

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-2468TTS

OSCAR D. RIZO,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing on February 4 and 5, 2020, in Miami, Florida.

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 430  
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
29605 U.S. Highway 19 North, Suite 110  
Clearwater, Florida 33761-1526

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

By letter dated May 9, 2019, Petitioner, Miami-Dade County School Board ("School Board"), notified Respondent, Oscar D. Rizo ("Respondent"), of the School Board's intent to suspend without pay and terminate his employment as a teacher. On May 9, 2019, Respondent timely requested an administrative hearing. Subsequently, the School Board referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing. The Notice of Specific Charges contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with Misconduct in Office (Count I) and Immorality (Count II).

The final hearing was initially set for July 8, 2019. On June 27, 2019, Respondent filed an unopposed motion to continue the final hearing. On July 1, 2019, the undersigned entered an Order resetting the final hearing for September 19, 2019. On September 5, 2019, Respondent filed another unopposed motion to continue the final hearing. On September 6, 2019, the undersigned entered an Order resetting the final hearing for November 20 and 21, 2019. On November 19, 2019, the undersigned sua sponte entered an Order resetting the final hearing for February 4 and 5, 2020. On January 31, 2020, the School Board filed a motion in limine to exclude testimony regarding Respondent's character.

The final hearing was conducted on February 4 and 5, 2020. At the outset of the hearing, the undersigned addressed the School Board's motion in limine. After hearing argument on the motion from counsel for the parties, the undersigned granted the motion, in part.

At the hearing, the School Board presented the testimony of K.S., V.S.C., Damaris Perez, and Edward Torrens. Respondent testified on his own behalf and presented the additional testimony of Bernice Charley, Steven C. Webb,

Thelma Fornell, Joseph Tolliver, and Minnie Hightower. The School Board's and Respondent's Exhibits 1 through 19 were received into evidence based on the stipulation of the parties, subject to hearsay objections.<sup>1</sup>

The two-volume final hearing Transcript was filed at DOAH on March 20, 2020. On March 30, 2020, Respondent filed a proposed recommended order. On March 30, 2020, the School Board filed an unopposed motion for extension of time until April 2, 2020, to file its proposed recommended order. The School Board's proposed recommended order was not filed until 8:00 a.m. on April 3, 2020, one-day late. On April 9, 2020, the undersigned entered an Order granting the motion.

There is no prejudice to Respondent as a result of the School Board's late-filed proposed recommended order. Accordingly, the parties' proposed recommended orders have been considered in the preparation of this Recommended Order. On November 19, 2019, the parties filed their Joint Pre-Hearing Stipulation, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below. 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.

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<sup>1</sup> At the conclusion of the hearing, the parties stipulated that students N.E., C.Z., T.C., and S.M., were unavailable, and that their deposition testimony, included within the School Board's Exhibit No. 12 and Respondent's Exhibit Nos. 16 through 18, could be received in evidence in lieu of their live testimony.

2. The School Board hired Respondent in 2010 as a teacher at Campbell Drive K-8 Center ("Campbell Drive"), a public school in Miami-Dade County. During the 2016-2017 and 2017-2018 school years and at all times relevant to this case, Respondent was employed at Campbell Drive as an intensive reading teacher pursuant to a professional services contract.

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 between the School Board and the United Teachers of Dade ("UTD").

4. The alleged conduct giving rise to the School Board's proposed suspension and termination of Respondent occurred during the 2016-2017 and 2017-2018 school years.

Allegations Involving K.S.

5. The School Board alleges in paragraph 10 of the Notice of Specific Charges that during the 2016-2017 school year Respondent made grossly inappropriate physical and verbal sexual contact with K.S. At the time of the alleged conduct, K.S. was a female 12-year-old student in Respondent's seventh-grade intensive reading class. Specifically, paragraph 10 of the notice alleges:

During the course of the school year, beginning sometime after the Winter Recess, he would touch her private area over her clothing. On one day during lunch, the Respondent requested that this student come to his room during lunch to make up a test. When she arrived in the room, the Respondent initiated physical sexual contact with the student. In addition to touching the girl beneath her clothes, the Respondent exposed himself to her and had her touch his private area. After the brief encounter, the girl exited the room. During the course of the school year the Respondent also asked her to engage in sexual acts and made sexual comments to her.

6. The School Board further alleges in paragraph 10 of the notice that during the 2017-2018 school year, when K.S. was a student in Respondent's eighth grade intensive reading class, "Respondent requested a sexual favor from [K.S] on a small note that he had handed her."

7. At hearing, Respondent vehemently denied making any sexual comments or engaging in any sexual contact with K.S. <sup>2</sup>

K.S.'s Written Sworn Statement to Detective Webb

8. On March 2, 2018, K.S. was interviewed by Detective Steven Webb, with the School Board's police department, regarding alleged inappropriate sexual conduct by Respondent against her. That same day, K.S. gave a written sworn statement to Detective Webb, received into evidence as Respondent's Exhibit No. 11. In this sworn statement, K.S. stated that during the 2016-2017 school year, Respondent "became sexually active with students, he did multiple things." K.S. went on state that Respondent:

started off by touching my private area and then he advanced a couple of days later by pulling his pen[n]is (*sic*) out and grabbing my hand and, placing it there. One day he sent a student to get me from the cafeteria and on the pass it stated that I had to make up a test, but when I entered his class he rubbed my breast, and started to suck them for about 10 to 15 seconds, and then I pushed him away. He was dropping my grade until I did the things he wanted me to do with him which is to have sex, give him head, thing of that nature. Recently, about 2-3 weeks ago he asked me to do things with him and that's a reason to why I left early recently.

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<sup>2</sup> K.S. did not complete her seventh-grade school year at Campbell Drive. Before the school year ended, the principal of Campbell Drive asked K.S. to leave the school because of disciplinary problems involving physical altercations with other students and defiant behavior. K.S. subsequently enrolled in Villa Prep Academy, a private school where she completed her seventh-grade year. K.S. did not attend Villa Prep Academy for very long because she was dismissed from that school during the early part of her eighth-grade year. In December 2017, K.S. re-enrolled in Campbell Drive. Upon her return, K.S.'s mother requested that she be put in Respondent's classroom and K.S. was a student in Respondent's eighth-grade intensive reading class for the remainder of the 2017-2018 school year.

9. There was nothing mentioned in K.S.'s written sworn statement about Respondent engaging in any inappropriate conduct toward K.S. while she sat at her desk in Respondent's classroom.

K.S.'s Audio Recorded Interview with Detectives Webb and Ochoa

10. In a subsequent audio recording interview of K.S. on March 2, 2018, by Detective Webb and Detective Gil Ochoa, received into evidence as the School Board's Exhibit No. 5, K.S. initially described the cafeteria pass incident as follows:

11. K.S. stated she left the cafeteria with her food tray in hand and went to Respondent's classroom. Upon entering Respondent's classroom, she began telling him things about her family. K.S. stated Respondent then took away her food tray, set the tray down, and pulled her over to another area of the room, at which time he touched her breasts over her shirt, lifted up her shirt and sports bra, exposed her breasts, and sucked on one of her breasts for about 10 to 15 seconds. K.S. stated she got scared and left the classroom, and that is all he did that day.

12. K.S. failed to mention anything about Respondent pulling out his penis on this occasion until asked specifically about it by Detective Ochoa near the conclusion of the interview. School Board's Ex. 5 at 13:22. K.S. then stated that she saw his penis, but she was scared and looked away. K.S. made no mention of Respondent placing her hand on his penis.

13. During this interview, K.S. went on to describe another occasion in Respondent's class that occurred after school was dismissed for the day. According to K.S., on this particular occasion, Respondent asked her "to give him head" and "to have sex with him." However, according to K.S., it never happened. K.S. further stated that recently (two to three weeks ago), Respondent asked that she "give him head."

14. There was no mention in this interview of Respondent touching K.S.'s vaginal area or dropping her grades.

15. The entire audio recorded interview lasted approximately 15 minutes. At the conclusion of the interview, K.S. was asked if there was anything else that she remembered that she wanted to add. K.S. declined and she did not state any other alleged inappropriate physical and verbal sexual contact by Respondent.

K.S.'s Testimony at Hearing

16. At the final hearing, K.S. testified that toward the beginning of the 2016-2017 school year, Respondent moved her seat next to his because she was easily distracted by the other students and failed the first test. Subsequently, the following exchange occurred between counsel for the School Board and K.S.:

Q: Now, during that school year, did Mr. Rizo ever do anything inappropriate to you during class time?

A: Yes.

Q: All right. Can you explain to the Judge what he would do to you?

A: He would, like, walk by, 'cause since I was sitting so close to him, he would just touch me, like, my private areas or he'll just, like go down on my arm, like that. Stuff like that.

Q: All right. Now, this would occur during class time?

A: Yes.

Q: When specifically--was there a specific time that it would occur during class time?

A: Mainly when we were testing or doing our work.

T. Vol. 1, pp. 28-29.

17. Counsel for the School Board went on to question K.S. about the testing process and Respondent's efforts to curtail students cheating on tests.

K.S. testified that students placed raised stapled manila folders on their desks to prevent students from seeing each other's tests. Counsel for the School Board then asked K.S., in leading fashion: "So it was this time, during the testing, when he would touch you? K.S. responded: "Yes." *Id.*, Vol. 1, pp. 29-30.

18. However, K.S. could not describe the number of times "this occurred" during the 2016-2017 school year. Moreover, this alleged inappropriate touching supposedly occurred while 20 to 25 other students were in the classroom.

19. At hearing, K.S. testified at one point that Respondent's touching of her vaginal area occurred every time they had tests, but she acknowledged that the raised stapled manila folders were not always present on the students' desks during testing. At hearing, K.S. further acknowledged that had the inappropriate touching occurred as she testified to, any student at any point could have looked and seen Respondent caressing her in her vaginal area.

20. Counsel for the School Board then inquired of K.S. if there was "ever anything more serious that [Respondent] did to [her]" that school year (2016-2017). In response, K.S. described the alleged cafeteria pass incident as follows:

A: I was in lunch--because I was in seventh grade at the time, seventh grade goes to lunch before anybody, and he sent one of his eighth grader students with a pass to go to get me. Because in order to leave the lunchroom, you have to have a pass. Security didn't let you leave the lunchroom. Security called me and told me that my teacher was calling me to make up a test.

When I got in the room, I had my tray in my hand, and he took my tray, put it down, he exposed



himself. And then there was a corner and he, like, put me in the corner and he sucked on my breast.

T. Vol. 1, pp. 32-33.

21. However, moments later, K.S. described the incident differently:

First he pushed me to the corner, and then after he sucked my breast, then he exposed himself. And then I was just scared. And he--when he exposed himself, he grabbed my arm and he made me touch his area, and then I grabbed my tray, I threw it away, and then I left.

*Id.* at p. 33.

22. According to K.S., she was in Respondent's classroom on this particular occasion between five or ten minutes. The corner of Respondent's classroom is located right next to the door entering the room. K.S. testified that the incident occurred with just Respondent and K.S. in the classroom, but with the other student who had retrieved K.S. from the cafeteria still waiting outside the door when K.S. left Respondent's classroom.

23. At hearing, counsel for the School Board also asked K.S., in leading fashion, whether she ever told the police officers that Respondent would "suck on your breasts or try to have sex with you multiple times?" In response, K.S. testified: "I told them--I told them the suck on my breast part, when he exposed him. And then when they asked about my eighth-grade-year, I told them how he wrote on a sticky note that I want to give him head, like oral sex ...." Inconsistently, K.S. testified in her deposition that Respondent wrote on the sticky note: "Can I eat her?" According to K.S. in her deposition, Respondent picked up the sticky note, showed it to K.S., and she grabbed it from him and threw the note away. School Board's Ex. 11, p. 11. At hearing, K.S. testified that Respondent handed her the sticky note and that she then threw it away.

24. K.S. and Respondent never communicated by telephone, text, e-mail, or social media.

25. There are no witnesses to any of the alleged incidents.

26. K.S. never reported any alleged inappropriate conduct by Respondent to her parents, a teacher, or school administrators.

27. However, at hearing, K.S. testified she told V.S.C. about Respondent's conduct toward her during the 2016-2017 school year when V.S.C. came to her house on a single occasion sometime during K.S.'s eighth grade school year.

Allegations Involving V.S.C.

28. The School Board alleges in paragraph 11 of the Notice of Specific Charges that during the 2017-2018 school year, Respondent also made inappropriate comments to V.S.C. during his role as an afterschool care supervisor, and that he would "bump up against" V.S.C., "rubbing himself on her buttocks area."

29. V.S.C. was not a student in Respondent's classroom. The alleged inappropriate conduct occurred while V.S.C., a female 14-year-old eighth grade student at Campbell Drive, attended the school's Students with a Goal ("SWAG") afterschool program.

30. SWAG is an outdoor program where students can engage in a variety of recreational activities. Respondent was one of six school staff members that participated in the program. At any given time, there were approximately 100 students in attendance. Students could play soccer, basketball, football, dodge ball, board games, or do homework. Students could freely rotate through the different activities by simply notifying the adult conducting the desired activity. Respondent primarily engaged in soccer, but would occasionally participate in other activities.

31. At hearing, Respondent vehemently denied making any sexual comments or engaging in any sexual contact with V.S.C.

V.S.C.'s Audio Recorded Interview with Detective Bernice Charley

32. On March 6, 2018, V.S.C. was interviewed by Detective Bernice Charley, with the School Board's police department, regarding alleged

inappropriate sexual conduct by Respondent against her. An audio recording of the interview was received into evidence as the School Board's Exhibit 8.<sup>3</sup>

33. During the interview, V.S.C. stated that while she and Respondent were at SWAG during the 2017-2018 school year, Respondent told her he wanted to slap her face with his penis; he asked her if she liked it rough (referring to sex); and he told her his penis was his "third leg." According to V.S.C., she and Respondent would engage in a verbal "back and forth," and he would say these comments in front of other students at SWAG.

34. Additionally, V.S.C. stated she and Respondent would "bump" into each other at SWAG. According to V.S.C., Respondent would bump into her side or back from behind.

35. During the interview, V.S.C. stated she had a bad memory. V.S.C. was reluctant to speak and there were many long pauses by her after questioning by Detective Charley.

36. After much prodding and requests by Detective Charley for V.S.C. to "open-up," V.S.C. actually stated: "There's nothing to talk about because nothing did happen." School Board's Ex. 8, at 38:48-38:52.

37. After further pauses, prodding, and requests by Detective Charley for V.S.C. to "open up," V.S.C. stated that Respondent also touched her breasts one time while they were at SWAG. According to V.S.C., this incident occurred with her shirt on.

38. The School Board argues in its proposed recommended order that V.S.C. also described another incident while she and Respondent were at his classroom. According to V.S.C., Respondent was standing at his desk and V.S.C. was standing in the doorway, at which time Respondent stated to V.S.C.: "me and you here and now," followed by Respondent tapping on his desk. V.S.C. interpreted this comment as meaning that Respondent wanted

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<sup>3</sup> The audio recorded interviews of K.S. and V.S.C. (School Board's Exhibits 6 and 8) are contained on a thumb-drive accompanying the School Board's written exhibits received into evidence at the hearing.

to have sex with her. According to V.S.C., other students were present when Respondent allegedly made the comment. Notably, this alleged incident is not referred to in the Notice of Specific Charges. The notice was, therefore, insufficient to inform Respondent of the School Board's contention.

39. The entire recorded interview lasted approximately 52 minutes. Much of the interview involved Detective Charley's repeated efforts to redirect V.S.C. and her attempts to have V.S.C. "open-up."

#### V.S.C.'s Testimony at Hearing

40. At the final hearing, V.S.C. could not even remember whether she was in seventh or eighth grade during the 2017-2018 school year.

41. In any event, V.S.C. testified that during the 2017-2018 school year, she attended Campbell Drive and the afterschool SWAG program. Respondent and V.S.C. did not have much interaction in the SWAG program. V.S.C. testified that she did not really participate in any of the SWAG activities; rather, she would either just "hang-out with [her] friends or sleep," or watch her friends and Respondent play soccer. However, most of V.S.C.'s time was spent sleeping near a tree, far away from where Respondent spent most of his time with the soccer group.

42. When asked if Respondent ever did anything inappropriate to her during the SWAG program, V.S.C. testified that he talked about his "private part" to her, saying that "it was big," and referring to it once as "his third leg."

43. Counsel for the School Board then asked V.S.C. in leading fashion: "Okay. Did he ever mention anything that he would like to do with his private part," to which V.S.C. responded, "I don't remember. I just know that he talked about it once." T. Vol. 1, p. 82.

44. V.S.C. described unspecified things that Respondent allegedly said to V.S.C. as "playful, like, in an inappropriate way," and "weird."

45. Counsel for the School Board then asked V.S.C. in leading fashion: "Do you remember telling these things that he would say to you to the police at a

given point," to which V.S.C. responded, "I barely remember. It's, like, such a long time ago now." *Id.* at p. 83.

46. As with her recorded interview with Detective Charley, V.S.C. was reluctant to testify at hearing and there were many long pauses by her after questioning by the School Board's counsel.

47. After further prodding and requests by the School Board's counsel to describe "the things he would say to you, other than his talking about his private part," V.S.C. described the aforementioned verbal incident in Respondent's classroom. On cross-examination, V.S.C. acknowledged this comment was loud enough so that other students could hear it and that she read a sexual connotation into the comment. *Id.* at p. 97.

48. Counsel for the School Board again asked V.S.C. if Respondent ever made any other comments to her during SWAG, to which V.S.C. responded, "I can't remember." *Id.* at p. 85.

49. Subsequently, the following exchanges occurred between counsel for the School Board and V.S.C.:

Q: Did he ever threaten to slap you with anything?"

A: Yeah, with his penis.

Q: What did he say?

A: He said he wants to, like, slap me in the face with his penis.

Q: And when did he say that?

A: I think in SWAG. Yeah, it was in SWAG.

\* \* \*

Q: Do you remember Mr. Rizo touching you in any other way other than bumping you with his hip or anything like that?

A: When we would play fight, he would, like, put his pelvis, like, on my back area.

Q: What would he do with his pelvis?

A: He would just, like, be there, like, behind me and play fighting me.

Q: Did he ever try to touch you sexually in any way?

A: I guess, yeah, if he's doing that, if he's behind me like that.

*Id.* at pp. 87 and 92.

50. V.S.C. never reported any alleged inappropriate conduct by Respondent to her parents, teachers, or school administrators.

51. At hearing, V.S.C. acknowledged that she and K.S. were friends.

52. At hearing, V.S.C. admitted that she and Respondent were never alone during the SWAG program and that she was always close to the other students.

53. At hearing, nothing was mentioned about Respondent touching V.S.C.'s breasts.

Allegations involving N.E.

54. In paragraph 12 of the Notice of Specific Charges, the School Board alleges that "Respondent also made sexual advances and over the clothing sexual contact with a third female student [N.E.] during the 2017-2018 school year."

55. However, N.E. did not testify live at hearing and the School Board did not present any eyewitness testimony in support of the allegations.

56. At hearing, Respondent vehemently denied making any sexual comments or engaging in any sexual contact with N.E.

### Ultimate Findings of Fact

57. At hearing, the undersigned had the opportunity to observe the testimony and demeanor of Respondent, K.S., and V.S.C. The testimony of Respondent is credited and is more persuasive than the testimony of K.S. and V.S.C., which is not credited or persuasive.

58. Notably, K.S.'s and V.S.C.'s versions of the events as set forth in their statements to the police and testimony at hearing were vague, differed in key respects, and much of their testimony and statements to the police were obtained through patently leading questions. Moreover, V.S.C. admitted that her memory is bad and that "there's nothing to talk about because nothing did happen." It is also inconceivable that K.S. would have returned to Respondent's classroom for intensive reading during the 2017-2018 school year had the alleged conduct during the 2016-2017 school year actually occurred. Had the alleged incidents occurred as testified about by K.S. and V.S.C., who were friends, it is also expected that there would have been eyewitnesses.

59. In sum, the persuasive and credible evidence adduced at hearing demonstrates that Respondent did not engage in inappropriate physical and verbal sexual contact with K.S., V.S.C., or N.E., as alleged in the Notice of Specific Charges, and Respondent did not engage in conduct with K.S., V.S.C., or N.E., which constitutes misconduct in office or immorality.<sup>4</sup>

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<sup>4</sup> K.S. and N.E. were also friends. As detailed above, N.E. did not testify at the hearing. However, an audio statement and a written statement purportedly authored by N.E., both of which are hearsay, were received into evidence at the final hearing as the School Board's Exhibit Nos. 6 and 16, respectively. 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."). At hearing, the parties stipulated to the receipt into evidence of N.E.'s deposition testimony in lieu of her live testimony. Even if the audio statement and written statement could be used by the undersigned, however, the audio statement, written statement, and deposition testimony would not be given any weight based on the live testimony Respondent presented at hearing. Unlike N.E., who did not testify live

## CONCLUSIONS OF LAW

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

61. 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).

62. The School Board's allegations are limited to those contained within the Notice of Specific Charges. *MacMillian v. Nassau Cnty. Sch. Bd.*, 629 So. 2d 226, 228 (Fla. 1st DCA 1995); *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). The School Board has the burden of proving, 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 dismissal. §§ 1012.33(1)(a) and (6)(a), Fla. Stat.; *Dileo v. Sch. Bd. of Dade Cnty.*, 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

63. 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).

64. 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

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at hearing, the undersigned had an opportunity to observe the demeanor of the live witnesses who testified. Unlike N.E., the live witnesses at the final hearing were subject to cross-examination. The testimony of Respondent is inherently more trustworthy, more persuasive, and credited over the hearsay statements and deposition testimony of N.E., who did not testify live at the hearing.



alleged violation. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995).

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

66. 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.

67. 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, in pertinent part:

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

\* \* \*

(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.

68. Rule 6A-5.056(2)(b) incorporates by reference Florida Administrative Code Rule 6A-10.081, which is titled "Principles of Professional Conduct for the Education Profession in Florida." Rule 6A-10.081(1)(a) and (2)(a) provides, in pertinent part:

(1) Florida educators shall be guided by the following ethical principles:

(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 to 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.

(2) Florida educators shall comply with the following disciplinary principles. 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.

(a) Obligation to the student requires that the individual:

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

\* \* \*

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

6. Shall not intentionally violate or deny a student's legal rights.

\* \* \*

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

69. Consistent with its rulemaking authority, the State Board of Education has defined "immorality" in rule 6A-5.056(1), which provides:

(1) "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

70. School Board Policy 3210, Standards of Ethical Conduct, 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;

8. not intentionally violate or deny a student's legal rights;

\* \* \*

10. not exploit a relationship with a student for personal gain or advantage;

\* \* \*

14. not use institutional privileges for personal gain or advantage;

\* \* \*

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

71. School Board Policy 3210.01, Code of Ethics, provides, in pertinent part:

All members of the School Board, administrators, teachers and all other employees of the District, 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 District students.

**Application**

This Code of Ethics applies to all members of the Board, administrators, teachers, and all other employees regardless of full or part time status. It also applies to all persons who receive any direct economic benefit such as membership in Board funded insurance programs.

Employees are subject to various other laws, rules, and regulations including but not limited to The Code of Ethics for the Education Profession in Florida and the Principles of Professional Conduct of the Education Profession in Florida, F.A.C.

Chapter 6A-10.081, the Code of Ethics for Public Officers and Employees, found in F.S. Chapter 112, Part III, and Policy 3129, which are incorporated by reference and this Code of Ethics should be viewed as additive to these laws, rules and regulations. To the extent not in conflict with any laws, Board policies, or governmental regulations, this Code of Ethics shall control with regard to conduct. In the event of any conflict, the law, regulation, or Board policy shall control.

### **Fundamental Principles**

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

\* \* \*

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 strike to be fair in all matters.

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

\* \* \*

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

\* \* \*

## 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.

\* \* \*

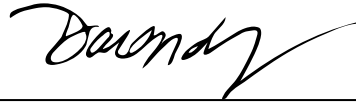
H. shall not exploit a relationship with a student for personal gain or advantage.

72. As detailed above, the School Board failed to prove that Respondent made grossly inappropriate physical and/or verbal sexual contact with K.S., V.S.C., or N.E. as alleged in the Notice of Specific Charges. As such, the School Board failed to prove that Respondent engaged in conduct which constitutes misconduct in office, immorality, or a violation of School Board Policy 3210 or 3210.01.

### 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 rescinding the suspension and termination of Respondent, Oscar D. Rizo, and reinstate Respondent with full back pay and benefits.

DONE AND ENTERED this 18th day of May, 2020, in Tallahassee, Leon  
County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of May, 2020.

COPIES FURNISHED:

Christopher J. La Piano, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 430  
Miami, Florida 33132  
(eServed)

Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
29605 U.S. Highway 19 North, Suite 110  
Clearwater, Florida 33761-1526  
(eServed)

Alberto M. Carvalho, Superintendent  
Miami-Dade County Public Schools  
1450 Northeast Second Avenue, Suite 912  
Miami, Florida 33132

Matthew Mears, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

Richard Corcoran, Commissioner of Education  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(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.