

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-4129TTS

EMMANUEL FLEURANTIN,

Respondent.

_____ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013), before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on March 18, 2014, by video teleconference at sites in Miami and Tallahassee, Florida, and on April 8, 2014, by webcast at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Sara M. Marken, Esquire
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For Respondent: Branden Vicari, Esquire
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent without pay and terminate his employment as a teacher.

PRELIMINARY STATEMENT

On or about October 16, 2013, Petitioner, Miami-Dade County School Board, took action to suspend Respondent, Emmanuel Fleurantin, without pay and to terminate his employment as a teacher. Respondent timely requested an administrative hearing to contest Petitioner's action, and this matter was referred to DOAH on October 18, 2013. The final hearing was scheduled for January 16, 2014.

On December 19, 2013, the parties moved to continue the final hearing. The motion was granted and the hearing was rescheduled for March 18, 2014.

On January 8, 2014, Petitioner filed a Notice of Specific Charges alleging just cause to suspend Respondent without pay and terminate his employment on the bases of misconduct in office under Florida Administrative Code Rule 6A-5.056(3)^{1/} and violating Petitioner's policies 3210, 3210.01, and 2605.

The final hearing was held on March 18, 2014, but was not completed that day, so was reconvened on April 8, 2014. The final hearing was concluded that day.

Petitioner presented the testimony of Guy Halligan, D.J., Joyce Castro, Ellen Roelofs, and N.A. Petitioner's Exhibits 1

through 5, 7, and 19 were admitted into evidence without objection, and Petitioner's Exhibits 14 and 25 were admitted into evidence over objection. Respondent testified on his own behalf and presented the testimony of Haresh Seogopaul, T.O., Rhailyn Campbell, Dean Anthony Richards, Janice Fleurantin, and Ellen Roelofs. Respondent's Exhibits 1 through 3 were admitted over objection.

The two-volume Transcript was filed on June 2, 2014, and the parties were given ten days, until June 12, 2014, in which to file their proposed recommended orders. Pursuant to Petitioner's unopposed Motion for Extension of Time to File Proposed Recommended Orders, filed on June 9, 2014, the parties were given until June 23, 2014, to file their proposed recommended orders. The parties timely filed Proposed Recommended Orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner is a duly-constituted school board charged with operating, controlling, and supervising all free public schools within the School District of Miami-Dade County, Florida, pursuant to Florida Constitution Article IX, section 4(b), and section 1012.23, Florida Statutes.

2. In the timeframe relevant to this proceeding, the 2011-2012 school year, Respondent was employed as the lead technology teacher, pursuant to an annual services contract, at Miami Norland High School ("Norland"), a public school in Miami-Dade County, Florida.

3. At all times relevant to this proceeding, Respondent's employment with Petitioner was governed by Florida law, Petitioner's policies, and the collective bargaining agreement between Miami-Dade County Public Schools and the United Teachers of Dade.

II. Events Giving Rise to This Proceeding

A. Certification Examinations

4. Norland offers courses in Adobe Photoshop ("Photoshop") and Adobe Dreamweaver ("Dreamweaver"). Each course offers an industry certification examination. The exams are provided by Certiport, an independent provider of educational, assessment, examination, and certification programs.

5. To prepare for a certification exam, the student takes practice exams. Performance on the practice exams indicates readiness to take the certification exam, so it is important that the student perform well on the practice exams prior to taking the certification exam.

6. Upon reaching a certain achievement level on the practice exams, indicating readiness to take the certification

exam, the student goes to another classroom to take the certification exam.

7. The exams are taken on a computer. Nothing but the computer is allowed on the desk during the exam. Students are informed of the rule that they are not allowed to have or use papers, notebooks, or any other materials when taking the exam.

8. If the student passes the exam, he or she receives a certificate.

9. In the 2011-2012 school year, the certification exams for Photoshop and Dreamweaver were administered more than once per school day at Norland.

10. As part of his responsibility as lead technology teacher at Norland, Respondent proctored the certification exams for the Photoshop and Dreamweaver courses during the 2011-2012 school year.

11. To be authorized to proctor the certification exams, Respondent entered into a Proctor Agreement with Certiport ("Agreement"). The Agreement required, among other things, that Respondent ensure the security of the exam and supervise certification candidates taking the exam to ensure that no notes containing the content of the test questions or answers were used during the exam. The Agreement provided that in the event of any evidence of improper conduct by the candidate or violation of the exam process, the proctor must terminate the exam, confiscate the

exam materials, and immediately notify Certiport. Adherence to the Agreement was required for Respondent to be authorized to serve as a proctor for the certification exams.

B. Alleged Cheating on Certification Exams

12. D.J. was enrolled as a student in Mr. Halligan's Photoshop course at Norland during the 2011-2012 school year.

13. Despite never having obtained a passing score on a practice exam, D.J. was taken out of Halligan's class to take the Photoshop certification exam.^{2/}

14. D.J. took the Photoshop certification exam twice, and sat for it during her regularly scheduled Photoshop class.^{3/} D.J. took the certification exam for the second time on April 3, 2012, and passed it on her second sitting.

15. Respondent proctored the Photoshop certification exam on April 3, 2012, during the period when D.J. took the exam and passed.

16. D.J. testified, credibly, that Respondent allowed her to use a package containing the answers during the exam, and that he told the other students taking the exam during that period that they also could use assistance materials to take the exam.

17. After finding out that she had passed the exam, D.J. returned to her Photoshop class and told Halligan that she had passed. She also told him that Respondent had allowed her and others to use materials to assist them while taking the exam.

18. D.J. testified, credibly, that she had never been a student in Respondent's class, that he had never disciplined her, and that she had never had problems with him. Accordingly, she had no motivation to fabricate her statement that Respondent had allowed her to cheat on the exam.

19. N.A. also attended Norland during the 2011-2012 school year and also took Halligan's Photoshop course.

20. N.A. had never achieved the minimum passing score on the practice exams, but nonetheless was ordered to take the Photoshop certification exam.^{4/} She sat for the Photoshop certification exam three times and passed it on her third sitting, on April 3, 2012.

21. N.A. credibly testified that Respondent had allowed her to use the practice exam package to take the certification exam.^{5/}

22. After passing the exam, N.A. returned to Halligan's class and told him that she had passed. Halligan asked her how she had passed and she told him that Respondent had allowed her to use her practice exam package. Halligan asked her to provide a written statement regarding what had happened. She prepared a written statement but subsequently retracted it.

23. Halligan and another technology teacher, Mr. Gant, contacted the Office of the Inspector General for Miami-Dade County Public Schools ("OIG") and reported that students who were

not capable of passing the certification exams were, in fact, passing.

24. The OIG conducted an investigation into alleged violations regarding the Adobe and Dreamweaver certification exam protocol at Norland.

25. As part of this investigation, Ellen Roelofs, along with another OIG investigator, interviewed N.A. and asked her if she had cheated on the certification exam. N.A. initially denied having cheated but then confessed to having done so.^{6/}

26. The OIG investigation ultimately substantiated allegations that Respondent had allowed students to cheat on the Photoshop and Dreamweaver certification exams.

27. Following completion of the OIG investigation, a conference for the record ("CFR") was conducted between Respondent; Joyce Castro, a District Director for the Miami-Dade County Public Schools Office of Professional Standards; and others regarding charges that Respondent allowed students to cheat on the Photoshop and Dreamweaver certification exams, in violation of Petitioner's policies 3210, Standards of Ethical Conduct; 3210.01, Code of Ethics; and 2605, Research and Evaluation.

28. Based on the OIG report findings, the Office of Professional Standards determined that Respondent could not be trusted in the future to proctor the certification exams.

29. Following the CFR, the matter was presented to a disciplinary review team, which recommended that Respondent be terminated from his employment.

30. On October 16, 2013, Petitioner took action to suspend Respondent without pay and terminate his employment.

C. Respondent's Defenses

31. Respondent verified that as part of his duties as lead technology teacher at Norland, he proctored the Photoshop and Dreamweaver certification exams in the 2011-2012 school year.

32. Respondent denied having given students the answers to the exams or otherwise allowing them to cheat on the exams. The undersigned found Respondent's testimony less than forthcoming and not credible.

33. Respondent also presented the testimony of Rhailyn Campbell, a student at Norland during the 2011-2012 school year. Campbell testified that he took the Dreamweaver certification exam on April 3, 2012, midday; that Respondent did not tell him or any other students that they could cheat on the exam; and that he did not observe any other students cheating or being allowed to cheat. Campbell denied having been interviewed by the OIG during its investigation of Respondent. However, Roelofs testified, credibly, that she did, in fact, interview Campbell during the OIG investigation. This testimony was substantiated by the Report of Interview she prepared memorializing that

interview. Based on this evidence, Campbell's testimony is deemed not credible.^{7/}

34. Respondent also presented the testimony of Haresh Seogopaul, T.O., and Dean Anthony Richards, students at Norland in the 2011-2012 school year. Seogopaul and T.O. testified that they took the Dreamweaver^{8/} certification exam on January 25, 2012. Richards took the Photoshop certification exam on January 25, 2012. Each testified that he did not cheat on the exam, that Respondent did not allow him to cheat on the exam, and that Respondent did not allow others to cheat on the exam.

35. This testimony does not contradict D.J.'s and N.A.'s credible testimony that they were allowed to cheat on the Photoshop certification exams conducted on April 3, 2012; it merely shows that Respondent did not allow students to cheat on an entirely different day, January 25, 2012.

36. Through the testimony of Roelofs, Respondent offered the Report of Interview ("Report") for K.E., D.C., and D.W., each of whom took the Photoshop certification exam on April 3, 2012, and each of whom were interviewed by Roelofs during the OIG investigation. Each Report was prepared by Roelofs and contained a summary of the statement made by the student being interviewed, at the time he was interviewed. Each summary reflects that the student stated that Respondent did not

allow students taking the certification exam to cheat on the exam.^{9/}

37. Clearly, Roelofs has no personal knowledge of the facts and events that are described in the summaries of these students' statements, and the statements themselves constitute unsubstantiated hearsay that does not supplement or explain other competent evidence in the record. As such, these reports and their contents do not constitute competent substantial evidence on which findings of fact may be based.

III. Findings of Ultimate Fact

38. In this proceeding, Petitioner seeks to suspend Respondent without pay and terminate his employment as a teacher on the basis of just cause—specifically, misconduct in office under Florida Administrative Code Rule 6A-5.056 and violation of Petitioner's policies 3210, 3210.01, and 2605.

39. As more fully addressed below, Petitioner bears the burden of proof, by a preponderance of the evidence, to show that just cause exists, on these bases, to suspend Respondent without pay and terminate his employment.

40. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation.

A. Misconduct in Office

41. Misconduct under rule 6A-5.056(3) requires violation of the Code of Ethics of the Education Profession, as adopted in rule 6B-1.001, and the Principles of Professional Conduct for the Education Profession in Florida, as adopted in rule 6B-1.006.

42. Here, the evidence establishes that Respondent allowed students to cheat on the Photoshop certification exams administered on April 3, 2012.

43. In doing so, Respondent failed to exercise the best professional judgment and integrity and failed to achieve and sustain the highest degree of ethical conduct, in violation of rule 6B-1.001.

44. Respondent violated rule 6B-1.006 by failing to maintain honesty in all professional dealings. He also violated this rule by submitting fraudulent information on documents in connection with his professional activities, both in allowing or enabling students to cheat, and for his role in generating fraudulent passing scores for students who cheated on the exams.

45. Rule 6A-5.056(3)^{10/} requires, for a finding of misconduct, a showing that the violation is sufficiently serious to impair the individual's effectiveness in the school system.

46. Here, the evidence establishes that as a result of his conduct, Respondent's effectiveness in the school system is impaired. Castro persuasively testified that Respondent could

not be trusted in the future to proctor exams. Moreover, Respondent violated the Agreement with Certiport, so can no longer serve as proctor for the Photoshop and Dreamweaver certification exams. For these reasons, it is determined that Respondent's effectiveness in the school system is impaired.

47. Accordingly, the preponderance of the evidence establishes that Respondent's conduct at issue in this proceeding constitutes misconduct in office pursuant to rule 6A-5.056(3).

B. Violation of Petitioner's Policies

48. Petitioner has charged Respondent with violating Policy 3210, Standards of Ethical Conduct, which requires that instructional staff maintain honesty in all professional dealings and not submit fraudulent information on any document in connection with professional activities. Here, the evidence establishes that Respondent did not maintain honesty in his professional dealings in connection with his proctoring duty to maintain the integrity of the Photoshop certification exams. Further, he submitted fraudulent information on documents in connection with his professional activities, in allowing or enabling students to cheat and for his role in generating fraudulent passing scores for students who cheated on the certification exams. Accordingly, it is determined that Respondent violated Policy 3210.

49. Petitioner also has charged Respondent with violating Policy 3210.01, Code of Ethics. Here, the evidence establishes that Respondent did not abide by Petitioner's Code of Ethics. His actions in allowing cheating on the certification exams show that he did not make the well-being of the students and the honest performance of his professional duties his core guiding principles. Through his actions, he failed to protect and advance the Miami-Dade County Public School District and its students. Accordingly, it is determined that Respondent violated this policy.

50. Additionally, Petitioner has charged Respondent with violating Policy 2605, Research and Evaluation. Policy 2605 incorporates the test administration and security standards set forth in the document titled "Miami-Dade County Public Schools: Standards, Guidelines, and Procedures for Test Administration and Test Security" (November 2007) (hereafter "Test Security Document"). These standards require, among other things, that all testing activities, including supervision and monitoring, be conducted in a manner that ensures the security of test content. The standards also require that all standardized tests be administered in accordance with established administration and test security procedures as outlined in program guides for each testing program; that students shall not be assisted in answering test questions by any means or by any person; and that test

proctors must actively monitor students to discourage cheating and must record, and immediately notify the principal and test chairperson of, any test administration irregularity or security breach. Here, Respondent's professional duties included serving as proctor for the Photoshop and Dreamweaver certification exams for Norland. Respondent's conduct in allowing students to cheat on the Photoshop certification exams violated the foregoing test administration and security standards and, thus, violated Policy 2605.

CONCLUSIONS OF LAW

51. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

52. Here, Petitioner alleges that just cause exists to suspend Respondent from his employment without pay and terminate his employment as a teacher, pursuant to section 1012.33, Florida Statutes^{11/}; Florida Administrative Code Rule 6A-5.056, which references rules 6B-1.001 and 6B-1.006; and School Board Policies 3210, 3210.01, and 2605. These statutes and rules are penal and therefore must be strictly construed, with ambiguities resolved in favor of the person charged with violating them. McCloskey v. Dep't of Fin. Servs., 115 So. 3d 1103 (Fla. 5th DCA 2013).

53. Respondent is an instructional employee as defined in section 1012.01(2). Petitioner has the authority to suspend and

terminate instructional employees pursuant to sections 1012.22(1)(f) and 1012.33(1)(a) and (6)(a).

54. To do so, Petitioner must prove, by a preponderance of the evidence, that Respondent committed the alleged violations and that such violations constitute "just cause" for dismissal. § 1012.33(1)(a), (6), Fla. Stat.; McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

55. Whether Respondent committed the charged offenses is a question of ultimate fact to be determined by the trier of fact in the context of each alleged violation. Holmes v. Turlington, 480 So. 2d 150, 153 (Fla. 1985); McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

56. Pursuant to sections 1012.33(1)(a) and (6), instructional staff may be terminated during the term of their employment contract only for "just cause" as defined in section 1012.33(1)(a), Florida Statutes.

57. Section 1012.33(1)(a) states in pertinent part:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, . . . gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless

of adjudication of guilt, any crime involving moral turpitude.

§ 1012.33(1)(a), Fla. Stat. (emphasis added).

A. Misconduct in Office

58. Rule 6A-5.056(3) defines "misconduct in office" as:

[A] violation of the Code of Ethics of the Education Profession as adopted in [r]ule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in [r]ule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

59. Rule 6B-1.001, Code of Ethics, states in pertinent part:

(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.

60. Rule 6B-1.006, Principles of Professional Conduct of the Education Profession, states 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.

* * *

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

(a) Shall maintain honesty in all professional dealings.

* * *

(h) Shall not submit fraudulent information on any document in connection with professional activities.

61. As discussed above, Respondent's conduct in allowing students to cheat on the Photoshop exams he proctored on April 3, 2012, constituted failure to exercise best professional judgment and integrity, in violation of rule 6B-1.001, and constituted failure to achieve and sustain the highest degree of ethical conduct, in violation of rule 6B-1.006.

62. To find Respondent guilty of misconduct under rule 6A-5.056(3), not only must Respondent be determined to have violated rules 6B-1.001 and 6B-1.006, but the violations must be so serious as to impair his effectiveness in the school system. See McMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

63. As discussed above, the persuasive testimony and other evidence shows that Respondent's violations of rules 6B-1.001 and

6B-1.006 are so serious that they impair his effectiveness in the school system.

64. For these reasons, it is concluded that Respondent's conduct constituted misconduct in office pursuant to rule 6A-5.056(3).

65. Accordingly, just cause exists, on the basis of misconduct in office, to suspend Respondent without pay and terminate his employment.

B. Petitioner's Policies

66. School Board Policy 3210, Standards of Ethical Conduct, states in pertinent part:

All employees are representatives of the District and shall conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.

A. An instructional staff member shall:

* * *

17. [M]aintain honesty in all professional dealings;

* * *

26. [N]ot submit fraudulent information on any document in connection with professional activities[.]

67. For the reasons addressed above, it is concluded that Respondent's conduct violated this policy.

68. School Board Policy 3210.01, Code of Ethics, states in pertinent part:

All members of The School Board of Miami-Dade County, Florida, administrators, teachers and all other employees of Miami-Dade County Public Schools, regardless of their position, because of their dual roles as public servants and educators are to be bound by the following Code of Ethics. Adherence to the Code of Ethics will create an environment of honesty and integrity and will aid in achieving the common mission of providing a safe and high quality education to all Miami-Dade County Public Schools students.

As stated in the Code of Ethics of the Education Profession in Florida (State Board of Education Rule 6B-1.001):

* * *

B. 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.

C. Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

* * *

FUNDAMENTAL PRINCIPLES

The fundamental principles upon which this Code of Ethics is predicated are as follows:

* * *

D. Honesty - Dealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating nor lying.

* * *

Each employee agrees and pledges:

A. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

* * *

G. To cooperate with others to protect and advance the District and its students.

69. For the reasons addressed above, it is concluded that Respondent's conduct violated this policy.

70. School Board Policy 2605, Research and Evaluation, states in pertinent part:

School Responsibilities

* * *

C. Schools must adhere to the test administration and security standards, guidelines, and procedures established by ARDA to ensure the integrity of the testing process and the accuracy and validity of all test scores. The standards and procedures are in the document Miami-Dade County Public Schools: Standards, Guidelines, and Procedures for Test Administration and Test Security [Test Security Document]. These standards apply to all personnel involved with any aspect of the testing process and are in effect for school, District, and State testing programs.

71. The Test Security Document states in pertinent part:

STANDARD: SECURITY OF TEST CONTENT

The content of tests and any other specified testing materials must remain secure to ensure the integrity of the testing process and the accuracy and validity of the test scores. All testing activities, including test preparation, test distribution and return, supervision and monitoring of testing, and the use of test results must be conducted in a manner that ensures the security of test content.

* * *

STANDARD: MAINTAINING STANDARDIZATION AND TEST SECURITY DURING TEST ADMINISTRATION

* * *

8. Students shall not be assisted in answering test questions by any means or by any person, including individuals administering or proctoring the test.

* * *

10. Test administrators and proctors must actively monitor students to discourage talking or cheating, and to ensure that students are working independently and on the appropriate section.

a. Test administrators and proctors must remain attentive throughout the entire testing period, moving about the room as needed to ensure coverage in all areas of the room.

* * *

15. Students must be advised that the possession or use of notes, scratch paper, reference materials, or electronic/ technological devices, other than those

specifically allowed within the guidelines for that test, will result in dismissal from the test administration and invalidation of their test results.

72. For the reasons set forth above, it is concluded that Respondent's conduct violated Policy 2605.

73. Violation of Petitioner's policies is not one of the just causes enumerated in section 1012.33(1)(a). However, the list of offenses, by its plain terms, is not intended to be exclusive. Under the doctrine of ejusdem generis,^{12/} offenses other than those enumerated in the statute may constitute just cause when they are so serious as to impair the individual's effectiveness in the school system. See Miami-Dade Cnty. Sch. Bd. v. Regueira, DOAH Case No. 06-4752 (Fla. DOAH Apr. 11, 2007; Miami-Dade Cnty. Sch. Bd. May 30, 2007); Miami-Dade Cnty. Sch. Bd. v. Depalo, 2004 Fla. Div. Admin. Hear. LEXIS 1684 (Fla. DOAH Apr. 29, 2004); Miami-Dade Cnty Sch. Bd. v. Wallace, DOAH Case No. 00-4392 (Fla. DOAH Apr. 4, 2001; Miami-Dade Cnty. Sch. Bd. May 17, 2001).

74. As discussed above, Respondent's conduct in allowing students to cheat on the Photoshop certification exam is contrary to the basic and key requirements that Respondent behave honestly and ethically, and that he exercise best professional judgment and integrity, in all of his professional dealings. Furthermore, his conduct in allowing students to cheat on the exam sent the

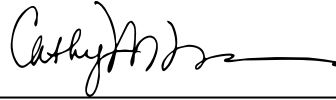
message to students that it is acceptable to behave dishonestly and without integrity. As a result of his conduct, Respondent also lost the trust and confidence of those in the school system with which he must work. For these reasons, Respondent's conduct in allowing cheating in violation of Petitioner's policies has seriously impaired his effectiveness in the school system and therefore constitutes just cause to suspend him without pay and terminate his employment.

75. In sum, Petitioner has demonstrated just cause, on the basis of misconduct in office and violation of Petitioner's policies, to suspend Respondent without pay and terminate his employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Miami-Dade County School Board, enter a final order upholding its suspension of Respondent, Emmanuel Fleurantin, without pay and terminating his employment as a teacher.

DONE AND ENTERED this 29th day of July, 2014, in
Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 2014.

ENDNOTES

^{1/} The Notice of Specific Charges cited the version of rule 6A-5.056(3) that went into effect on July 7, 2012. However, because Respondent's conduct alleged to violate the rule occurred prior to July 7, 2012, the previous version of the rule, which went into effect on April 5, 1983, applies to this proceeding.

^{2/} Halligan testified, credibly, that then-Assistant Principal Lee ordered that D.J. be taken out of class to take the certification exam even though her practice exam scores indicated she was not ready to take the certification exam. Mr. Lee was not called to testify at the final hearing regarding his rationale for ordering students to take the certification exams when their practice test scores indicated they were not ready.

^{3/} D.J. could not precisely recall, but thought she took Halligan's class and sat for the certification exams midday, perhaps during the Fifth Period.

^{4/} Again, no explanation was provided regarding why N.A. was ordered to take the certification exam without ever having achieved a passing score on the practice exams.

5/ She used the package that was prepared as a study guide in Halligan's class. Halligan did not tell her that it was permissible for her to use the package while taking the certification exam.

6/ The investigator told N.A. that she would be in trouble if it were determined that she lied about cheating on the certification exam. At that point, she told the truth about having cheated.

7/ The existence of the Report of Investigation, not its contents, were relevant to determining Campbell's lack of credibility.

8/ The Certiport/Miami Norland Sr. H.S. 2011-2012 Photoshop & Dreamweaver Test Scores Report shows that Seogopaul and T.O. took the Photoshop certification exam on January 25, 2012.

9/ Respondent's Proposed Recommended Order characterizes these statements as testimony. (Respondent's Proposed Recommended Order, p. 8, ¶ 34.) This is an incorrect characterization of this evidence. These statements were taken by Roelofs as part of the OIG investigation and there is no indication that the statements were made under oath. These students did not testify at the final hearing.

10/ The version of rule 6A-5.056 applicable to this proceeding does not define misconduct in office to include violation of adopted school board rules.

11/ The 2011 version of chapter 1012, Florida Statutes, applies to this proceeding.

12/ Ejusdem generis means "of the same kind." Under this statutory construction canon, where the statute enumerates specific things and contains a more general phrase, the general phrase is construed to refer to a thing of the same type or kind as the specifically enumerated things. Eicoff v. Denson, 896 So. 2d 795 (Fla. 5th DCA 2005).

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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.