

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-5491  
 )  
 KENNETH MILLS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on March 30, 2009, by video teleconference with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Janeen L. Richard, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 430  
Miami, Florida 33132

For Respondent: Kenneth Mills, pro se  
17890 West Dixie Highway, Number 703  
Miami, Florida 33160

STATEMENT OF THE ISSUE

Whether Respondent, Kenneth Mills (Respondent), committed the violations alleged in the Notice of Specific Charges filed January 9, 2009, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On October 18, 2008, Petitioner, Miami-Dade County School Board (School Board or Petitioner) issued a letter that notified Respondent that it had taken action to suspend him without pay and to initiate dismissal proceedings against him. The notice further provided that the action was being taken based upon just cause, including, but not limited to: misconduct in office; and violation of School Board Rules 6Gx13-4A-1.21, Responsibilities and Duties, and 6Gx13-4A-1.213, Code of Ethics. By letter dated October 23, 2008, Respondent requested a hearing to challenge the action of the School Board. The matter was then forwarded to the Division of Administrative Hearings for formal proceedings on November 3, 2008. The case was initially scheduled for February 25, 2009, and an Order Requiring Notice of Specific Charges was entered on December 2, 2008. Petitioner's request for additional time to file the Notice of Specific Charges was granted. On January 9, 2009, the Notice of Specific Charges was filed and alleged, in pertinent part:

6. At all times material hereto, Respondent was employed by Petitioner as a teacher within the school district of Miami-Dade County, Florida, pursuant to a professional service contract and subject to Florida Statutes, the regulation issued by the Florida State Board of Education, the policies and procedures of the School Board and the provisions of the UTD [United Teachers of Dade] Contract.

7. At all times material hereto, Petitioner employed Respondent as a Teacher pursuant to a professional service contract. Respondent

taught Math at Miami Lakes Educational Center ("Miami Lakes").

8. On or about February 19, 2008, school administrators at Miami Lakes discovered numerous photographs of female students in Respondent's classroom which included a poster-size photograph of a female student. Respondent accepted locks of students' hair and affixed them to the photographs. School administrators also discovered a student's picture I.D. in Respondent's desk drawer.

9. A search of Respondent's District assigned computer revealed additional student photographs and other inappropriate images. Many of the photographs depicted Respondent with his arms around female students. Also discovered were photographs Respondent took of students posing on his desk with one student wearing a T-shirt with the words "I HAVE A PUSSY, SO I MAKE THE RULES."

10. The matter was assigned to the Civilian Investigation Unit for investigation (SPAR Case No. N-09506). After interviewing several witnesses including Respondent, the investigator found probable cause that Respondent violated School Board Rule 6Gx13-4A.1.21 Responsibilities and Duties and 6Gx13-4A.1.213 Code of Ethics.

11. On or about July 24, 2008, a conference-for-the-record was held with Respondent in the Office of Professional Standards ("OPS") to address the investigative findings and his future employment with M-DCPS [Miami-Dade County Public Schools]. After consulting with several administrators, OPS recommended to terminate Respondent's employment.

12. On or about September 5, 2008, Respondent was advised of the recommended disciplinary action and of his right to seek a final review by the Superintendent or his designee. Respondent requested such a review and the Superintendent's designee approved the recommended disciplinary action.

13. On or about September 26, 2008, a meeting prior to School Board action was held with Respondent during which he was advised of the recommended disciplinary action. Subsequently, on or about October 1, 2008, Respondent was notified by letter that the Superintendent of Schools was recommending to the School Board to suspend him without pay and initiate dismissal proceedings. The letter further notified Respondent that the reason for the recommendations included, but was [sic] not limited to, misconduct in office, and violations of School Board Rules 6Gx134A-1.21, Responsibilities and Duties and 6Gx13-4A-1.213, Code of Ethics.

14. Petitioner, at its regularly scheduled meeting on October 15, 2008, took action to suspend Respondent without pay and initiate dismissal proceedings for just cause including, but not limited to, misconduct in office and violations of those School Board Rules set forth above. Respondent was notified of the Board action by letter dated October 16, 2008.

Based upon the foregoing factual allegations, Petitioner set forth four counts itemizing the violations claimed: Count I alleged misconduct in office as that term is defined by Florida Administrative Code Rule 6B-4.009; Count II alleged a violation of School Board Policy 6Gx13-4A-1.21; Count III alleged a violation of School Board Policy 6Gx13-4A-1.213; and Count IV alleged a violation of School Board Policy 6Gx13-4A-1.09.

At the hearing, Petitioner presented the testimony of the following witnesses: Bridget McKinney, former Assistant Principal at Miami Lakes; Terri Chester, an investigator at the Civilian Investigative Unit; James Parker, Principal at Miami Lakes; and Dr. Milagros Hernandez, District Director for the

School Board's Office of Professional Standards. Petitioner's Exhibits 1-19 and 21-30 were admitted into evidence. Respondent testified on his own behalf. Respondent's Exhibits 3, 9-11, 13, 15, and 17 were also received in evidence.

At the conclusion of the hearing, the parties were granted ten days from the date of the filing of the transcript within which to file their proposed recommended orders. The Transcript of the final hearing was filed with the Division of Administrative Hearings on June 12, 2009. Thereafter, the School Board timely filed a Proposed Recommended Order that has been considered in the preparation of this Recommended Order. Respondent filed a letter requesting an expeditious order.

#### FINDINGS OF FACT

1. Petitioner is a duly constituted entity charged with the responsibility and authority to operate, control, and supervise the public schools within the Miami-Dade County Public School District. As such, it has the authority to regulate all personnel matters for the school district, including those personnel decisions affecting the professional teaching staff at Miami Lakes.

2. At all times material to the allegations of this case, Respondent, Kenneth Mills, was an employee of the School Board and was subject to the disciplinary rules and regulations pertinent to employees of the school district.

3. At all times material to this case, Respondent was

employed by Petitioner and was assigned to teach mathematics at Miami Lakes. All acts complained of occurred during Respondent's tenure at Miami Lakes.

4. During the 2007-2008 school year, Bridget McKinney was assigned to duties as an assistant principal at Miami Lakes. Among her responsibilities was the task of assuring that classrooms were ready for an open house at the school. The school had been chosen to be the site of a "town hall meeting." Respondent's classroom was among those rooms to be used for the session, and he was notified to have the room straightened and ready to receive the public.

5. During an inspection of Respondent's classroom in final preparation for the meeting, Ms. McKinney discovered numerous photographs of Respondent hugging students, a large poster of a female student, and locks of hair taped to a cabinet with notes attached.

6. Ms. McKinney removed the items described above and went to place them in Respondent's desk. When she opened the desk drawer, Ms. McKinney discovered more pictures of female students. One of the photographs showed a female student wearing a t-shirt that depicted the words, "I HAVE THE PUSSY, SO I MAKE THE RULES."

7. Additional photos of female students showed one standing on Respondent's desk. Respondent took a picture of a female student standing on his desk. The picture was taken after hours. The student was not enrolled in Respondent's class at the time

the photo was taken. Respondent claimed the student made the unsolicited visit to his classroom because "he looked lonely."

8. One picture stored on Respondent's district-owned computer showed a female student with an added "I Love You" border around the photo.

9. Respondent admitted that he possessed a school identification badge of a female student who was also shown in the poster-size photo Ms. McKinney removed from Respondent's wall.

10. After Ms. McKinney reported her discoveries to the principal, James Parker, Respondent's computer was confiscated and turned over to the school investigators to conduct an analysis of the hard drive content. After retrieving the data, images were stored on a DVD, and the matter was turned over to the Civil Investigation Unit for further review.

11. Respondent was notified of the on-going investigation in writing and was placed on alternate assignment at Region Center I.

12. The investigation of the matter was assigned to Terri Chester. Ms. Chester reviewed the images from the DVD. The DVD stored photos and videos that were taken by Respondent. The images depicted: several provocative pictures with nudity or partial nudity; the picture of the female student with the t-shirt proclaiming "I HAVE THE PUSSY, SO I MAKE THE RULES;" audio of Respondent calling a student "nerd;" students who do not want

to be video taped by Respondent who he challenges; Respondent proclaiming that video will be posted to You Tube by the next day; and other classroom activities that are inappropriate such as students running around the room, climbing on chairs, and attempts made by one student trying to staple other students in the back. Throughout the depicted images, Respondent does not redirect students to appropriate activities and does not assist them in any mathematics-related endeavor. Based upon the foregoing, Ms. Chester concluded that Respondent's conduct violated School Board rules.

13. When presented with the findings of Ms. Chester's investigation, Respondent sought additional inquiry into the allegations against him. Ms. Chester then reviewed all information Respondent presented. Afterward, Ms. Chester referred the matter to the OPS.

14. Dr. Hernandez, District Director at OPS, conducted a conference for the record (CFR) with Respondent. The purpose of the CFR was to discuss the investigative findings and Respondent's future employment with Petitioner. Throughout the investigation and review process, Respondent has not denied taking the pictures and videos. Moreover, when confronted with the images from his district-owned computer he provided no plausible explanation for the materials.

15. Subsequent to the CFR, Mr. Parker as well as other



staff from the region office recommended termination of Respondent's employment with the school district.

16. Among the reasons Mr. Parker recommended termination was Respondent's failure to abide by the educational principles concerning teacher conduct. Mr. Parker determined that Respondent's conduct impaired his effectiveness as a teacher since he failed to properly manage students, displayed an inappropriate familiarity with students, and took and retained improper images.

17. At its meeting on October 17, 2008, Petitioner accepted the recommendation to suspend Respondent and initiated dismissal proceedings against him.

18. Thereafter, Respondent timely requested an administrative hearing to contest the proposed dismissal.

19. Respondent does not deny displaying the photographs in his classroom or the retention of locks of hair. Moreover, Respondent does not deny that he took the images that were stored on his district-owned computer. Photography is one of Respondent's main interests. He sought to combine his interest in photography with his classroom responsibilities.

20. Finally, Respondent maintains that he did not do anything wrong and that he is the victim of an administrator trying to get him fired. Respondent advised that it was his intention to have a disruptive class at the time portions of the video were shot to add some levity to the class work. Respondent

stated that during the two hour blocks of teaching allocated to each class that it was his desire to have the students have some levity and laugh.

21. The UTD negotiated terms and conditions of employment for Petitioner and its teachers. Under the terms of the collective bargaining agreement, also known as the UTD contract, "any member of the instructional staff shall be suspended or dismissed at any time during the school year, provided that such charges against him/her are based upon Florida Statutes."

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

23. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent committed the violations alleged. See McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996).

24. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

25. Section 1012.33, Florida Statutes (2008), provides, in pertinent part:

. . . 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.

26. In this case "just cause" includes those items specifically addressed by the statute, but also includes other conduct that may be denoted by the "not limited to" language of the statute. See Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2nd DCA 1994). Also, "misconduct in office" in the instant matter must be considered in relation to the failure to comply with School Board rules.

27. "Misconduct in office" is defined by Florida Administrative Code Rule 6B-4.009, as:

. . . a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC,, and the Principals 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.

28. Florida Administrative Code Rule 6B-1.001, provides:

(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.

29. Florida Administrative Code Rule 6B-1.006 provides in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) 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.

(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.

30. An agency's interpretation of the policies it is charged to administer is entitled to deference and should not be overturned as long as the interpretation is within the range of

reasonable alternatives. See Rollison v. City of Key West, 875 So. 2d 659 (Fla. 3rd DCA 2004).

31. School Board Rule 6Gx-4A-1.21 provides in part:

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. Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

32. School Board Rule 6Gx-4A-1.213, Code of Ethics, provides in part:

Each employee agrees and pledges:

1. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.
2. To obey local, state and national laws, codes and regulations.
3. To support the principles of due process to protect the civil and human rights of all individuals.
4. To treat all persons with respect and to strive to be fair in all matters.
5. To take responsibility and be accountable for his or her actions.
6. To avoid conflict of interest or any appearance of impropriety.
7. To cooperate with others to protect and advance the District and its students.
8. To be efficient and effective in the delivery of job duties.

\* \* \*

V. CONDUCT REGARDING STUDENTS

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.

\* \* \*

8. Shall not exploit a relationship with a student for personal gain or advantage.

33. School Board Rule 6Gx13-4-1.09 provides, in part:

Nothing is more important to the 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 reason; and/or demonstrating any other behavior which gives an appearance of impropriety.

34. Count I of the Notice of Specific Charges alleged misconduct in office. In this case, Petitioner has established by a preponderance of the evidence that Respondent violated

School Board rules and the state standards for the conduct of teachers to such a degree that his effectiveness as a teacher with the Miami-Dade Public Schools has been impaired.

35. Count II of the Notice of Specific Charges alleged that Respondent violated the School Board rule addressing an educator's responsibilities and duties. It is concluded that Respondent's behavior in this matter demonstrates conduct that does not reflect credit on himself or the school system.

36. Count III of the Notice of Specific Charges alleged that Respondent violated the School Board rule setting forth the code of ethics. In this regard it is concluded that Respondent failed to take responsibility for his actions, failed to treat his students with appropriate respect, failed to maintain an appropriate classroom decorum, and exposed a student to disparagement.

37. Count IV of the Notice of Specific Charges alleged Respondent abused his relationships with students. With regard to this claim, it is concluded that not only did Respondent encourage inappropriate behaviors, he perpetuated them by documenting them on camera.

38. As reviewed in this matter, Petitioner has established by a preponderance of the evidence that Respondent violated the rules and policies of the School Board to support "just cause" for disciplinary action.

39. It is important to note that Respondent did not deny

any of the activities and actions described in this case. Moreover, he did not acknowledge anything "wrong" with his behavior. Respondent claimed that taking pictures of students was appropriate and none of the photos posted in his room were, in and of themselves, inappropriate.

40. Given the professed lack of comprehension expressed by Respondent, the following is noted:

- a. In this state educators are held to a high standard of ethical behavior.
- b. An educator is responsible for the decorum of his/her classroom.
- c. Taking and maintaining photographic or video images of students engaged in behaviors that are not sanctioned is inappropriate.
- d. Maintaining an environment that is disruptive and nonconductive to learning constitutes inappropriate classroom decorum.
- e. Failure to recognize the inappropriateness of such behaviors demonstrates ineffectiveness in the school system.
- f. Failure to after-the-fact comprehend the inappropriateness of the foregoing behaviors demonstrates an indifference to the rules and regulations that govern teacher conduct.



41. Misconduct may result when the conduct engaged in "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. Proof of the conduct and the failure to act appropriately may be considered proof of impaired effectiveness. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000) and Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2nd DCA 2000). In this regard, not only did the principal expressed the impaired effectiveness, but the conduct complained of also "speaks for itself."

42. It is concluded that Respondent did not exercise sound professional judgment and integrity. The video of the classroom depicts an uncontrolled environment with students running around, climbing on desks, attempting to staple one another, and yelling. Respondent called one student "nerd" and attempted to video students who, from their expression and demeanor, clearly did not desire to be filmed.

43. Respondent did not adequately explain photographs of a female student who posed standing on his desk during after hours. No educational purpose could be served by such a remembrance. Respondent was not directed to be the friend of the students. He was challenged to educate them. Similarly, maintaining human hair posted to a wall/cabinet in the room presumably as some type of "keep sake" also served no educational purpose.

44. Respondent's behavior discredited himself and the

school district. Respondent was charged with avoiding behavior that gives the appearance of impropriety. In this regard, encouraging a female student to flaunt a t-shirt with an inappropriate message, in and of itself sends an inappropriate message to the student and those who viewed the photos that perpetuated the image.

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 terminating Respondent's employment with the School District.

DONE AND ENTERED this 20th day of July, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 20th day of July, 2009.

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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.