

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-2149TTS

KRISHNA CHANDRA-DAS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing by video teleconference on August 27, 2014, with sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Cristina Rivera Correa, Esquire  
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For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend Respondent for 15 days without pay.

PRELIMINARY STATEMENT

On May 7, 2014, at its scheduled meeting, Petitioner, Miami-Dade County School Board ("School Board"), took action to suspend Respondent, Krishna Chandra-Das ("Respondent"), for 15 workdays without pay. Respondent was advised of his right to request an administrative hearing within 15 days.

On May 8, 2014, Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

At the request of the parties, the final hearing initially was set for July 23, 2014. On June 24, 2014, Respondent filed an unopposed motion to continue the final hearing. On June 25, 2014, the undersigned entered an Order resetting the final hearing for August 27, 2014.

On June 25, 2014, the undersigned entered an Order requiring the School Board to file its notice of specific charges by July 7, 2014. On July 7, 2014, the School Board filed its Notice of Specific Charges. The Notice of Specific Charges contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with the following violations in five counts: (1) Misconduct in Office; (2) Violation of School Board Policy 3210, "Standards of

Ethical Conduct”; (3) Violation of School Board Policy 3210.01, “Code of Ethics”; (4) Violation of School Board Policy 3213, “Student Supervision and Welfare”; and (5) Gross Insubordination.<sup>1/</sup>

The final hearing commenced as scheduled on August 27, 2014, with both parties present. At the hearing, the School Board presented the testimony of John Lux, Vivian Taylor, and Ann-Marie DuBoulay. The School Board’s Exhibits 1 through 17, and 19 were received into evidence. Respondent testified on his own behalf, and did not offer any exhibits into evidence.

The final hearing Transcript was filed on October 20, 2014. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

#### FINDINGS OF FACT

1. The School Board is a duly-constituted school board charged with the duty to operate, control, and supervise the public schools within Miami-Dade County, Florida.

2. At all times material to this case, Respondent was employed as a social studies teacher at Palmetto Middle School (“Palmetto”), a public school in Miami-Dade County, Florida.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law, the School Board's policies, and the collective bargaining agreement ("CBA") between the School Board and the United Teachers of Dade ("UTD").

4. The incident giving rise to this proceeding occurred on March 18, 2014, during the 2013-2014 school year.

5. On March 18, 2014, Respondent was co-teaching a seventh grade social studies class with Vivian Taylor. Ms. Taylor is another social studies teacher at Palmetto. K.W. was a female student in the class. At that time, K.W. was approximately five feet tall and weighed ninety pounds.

6. Prior to March 18, 2014, K.W. sat in an assigned seat in the back of the classroom of the social studies class co-taught by Respondent and Ms. Taylor. On March 17, 2014, K.W. displayed disruptive behavior in the classroom.

7. On March 18, 2014, as the bell rang to signal that class was about to begin, K.W. and other students entered Respondent's and Ms. Taylor's classroom.

8. When K.W. entered the classroom on March 18, 2014, Respondent instructed K.W. that she could not sit at her seat in the back of the classroom, and that she needed to sit at a desk in the front of the classroom. Instead of walking toward her newly assigned seat in the front of the classroom, K.W.

disregarded Respondent's instructions and attempted to walk in the opposite direction toward her prior assigned seat in the back of the classroom.

9. Respondent then stood in the aisle, stepped in front of K.W., and "blocked" her "path" toward the seat in the back of the classroom. Respondent blocked K.W.'s path in an attempt to re-direct her to her newly assigned seat in the front of the classroom.

10. In his effort to block K.W.'s path of travel and re-direct her to her newly assigned seat in the front of the classroom, Respondent and K.W. made very slight physical contact with each other. The physical contact between Respondent and K.W. was minor, inadvertent, and lasted no more than one second.

11. At hearing, Respondent denied that he ever made physical contact with K.W. Ms. Taylor, the only other purported eye-witness to the incident, who testified at the hearing on behalf of the School Board, was asked by the School Board's counsel to describe whether Respondent and K.W. ever made physical contact. In response, Ms. Taylor testified:

It was just their chest, just the top body, because Mr. Chandra-Das is a bit taller than her, so when he stepped up, that's what touched.

12. Ms. Taylor described the physical contact between Respondent and K.W. as very slight--"it was just a touch," it lasted "[a] second, half a second."

13. After Respondent blocked K.W.'s path, K.W. stepped back and put her head down. Ms. Taylor testified that K.W. was visibly upset and crying. Ms. Taylor immediately told K.W. to leave the room and go directly to the assistant principal's office.

14. Respondent's supervisor, Principal Lux, acknowledged at the final hearing that there is no written directive or School Board policy which forbids a teacher from blocking the path of a student. Principal Lux further testified that he has never "disciplined a teacher in the past for blocking the path of students and not letting the student go wherever they want," and that he is unaware of any circumstance in his 15 years with the School Board in which the School Board has disciplined an employee for blocking the path of a student.

15. The persuasive and credible evidence adduced at hearing demonstrates that there was, at most, very slight physical contact between K.W. and Respondent as Respondent attempted to block K.W.'s path of travel and re-direct her to her newly assigned seat in the front of the classroom. Respondent did not intend to make physical contact with K.W., and the physical contact between Respondent and K.W. was minor, inadvertent, and lasted no more than one second.

16. The evidence does not establish that Respondent pressed his body against K.W., as alleged in the Notice of Specific Charges.<sup>2/</sup>

17. At no time did Respondent grab, push, shove, punch or place his hands on K.W. in any way.

18. Respondent was justified and acted in an appropriate manner in blocking K.W.'s path in the manner that he did, which was in an effort to re-direct K.W. to her newly assigned seat.

19. On March 20, 2014, Respondent was advised of an investigation with regard to the March 18, 2014, incident involving K.W. On that date, Respondent was specifically advised by his supervisor, Principal Lux, in a letter:

You are prohibited from contacting any complainant(s) and/or witness(es), with the intent to interfere with the investigation of the above listed allegation(s).

20. Subsequent to Respondent's receipt of this directive, Respondent contacted Ms. Taylor and advised her that he was the subject of an investigation regarding the March 18, 2014, incident involving K.W. Respondent showed Ms. Taylor the letter, but he did not attempt to influence her in any way. Respondent did not violate the directive of Principal Lux, because Respondent did not contact Ms. Taylor "with the intent to interfere with the investigation."

21. In sum, the evidence at hearing failed to show that Respondent's conduct with regard to the incident in the

classroom on March 18, 2014, involving K.W. constitutes misconduct in office, gross insubordination, or a violation of School Board policies.

22. In sum, the evidence at hearing failed to show that Respondent violated Principal Lux's directive not to contact any witnesses "with the intent to interfere with the investigation." Accordingly, the School Board failed to prove that Respondent's communications with Ms. Taylor constitutes gross insubordination.

#### CONCLUSIONS OF LAW

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

24. Respondent is an instructional employee, as that term is defined in section 1012.01(2), Florida Statutes (2013). The School Board has the authority to suspend instructional employees pursuant to sections 1012.22(1)(f), 1012.33(4)(c), and 1012.33(6)(a).

25. To do so, the School Board must prove, by a preponderance of the evidence, that Respondent committed the violations alleged in the Notice of Specific Charges, and that such violations constitute "just cause" for suspension.

§ 1012.33(1)(a) and (6), Fla. Stat.; Mitchell v. Sch. Bd., 972



So. 2d 900, 901 (Fla. 3d DCA 2007); Gabriele v. Sch. Bd. of Manatee Cnty., 114 So. 3d 477, 480 (Fla. 2d DCA 2013).

26. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280, n.1 (Fla. 2000). The preponderance of the evidence standard is less stringent than the standard of clear and convincing evidence applicable to loss of a license or certification. Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

27. 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); McMillian v. Nassau Cnty. Sch. Bd., 629 So. 2d 226, 228 (Fla. 1st DCA 1993).

28. Sections 1012.33(1)(a) and (6) provide in pertinent part that instructional staff may be suspended during the term of their employment contract only for "just cause."  
§ 1012.33(1)(a) and (6), Fla. Stat. "Just cause" is defined in section 1012.33(1)(a) to include "misconduct in office" and "gross insubordination."

29. Section 1001.02(1), Florida Statutes, grants the State Board of Education authority to adopt rules pursuant to

sections 120.536(1) and 120.54 to implement provisions of law conferring duties upon it.

30. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in rule 6A-5.056(2), effective July 8, 2012, which provides:

(2) "Misconduct in Office" means one or more of the following:

(a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;

(c) A violation of the adopted school board rules;

(d) Behavior that disrupts the student's learning environment; or

(e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

31. Rule 6B-1.001, re-numbered without change effective January 11, 2013, as rule 6A-10.080, "Code of Ethics of the Education Profession in Florida," 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.

32. While rule 6A-5.056(2)(a) provides that violation of the Code of Ethics rule constitutes "misconduct," it has been frequently noted that the precepts set forth in the above-cited "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." Walton Cnty. Sch. Bd. v. Hurley, Case No. 14-0429 (Fla. DOAH May 14, 2014); Miami-Dade Cnty. Sch. Bd. v. Anderson, Case No. 13-2414 (Fla. DOAH Jan. 14, 2014).

33. Rule 6A-5.056(2)(b) incorporates by reference rule 6B-1.006, renumbered without change effective January 11, 2013, as rule 6A-10.081, "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081 provides, in pertinent part:

(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

34. School Board Policy 3210, Standards of Ethical Conduct, effective July 1, 2011, is a "rule" within the meaning of rule 6A-5.056(2)(c). School Board Policy 3210 provides, 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:

\* \* \*

7. not intentionally expose a student to unnecessary embarrassment or disparagement;

\* \* \*

21. not use abusive and/or profane language or display unseemly conduct in the workplace;

35. School Board Policy 3210.01, Code of Ethics, effective July 1, 2011, is a "rule" within the meaning of rule 6A-5.056(2)(c). School Board Policy 3210.01 mirrors the Code of Ethics found in rule 6A-10.080. School Board Policy 3210.01 provides, in pertinent part:

A. 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.

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, of students, of parents, and of 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:

\* \* \*

A. Citizenship--Helping to create a society based upon democratic values (e.g., rules of law, equality of opportunity, due process, reasoned argument, representative government, checks and balances, rights and responsibilities, and democratic decision-making).

B. Cooperation--Working together toward goals as basic as human survival in an increasingly interdependent world.

C. Fairness--Treating people impartially, not playing favorites, being open-minded, and maintaining an objective attitude toward those whose actions and ideas are different from our own.

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

E. Integrity--Standing up for their beliefs about what is right and what is wrong and resisting social pressure to do wrong.

F. Kindness--Being sympathetic, helpful, compassionate, benevolent, agreeable, and gentle toward people and other living things.

G. Pursuit of Excellence--Doing their best with their talents, striving toward a goal, and not giving up.

H. Respect--Showing regard for the worth and dignity of someone or something, being courteous and polite, and judging all people on their merits. It takes three (3) major forms: respect for oneself, respect for other people, and respect for all forms of life and the environment.

I. Responsibility--Thinking before acting and being accountable for their actions, paying attention to others and responding to their needs. Responsibility emphasizes our positive obligations to care for each other.

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.

B. To obey local, State, and national laws, codes and regulations.

C. To support the principles of due process to protect the civil and human rights of all individuals.

D. To treat all persons with respect and to strive to be fair in all matters.

E. To take responsibility and be accountable for his/her actions.

F. To avoid conflicts of interest or any appearance of impropriety.

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

H. To be efficient and effective in the performance of job duties.

**Conduct Regarding Students**

Each employee:

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;

36. School Board Policy 3213, "Student Supervision and Welfare," effective July 1, 2011, is a "rule" within the meaning of rule 6A-5.056(2) (c). School Board Policy 3213 provides, in pertinent part:

Protecting the physical and emotional well-being of students is of paramount importance. Each instructional staff member shall maintain the highest professional, moral, and ethical standards in dealing with the supervision, control, and protection of students on or off school property.

37. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), effective July 8, 2012, which provides:

(4) "Gross insubordination" means the intentional refusal to obey a direct order,

reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

38. Turning to the present case, the School Board failed to prove by a preponderance of the evidence that Respondent's conduct on May 18, 2014, involving K.W., constitutes misconduct in office, gross insubordination, or a violation of School Board policies. Respondent merely blocked K.W.'s path in the aisle when she failed to follow his directive and sit in her newly assigned seat in the front of the classroom. In his effort to block K.W.'s path of travel and redirect her to her newly assigned seat, Respondent and K.W. made very slight physical contact with each other. The physical contact was minor, inadvertent, and lasted no more than one second. To hold that Respondent's conduct in this instance constitutes misconduct in office, gross insubordination, or a violation of School Board policies would have a chilling effect on a teacher's authority to control and redirect defiant student behavior in the classroom.

39. The School Board also failed to prove by a preponderance of the evidence that Respondent was grossly insubordinate based on his communications with Ms. Taylor subsequent to March 18, 2014. Respondent did not contact Ms. Taylor "with the intent to interfere with the



investigation," and therefore, he did not violate Principal Lux's directive of March 20, 2014.<sup>3/</sup>

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 rescinding the 15-day suspension of Respondent with back pay.

DONE AND ENTERED this 17th day of November, 2014, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of November, 2014.

ENDNOTES

<sup>1/</sup> A typographical error appears in the Notice of Specific Charges, numbering "Gross Insubordination" as Count IV, when in fact, it is Count V.

<sup>2/</sup> K.W. did not testify at the final hearing. However, K.W.'s two-page handwritten statement, which is hearsay, was received into evidence at the final hearing. Although hearsay is admissible in administrative proceedings, this does not necessarily mean that the undersigned must use the

hearsay in resolving a factual dispute. The statement cannot be used as the sole basis to support a finding of fact because it does not fall within an exception to the hearsay rule and it does not supplement or explain other non-hearsay evidence. See Fla. Stat. § 120.57(1)(c) (2014) ("Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").

Even if the statement could be used by the undersigned, however, it would not be given any weight based on the live testimony presented at the final hearing. Unlike K.W., who did not testify, the undersigned had an opportunity to judge the demeanor of the live witnesses who testified. Unlike K.W., the live witnesses at the final hearing were subject to cross-examination. The testimony of the live witnesses at hearing is inherently more trustworthy, more persuasive, and credited over the hand-written two-page hearsay statement of K.W., who did not testify.

<sup>3/</sup> The School Board argues that Respondent was given various directives between May 2013 and February 2014. Because the undersigned has found that Respondent was not grossly insubordinate with regard to the March 18, 2014, incident involving K.W., and the March 20, 2014, directive of Principal Lux, there is no need to address any directives given to Respondent prior to March 18, 2014.

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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.