. and N.F. danced in a music video he made for a college project; J.D. and N.F. were in his apartment several times; and he drove J.D. and N.F. in his car to and from his apartment. The contents and tone of the written statement Mr. Lefkowitz adopted as his testimony supports an inference that he was on very familiar terms with both J.D. and N.F., and with Ms. Legros as well.¹³

Mr. Lefkowitz's poor judgment in developing significant social relationships outside of school with two female students at North Miami Beach High and his inappropriate behavior in having these students as guests in his car and in his apartment reflect poorly on him as a teacher employed by the School Board.

39. Mr. Lefkowitz also failed to exercise the best professional judgment and to maintain the highest ethical standards with respect to his dealings with the School Board during the investigation of his conduct. Mr. Lefkowitz lied to Dr. Bernstein and Detective Hernandez and at the October 2, 2002, Conference-for-the-Record when he said he did not know J.D. or N.F., and he admitted at the final hearing that he lied

because he knew that he should never have involved these students in making the music video, should never have given these students rides in his car, and should never have invited the students to his apartment. Mr. Lefkowitz's lack of truthfulness reflects poorly on him as a teacher employed by the School Board.

40. The evidence presented by the School Board is also sufficient to establish that Mr. Lefkowitz engaged in one instance of inappropriate behavior involving students M.D. and H.D. Mr. Lefkowitz admitted that, on one occasion, he picked up these two students in his car and drove them to his apartment, where H.D. danced in the music video and M.D. observed Mr. Lefkowitz and cohorts filming the music video. Mr. Lefkowitz did not have repeated out-of-school contacts with these two students, as he did with J.D. and N.F., but his behavior with M.D. and H.D. reflected poorly on him as a teacher employed by the School Board.

41. The evidence presented by the School Board, which consisted only of Mr. Fontana's conclusory and general statements, is not sufficient to establish that Mr. Lefkowitz's conduct impaired his effectiveness as a teacher in the Miami-Dade County public school system. The evidence presented by the School Board is, however, sufficient to permit an inference that Mr. Lefkowitz's effectiveness as a teacher was impaired.

Mr. Lefkowitz encouraged students to develop personal relationships with him and to spend significant amounts of time with him in his apartment. Even though J.D., the young woman with whom he was primarily involved, was not a student in his class, his willingness to become involved with this student and her friends brings his personal and professional judgment into question and necessarily affects the school administration's assessment of his fitness for supervising high school students. It may also be inferred that Mr. Lefkowitz's effectiveness as an employee of the School Board was also impaired because he lied to the principal and assistant principal of his school and to the regional superintendent of the Miami-Dade County public school system about even knowing J.D. By not being truthful with the school system administrators, Mr. Lefkowitz diminished his credibility as a professional educator.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2002).

43. Because this case is a proceeding to terminate Mr. Lefkowitz's employment with the School Board and does not involve the loss of a license or certification, the School Board has the burden of proving the allegations in the Notice of

Specific Charges by a preponderance of the evidence. McNeill v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

44. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289, n.1 (Fla. 2000) (relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

45. "Whether a particular action constitutes a violation of a rule . . . 'is a factual question to be decided in the context of the alleged violation.'" McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995) (quoting Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995)). See also Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1st DCA 1985) (Whether there was a deviation from the required standard of conduct is not a conclusion of law, it is an ultimate finding of fact within the fact-finding discretion of the hearing officer.)

46. Section 230.23(5), Florida Statutes (2002), provides that a school board has the power to suspend and dismiss employees as follows:

(f) Suspension and dismissal and return to annual status.--Suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed or returned to annual contract except as provided in chapter 231.

47. At the times relevant to this proceeding, Mr. Lefkowitz was employed under a professional services contract. Section 231.36, Florida Statutes (2002), provides in pertinent part:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated pursuant to s. 231.17 or employed pursuant to s. 231.1725 and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

* * *

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a). . . .

48. In Count I of the Notice of Specific Charges, the School Board charged Mr. Lefkowitz with misconduct in office, which is defined in Rule 6B-4.009, Florida Administrative Code, as follows:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

49. In the Notice of Specific Charges, the School Board charged that Mr. Lefkowitz had violated the following provisions of Rule 6B-1.001, Florida Administrative Code, the Code of Ethics of the Education Profession in Florida:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the

educator strives to achieve and sustain the highest degree of ethical conduct.

50. In the Notice of Specific Charges, the School Board charged that Mr. Lefkowitz had violated the following provisions of Rule 6B-1.006, Florida Administrative Code, the Principles of Professional Conduct for the Education Profession in Florida:

(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.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

* * *

(h) Shall not exploit a relationship with a student for personal gain or advantage.

51. Based on the findings of fact herein, the School Board has proven by a preponderance of the evidence that Mr. Lefkowitz violated Rule 6B-1.001(2) and (3), Florida Administrative Code, and Rule 6B-1.006(3)(h), Florida Administrative Code.

52. The offense of misconduct in office has two elements, however. In order for Mr. Lefkowitz to be found guilty of misconduct in office, the violations of Rule 6B-1.001(2) and (3), Florida Administrative Code, and of Rule 6B-1.006(3)(h), Florida Administrative Code, must be so serious that Mr. Lefkowitz's

effectiveness as a teacher employed by the School Board has been impaired. The School Board failed to prove by a preponderance of the direct evidence that Mr. Lefkowitz's actions were so serious that they impaired his effectiveness as a teacher. See McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2d DCA 1996) ("The School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offense [misconduct in office] which may warrant dismissal.") Nonetheless, based on the findings of fact herein, it may be inferred that Mr. Lefkowitz's conduct impaired his effectiveness as a teacher in the Miami-Dade County public school system. See Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000) (In the absence of direct evidence, impaired effectiveness can be inferred from the nature and seriousness of the misconduct.)

53. This is not to say, however, that, under the circumstances, Mr. Lefkowitz's conduct is so serious that his effectiveness in the school system is permanently impaired. The School Board failed to carry its burden of proving the most serious charges against Mr. Lefkowitz, that he dated J.D., that he had sexual intercourse with N.F., or that he threatened to do violence to N.F. and Ms. Legros.

54. In Count II of the Notice of Specific Charges, the School Board charged Mr. Lefkowitz with violating School Board

Rule 6Gx13-4-1.09, Employee-Student Relationships, by engaging in conduct with students that gave the appearance of impropriety. Rule 6Gx13-4A-1.21 provides:

Nothing is more important to Miami-Dade County Public Schools than protecting the physical and emotional well-being of its students. This policy is developed to ensure that all School Board employees will conform to the highest professional, moral, and ethical standards in dealing with students on or off school property.

As such, all School Board personnel are strictly prohibited from engaging in unacceptable relationships and/or communications with students. Unacceptable relationships and/or communications with students include, but are not limited to the following: dating; any form of sexual touching or behavior; making sexual, indecent or illegal proposals, gestures or comments; exploiting an employee-student relationship for any reasons; and/or demonstrating any other behavior which gives an appearance of impropriety.

55. Based on the findings of fact herein, the School Board has proven by a preponderance of the evidence that Mr. Lefkowitz engaged in unacceptable social relationships with J.D. and N.F., and, to a lesser degree, with M.D. and H.D., and that Mr. Lefkowitz engaged in behavior that certainly gave the appearance of impropriety.

56. In Count III of the Notice of Specific Charges, the School Board charged Mr. Lefkowitz with violating School Board Rule 6Gx13-4A-1.21, Responsibilities and Duties, by engaging in

conduct unbecoming a School Board employee. Rule 6Gx13-4A-1.21 provides in pertinent part:

I. Employee conduct.

All persons employed by The School Board of Miami-Dade County, Florida, are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

Based on the findings of fact herein, the School Board has proven by a preponderance of the evidence that Mr. Lefkowitz violated School Board Rule 6Gx13-4A-1.21. By developing social relationships outside of school with J.D., N.F., and to a lesser degree, M.D. and H.D., and by lying to School Board personnel, Mr. Lefkowitz engaged in conduct that did not reflect well on him as a teacher.

57. The School Board seeks to terminate Mr. Lefkowitz's employment. Based on all of the evidence presented by the School Board and by Mr. Lefkowitz, the School Board certainly has just cause to discipline Mr. Lefkowitz, but, under the circumstances of this case, it is concluded that a penalty less than termination is appropriate. The School Board failed to prove the three most serious charges against Mr. Lefkowitz, but the violations that the School Board did prove by a preponderance of the evidence are quite serious. In determining

the penalty recommended herein, consideration has been given to Mr. Lefkowitz's prior disciplinary history with the School Board. Consideration has also been given to Mr. Lefkowitz's expressions of remorse as a mitigating factor and to his lying to School Board personnel about his involvement with J.D. and N.F. as an aggravating factor.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order;

1. Finding that Neil D. Lefkowitz is guilty of having committed misconduct in office and of violating School Board Rules 6Gx13-4-1.09 and 6Gx13-4A-1.21;

2. Suspending Mr. Lefkowitz without pay for a period of 24 months, retroactive to the date on which the School Board suspended him from his employment without pay; and

3. Imposing such conditions on Mr. Lefkowitz upon his return to employment as the School Board deems appropriate.

DONE AND ENTERED this 31th day of July, 2003, in
Tallahassee, Leon County, Florida.

Patricia H. Malono

PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31th day of July, 2003.

ENDNOTES

^{1/} At the hearing, counsel for the School Board stated that the School Board was not seeking to terminate Mr. Lefkowitz on the basis of the allegations in paragraphs 6 through 14 of the Notice of Specific Charges relating to past disciplinary actions taken against Mr. Lefkowitz but, rather, that these previous disciplinary actions were taken into consideration in the decision to recommend Mr. Lefkowitz's termination.

^{2/} Students and their parents will be referred to in this Recommended Order by their initials in order to preserve, at least in this Recommended Order, the confidentiality of the students' identity.

^{3/} Statutory references are to the 2002 version of the Florida Statutes; the Florida K-20 Education Code was not effective until January 7, 2003, after the events giving rise to this action allegedly occurred.

^{4/} Although J.D. denied knowing Ms. Legros well, Mr. Lefkowitz related in the statement that he adopted and introduced into

evidence as Respondent's Exhibit 2 that, from the first time he met J.D., J.D. talked to him about "her friend," Ms. Legros: "J.D. continued calling me and continued telling me how her friend wanted to meet me." Respondent's Exhibit 2.

⁵/ In her testimony, Ms. Legros first denied telephoning North Miami Beach High, then admitted having called the school to report that Mr. Lefkowitz had threatened her. Ms. Legros also insisted in her testimony that she had not identified herself as J.D.'s aunt when she called North Miami Beach High to report that Mr. Lefkowitz and J.D. were having an "affair"; Mr. Fontana, on the other hand, testified that he spoke with a person who claimed to be "an aunt of one of our students," who told him about the alleged affair of Mr. Lefkowitz and J.D. Transcript at page 132. Mr. Fontana's testimony is credited over that of Ms. Legros.

⁶/ Transcript at page 133.

⁷/ Apparently Mr. Lefkowitz was not a member of the United Teachers of Dade, and, therefore, no union representative appeared with him at the Conference-for-the-Record, either.

⁸/ (Transcript at 91.)

⁹/ Transcript at page 139.

¹⁰/ Mr. Lefkowitz was found to have held a child's arms behind his back when walking him to a corner of the classroom.

¹¹/ N.F. did not testify at the final hearing, although she was listed as a witness on the School Board's witness list.

¹²/ Even though Ms. Legros's brief testimony on this alleged incident is consistent with the Miami-Dade County Police Department Offense-Incident Report introduced into evidence as part of Petitioner's Exhibit 1, the information included in the report consisted only of statements made by Ms. Legros and N.F. and is, therefore, hearsay that cannot form the basis for a finding of fact in this Recommended Order. See Section 120.57(1)(c), Florida Statutes (2003). Mr. Lefkowitz was not placed at or near the apartment by the police, who arrived at the apartment three minutes after being dispatched. The facts that Ms. Legros called the police on the night of April 21, 2002, and that Ms. Legros and N.F. told the police that Mr. Lefkowitz had threatened them does not make

Ms. Legros's testimony on this point sufficiently persuasive to support a finding of fact that the incident actually happened.

¹³/ Respondent's Exhibit 2.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.