

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-5117TTS

ORENTHAL J. ADAMS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing by video teleconference on June 15, 2015, with sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Sara M. Marken, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 430  
Miami, Florida 33132

For Respondent: Orenthal J. Adams, pro se  
19953 Southwest 133rd Court  
Miami, Florida 33177

STATEMENT OF THE ISSUE

Whether just cause exists for Petitioner to suspend without pay and terminate Respondent's employment.

PRELIMINARY STATEMENT

On October 7, 2014, at its scheduled meeting, Petitioner, Miami-Dade County School Board ("School Board"), took action to

suspend without pay and terminate Respondent, Orenthal J. Adams. On October 8, 2014, Respondent was advised of his right to request an administrative hearing within 15 days of the receipt of notice of the School Board's action.

On October 23, 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.

On October 29, 2014, the undersigned entered an Order Requiring Notice of Specific Charges. On November 14, 2014, the School Board filed its Notice of Specific Charges. On February 25, 2015, the School Board filed a Motion to Amend Notice of Specific Charges. On March 10, 2015, the undersigned entered an Order Granting Motion to Amend Notice of Specific Charges.

The Amended Notice of Specific Charges contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with the following violations in six 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"; (5) Gross Insubordination; and (6) Violation of School Board Policy 3120, "Employment of Instructional Staff."<sup>1/</sup>

At the request of the parties, the final hearing initially was set for January 27, 2015. Following multiple continuances, the final hearing was reset for June 15, 2015. The final hearing commenced as scheduled on June 15, 2015, with both parties present. At the hearing, the School Board presented the in-person testimony of P.Z., James Medina, Guillermo A. Munoz, Carmen G. Gutierrez, Respondent, and Terri Ann Chester. The School Board also presented the deposition testimony of Khalilah Martin and Jill Brookner because they were unavailable for the hearing. The School Board's Exhibits 2 through 4, 9, 13, 14, 24, 25, 27, 28, and 29 were admitted into evidence.<sup>2/</sup> Respondent testified on his own behalf. Respondent's Exhibit 1 was admitted into evidence.

The final hearing Transcript was filed on August 5, 2015. The parties filed their proposed recommended orders on August 17, 2015, after 5:00 p.m. The parties' proposed recommended orders were filed one day late because they were filed after 5:00 p.m. on August 17, 2015. See Fla. Admin. Code R. 28-106.104(3). However, neither party was prejudiced because of the late filing. Accordingly, the parties' proposed recommended orders 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

### Background

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. Respondent began working for the School Board in August 2001. At all times material to this case, Respondent has been employed as a special education teacher at Homestead Senior High School, a public school in Miami-Dade County, Florida. Respondent teaches students with autism spectrum disorder.

3. At all times material to this case, Respondent's employment with the School Board has been 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").

### The Florida Alternative Assessment

4. The School Board's first allegation against Respondent involves the Florida Alternative Assessment ("FAA"). The School Board alleges that Respondent is subject to suspension and termination because of "testing [ir]regularities involving Respondent and the Florida Alternative Assessment." As factual support of this contention, the School Board alleges in

paragraph 11 of the Amended Notice of Specific Charges that "Respondent did not follow proper testing procedures since the testing booklets were submitted in blank."

5. The FAA is the standardized test given to students with very significant cognitive disabilities, who are incapable of taking the "FCAT" standardized test or the Florida standards testing given by the school to regular education students.

6. The scoring on the FAA is very different from traditional standardized tests. The test is divided into 20 items. Within each item, there are three separate questions. Depending on the students' performance, they may not be exposed to all of the questions. Whether or not a student has access to all three of the questions within an item depends upon whether the student correctly answers the previous question. For example, if a student correctly answers question one of item one, that student would then proceed to question two of item one. If the student answers question two correctly, the student would then proceed to question three of item one.

7. The FAA can be administered over a number of days or weeks. The test must be completed, however, within a five-week testing period.

8. In administering the test to students, the questions on the FAA are verbally read by the teacher to the student. The teacher gives a verbal prompt, and the student verbally responds

with an answer. There is one correct answer out of three possible responses.

9. After a student provides the teacher with a verbal answer to the question, the teacher should mark the student's answer in the test booklet. The student does not mark in the test booklet. Outside of the testing situation, the teacher should then transfer the scores from the test booklet into a separate student answer sheet, which is a "bubble sheet."

10. Although a teacher's marking of students' answers to the questions on the test booklet is recommended, it is not mandatory.

11. No test booklets involving Respondent's administration of the FAA to his students were offered into evidence.

12. The evidence adduced at hearing does not establish that Respondent engaged in testing irregularities by submitting FAA test booklets in blank.

13. In sum, the evidence at hearing fails to show that Respondent's conduct with regard to the submission of FAA test booklets constitutes misconduct in office, gross insubordination, or a violation of School Board policies.

14. At hearing, the School Board did not argue that Respondent committed testing irregularities by submitting test booklets in blank. Rather, the School Board argued that Respondent committed testing irregularities because some students

had identical responses to questions on the "bubble sheets." Despite the discussion at the hearing regarding the purported identical answers of some students on the "bubble sheets," that factual contention was not pled as a basis for Respondent's suspension and termination, and the School Board never sought to amend its Amended Notice of Specific Charges to assert this factual contention.

Allegations Involving P.Z.

15. The School Board alleges in paragraph 14 of the Amended Notice of Specific Charges that Respondent is subject to suspension and termination because he "held a student with his arm behind his back and allowed other students to hit him."

16. At hearing, Respondent denied the allegation.

17. At hearing, the School Board presented the testimony of P.Z., the alleged student victim. Without objection, P.Z. was accompanied by his mother at the hearing.

18. P.Z. was a 10th-grade special education student in Respondent's class on the date of the alleged incident.

19. P.Z. is a 15-year-old student with autism spectrum disorder.

20. P.Z. has cognitive impairments which impact his ability to comprehend events and communicate with others.

21. At hearing, the following exchange between the undersigned and P.Z. occurred after P.Z. was placed under oath by the court reporter at the hearing:

THE ADMINISTRATIVE LAW JUDGE: Do you understand the difference between telling the truth and what would be considered a lie? Do you understand the difference?

THE WITNESS: Sometimes I can't tell what the difference is of the truth or a lie.

22. At hearing, counsel for the School Board asked questions of P.Z. with regard to the alleged incident, as follows:

Q: P., I'm going to ask you about something that happened at the beginning of this school year. Do you remember getting into trouble with Mr. Adams.

A: Yeah, kind of.

Q: Can you tell me--do you remember why you got into trouble with Mr. Adams?

A: Yeah. It was for many reasons. Well, the last time, the last one, was when he twisted my arm on my back like a military guy, and let everyone hit me to this shoulder where I hit the student. Sometimes he--and not only me, it's other kids who do that, twisting my arm on the military thing. And when the misbehaved student cries, Mr. Adams and Ms. Poser just laugh.

Q: And that happened to you because you got into trouble for hitting another kid?

A: Yeah, I got in trouble for many different reasons sometimes.



Q: But that last time was because you had hit another student?

A: Yes.

MS. MARKEN: Your Honor, if I could have one moment. Judge, I don't have any other questions.

23. On cross-examination, P.Z. testified, however, as follows:

Q: I do lead you to the bathroom or accompany you. But P., let me ask you, when I told you to come apologize, did I twist your arm or did I take you by your hand?

MS. MARKEN: Objection, asked and answered.

THE ADMINISTRATIVE LAW JUDGE: Overruled.

THE WITNESS: I don't think you twisted it. It's hard to remember.

MR. ADAMS: Judge, I have no more questions.

THE WITNESS: It's hard to remember after you left. Because he had to make me do my work, and you even made me cry once. And you just left.

MS. MARKEN: One moment, Judge.

THE ADMINISTRATIVE LAW JUDGE: Okay, P., you answered the questions.

MS. MARKEN: No further questions, Judge.

24. At hearing, P.Z. was happy to see Respondent, and they exchanged pleasantries following P.Z.'s testimony. As he was leaving the hearing room following his testimony, P.Z. told Respondent: "Bye. I hope I see you again."

25. At hearing, no witnesses other than Respondent and P.Z. testified regarding the alleged incident.

26. At hearing, the undersigned had the opportunity to observe the testimony and demeanor of both P.Z. and Respondent. The testimony of Respondent is credited and is more persuasive than the testimony of P.Z., which is not credited or persuasive.

27. The evidence does not establish that Respondent held a student with his arm behind his back and allowed other students to hit him as alleged in the Amended Notice of Specific Charges.

28. In sum, the evidence at hearing fails to show that Respondent's conduct with regard to the incident in the classroom involving P.Z. constitutes misconduct in office, gross insubordination, or a violation of School Board policies.<sup>3/</sup>

Allegations Involving Respondent's Teaching Certificate

29. Finally, the School Board alleges in paragraph 22 of the Amended Notice of Specific Charges that Respondent is subject to suspension and termination because his teaching certificate was suspended on February 17, 2015, until further notice, making Respondent ineligible for employment as a teacher with the School Board.

30. After the School Board suspended Respondent and initiated dismissal proceedings, the Education Practices Commission notified the School Board on February 17, 2015, that

Respondent's teaching certificate had been suspended, until further notice, for failure to pay child support.

31. The evidence presented at hearing establishes that Respondent's teaching certificate was suspended by the Florida Department of Education on February 17, 2015.

32. On March 30, 2015, Respondent received a letter from the Florida Department of Revenue, Child Support Enforcement ("DOR"), indicating that DOR directed the Department of Education to reinstate Respondent's certificate because Respondent was paying child support as agreed or ordered by the circuit court, or he was otherwise entitled to have his certificate reinstated.

33. Following the hearing, the School Board filed its post-hearing Exhibit 30 (mis-numbered by the School Board as Exhibit 29), which consists of a letter from the Department of Education. The letter from the Department of Education was directed to Respondent and is dated June 17, 2015. The letter indicates that Respondent's teaching certificate is reinstated because the "Department of Revenue (DOR) has directed our office to reinstate your certificate because you are paying child support as agreed or ordered, or are otherwise entitled based on DOR's findings."

34. The evidence establishes that Respondent's teaching certificate was suspended from February 17, 2015, until June 17, 2015.

35. In sum, the evidence fails to show that the suspension of Respondent's teaching certificate from February 17, 2015, until June 17, 2015, constitutes misconduct in office, gross insubordination, or a violation of School Board policies justifying his suspension since October 7, 2014, and termination.

CONCLUSIONS OF LAW

36. 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 (2014).

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

38. 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 and termination. §§ 1012.33(1)(a) and (6), Fla. Stat.; Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

39. 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. 3d 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. Dileo, 569 So. 2d at 884.

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. 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).

41. The allegations of fact set forth in the charging document are the facts upon which this proceeding is predicated. MacMillan, 629 So. 2d at 229; M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 763 (Fla. 2d DCA 2008); Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996).

42. Sections 1012.33(1)(a) and (6) provide in pertinent part that instructional staff may be suspended and terminated 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."

43. 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.

44. Consistent with this rulemaking authority, the State Board of Education has defined "misconduct in office" in Florida Administrative Code Rule 6A-5.056(2), 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 6A-10.080, F.A.C.;

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.;

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

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

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

45. Florida Administrative Code 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.

46. 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." Miami-Dade Cnty. Sch. Bd v. McKenzie, 2015 Fla. Div. Adm. Hear. LEXIS 7 (Fla. DOAH Jan. 8, 2015); Miami-Dade Cnty. Sch. Bd. v. Chandra-DAS, 2014 Fla. Div. Adm. Hear. LEXIS 562 (Fla. DOAH Nov. 17, 2014).

47. Rule 6A-10.081, "Principles of Professional Conduct for the Education Profession in Florida," 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.

(f) Shall not intentionally violate or deny a student's legal rights.

\* \* \*

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

\* \* \*

(c) Shall not use institutional privileges for personal gain or advantage.

\* \* \*

(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.

48. School Board Policy 3210, Standards of Ethical Conduct, 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:

\* \* \*



3. make a 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;

\* \* \*

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

49. School Board Policy 3210.01, Code of Ethics, 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, 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:

\* \* \*

- A. Citizenship--Helping to create a society based upon democratic values (e.g., rule 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;

F. shall not intentionally violate or deny a student's legal rights.

50. School Board Policy 3213, "Student Supervision and Welfare," 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.

51. Consistent with its rulemaking authority, the State Board of Education has defined "gross insubordination" in rule 6A-5.056(4), 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.

52. Section 1012.55(1)(b), Florida Statutes, requires each person employed as a teacher to hold a teacher's certificate.

53. Turning to the present case, the School Board failed to prove by a preponderance of the evidence that Respondent's

conduct with regard to the submission of FAA test booklets constitutes misconduct in office, gross insubordination, or a violation of School Board policies. In this case, the Amended Notice of Specific Charges alleges that Respondent engaged in "testing [ir]regularities involving Respondent and the Florida Alternative Assessment." As factual support for this contention, the School Board alleges in paragraph 11 of the Amended Notice of Specific Charges that "Respondent did not follow proper testing procedures since the testing booklets were submitted in blank." The scope of this proceeding is properly restricted to those factual matters alleged in the Amended Notice of Specific Charges. The Amended Notice of Specific Charges makes no reference to students purportedly having identical answers on the "bubble sheets." Although there was discussion at the hearing regarding the purported identical answers of some students on the "bubble sheets," the School Board never sought to amend the Amended Notice of Specific Charges to assert such a factual contention in support of Respondent's suspension and termination.

54. The School Board also failed to prove by a preponderance of the evidence that Respondent held P.Z. with his arm behind his back and allowed other students to hit him as alleged in the Amended Notice of Specific Charges. Accordingly, the School Board failed to prove by a preponderance of the evidence that Respondent's conduct with regard to the incident in

the classroom involving P.Z. constitutes misconduct in office, gross insubordination, or a violation of School Board policies.<sup>4/</sup>

55. The preponderance of the evidence establishes that Respondent's teaching certificate was suspended by the Education Practices Commission on February 17, 2015, for failure to pay child support. Respondent's teaching certificate was reinstated on June 17, 2015, because DOR directed the Education Practices Commission to reinstate the certificate due to Respondent's paying of child support. Respondent was already suspended by the School Board during the same time period his teaching certificate was suspended by the Education Practices Commission for failure to pay child support. The preponderance of the evidence does not establish that the suspension of Respondent's teaching certificate from February 17, 2015, until June 17, 2015, constitutes misconduct in office, gross insubordination, or a violation of School Board policies justifying his suspension since October 7, 2014, and termination. However, Respondent is not entitled to back pay for the period of February 17, 2015, to June 17, 2015.<sup>5/</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 proposed termination and

suspension, and provide Respondent with back pay, except for the period of February 17, 2015, to June 17, 2015.

DONE AND ENTERED this 4th day of September, 2015, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of September, 2015.

#### ENDNOTES

<sup>1/</sup> Typographical errors appear in the Amended Notice of Specific Charges, numbering "Gross Insubordination" as Count IV and "Violation of School Board Policy 3120--Employment of Instructional Staff," as Count V, when in fact, they are Counts V and VI, respectively.

<sup>2/</sup> At the final hearing, the undersigned granted the School Board's request to leave the record open for ten days to allow the School Board to present documentation and rebuttal testimony to show that Respondent's teaching certificate "is still suspended and it hasn't been reinstated." On July 7, 2015, the School Board filed its untimely post-hearing exhibit (mis-numbered 29), which the undersigned has, nevertheless, received into evidence as Exhibit 30. Exhibit 30 reflects that Respondent's teaching certificate has, in fact, been reinstated. The School Board did not seek to offer any post-hearing rebuttal testimony with regard to the issue of the status of Respondent's teaching certificate.

At the final hearing, the undersigned advised the parties that Ms. Brookner's deposition transcript that was received in evidence as Exhibit 28 did not include any exhibits, even though the transcript references exhibits to the deposition. The undersigned indicated that he would leave the record open for a period of ten days so that counsel for the School Board could file the exhibits to the deposition. The undersigned directed counsel for the School Board to file the exhibits to Ms. Brookner's deposition within ten days of the hearing date, and counsel for the School Board indicated at the hearing that she would do so. However, counsel for the School Board did not file the exhibits to the deposition with DOAH until August 12, 2015. See Notice of Filing Amended Petitioner's Exhibit Twenty-Eight. Nevertheless, the undersigned has received Petitioner's Amended Exhibit 28 in evidence.

<sup>3/</sup> A one-page "Student Statement," purportedly authored by P.Z. (a/k/a P.C.) on August 29, 2014, was received into evidence at the final hearing as Respondent's Exhibit 13. According to the statement, which is hearsay, if the student is unable to write his/her own statement, the administrator, in the presence of the witness signing the document, must write the statement for the student in the student's own words/vocabulary; not the administrator's vocabulary. The statement was written by James Medina, an EBD clinician at the school, on behalf of P.Z. At the bottom of the statement, the initials "P.C." are hand-written next to a date of "9/10/2014." Mr. Medina testified that he authored the statement on the "morning" of the alleged incident.

Another one-page "Student Statement" purportedly authored by another student, J.H., on August 29, 2014, was received into evidence at the final hearing as Respondent's Exhibit 14. This hand-written statement, which is also hearsay, states: "I saw Adam grab P by his hand and is neck then he put paul on the wall and stand there do nothing." At the bottom of the statement, the initials J.H are hand-written next to a date of "9/10/14."

Although hearsay is admissible in administrative proceedings, this does not necessarily mean that the undersigned must use the hearsay in resolving a factual issue. The statements cannot be used as the sole basis to support a finding of fact, because they do not fall within an exception to the hearsay rule. Furthermore, the statements do not supplement or explain other non-hearsay evidence. See § 120.57(1)(c), Fla. Stat. ("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 statements could be used by the undersigned, however, they would not be given any weight based on the live testimony presented by Respondent at the final hearing. Unlike J.H., who did not testify, the undersigned had an opportunity to judge the demeanor of the live witnesses who testified. Unlike J.H., the live witnesses at the final hearing were subject to cross-examination.

As indicated above, the testimony of Respondent at hearing was more persuasive and credited over the live testimony of P.Z. The live testimony of Respondent is also credited over the handwritten hearsay statements of P.Z. and J.H., who did not testify.

The undersigned concludes that the written statement of P.Z. was not written in his own words/vocabulary given P.Z.'s testimony at the final hearing. Moreover, the undersigned concludes that the written statement of P.Z. was not witnessed by P.Z. on the date Mr. Medina wrote it because there are different dates indicated when P.Z. initialed the document (September 10, 2014) and when Mr. Medina wrote it (August 29, 2014). Furthermore, the contents of the statement are inconsistent with P.Z.'s testimony at hearing. The written statement of J.H. does not even support the School Board's allegation. The statement of J.H. makes no mention of Respondent allegedly placing P.Z.'s arm behind his back and allowing other children to hit him.

<sup>4/</sup> The School Board's Amended Notice of Specific Charges and Proposed Recommended Order references School Board Policy 3213, Student Supervision of Welfare, and then purportedly seeks to rely on Policy 5630, Corporal Punishment and Use of Reasonable Force. Both the Amended Notice of Specific Charges and Proposed Recommended Order quote from purported provisions of Policy 5630. At the final hearing, School Board Policy 3213 was received in evidence as the School Board's Exhibit 4. However, no purported Policy 5630, Corporal Punishment and Use of Reasonable Force, was offered into evidence.

<sup>5/</sup> The School Board argues that Respondent was given various directives during the 2013-2014 school year. Because the undersigned has found that Respondent was not grossly insubordinate with regard to the School Board's allegations involving his administration of the FAA; the incident involving P.Z., and the suspension of his teaching certificate, there is no

need to address any of the directives given to Respondent during the 2013-2014 school year.

COPIES FURNISHED:

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Pam Stewart, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
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Alberto M. Carvalho, Superintendent  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 912  
Miami, Florida 33132-1308  
(eServed)

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.