STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 19-4589TTS

ANTONIO DWIGHT BECKHAM,

Respondent.
_____/

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing on December 17, 2019, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Andrew Carrabis, Esquire
Douglas G. Griffin, Esquire
School Board of Broward County
600 Southeast 3rd Avenue, 11th Floor
Fort Lauderdale, Florida 33301

For Respondent: Robert F. McKee, Esquire
Robert F. McKee, P.A.
1718 East Seventh Avenue, Suite 301
Tampa, Florida 33675

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

By letter dated July 31, 2019, Petitioner, Broward County School Board ("School Board"), notified Respondent, Antonio Beckham ("Respondent"), of the School Board's intent to suspend his employment without pay. On August 9, 2019, Respondent timely requested an administrative hearing. On August 20, 2019, at its scheduled meeting, the School Board took action to suspend Respondent's employment as a teacher without pay for three days. Subsequently, the School Board referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing.

The Administrative Complaint contains certain factual allegations, and based on those factual allegations, the School Board charged Respondent with misconduct in office, incompetency, inefficiency, and violation of School Board Policy 4008.

The final hearing was initially set for October 7 and 8, 2019. On September 17, 2019, the parties filed a joint motion for continuance. That same date, the undersigned granted the motion and reset the final hearing for December 17 and 18, 2019.

The final hearing was conducted as scheduled on December 17, 2019, with both parties present. At the hearing, the School Board presented the testimony of R.D., E.P., Ms. Sabrina Tobias, and Ms. Shannon Burch. The School Board's Exhibits 1 through 15 were received into evidence based on the stipulation of the parties. Respondent testified on his own behalf and did not offer any exhibits into evidence.

At hearing, the parties agreed to file their proposed recommended orders within 30 days after the filing of the final hearing Transcript at DOAH. The one-volume final hearing Transcript was filed at DOAH on January 8, 2020.

On February 4, 2020, Respondent filed an unopposed motion to extend the deadline in which to file proposed recommended orders until February 21, 2020. On February 4, 2020, the undersigned entered an Order granting the motion.

The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. On December 9, 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

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

2. The School Board hired Respondent on July 1, 2013. At all times material hereto, Respondent was employed by the School Board as a physical education teacher at Lauderhill 6-12 Middle School.

3. At all times material to this case, Respondent's employment with the School Board was governed by Florida law and the School Board's policies.

4. The conduct giving rise to the School Board's proposed three-day suspension of Respondent occurred on April 18, 2018, during the 2017-2018 school year.

5. On April 18, 2018, R.D., a female 12th grade student, entered the school gym, along with fellow high school students E.P. and J.B., in an effort to take pictures of Respondent and Coach Jessica Bentle ("Bentle") for the school's yearbook. At the time, Respondent, Bentle, and another physical education

teacher, Mr. Drummer, were supervising a physical education class, with dozens of students participating in various physical education activities in the gym. Neither R.D., E.P., nor J.B. were students in the physical education class. Rather, R.D., E.P., and J.B. entered the gym during Respondent's and Bentle's physical education class for the sole purpose of taking their pictures for the school's yearbook.

6. When R.D. went to the gym on April 18, 2018, she was aware that Respondent and Bentle did not want their pictures taken because they had declined previous requests to have their pictures taken. Nevertheless, on April 18, 2018, R.D. again requested to take pictures of Respondent and Bentle for the school's yearbook, and both Respondent and Bentle declined.

7. Despite Respondent's repeated denials of requests not to have his picture taken, R.D. waited until Respondent was not looking and took his picture anyway with her cell phone.

8. According to R.D., when Respondent realized she had taken his picture, he became angry and started walking toward her to confiscate her cell phone. R.D. did not want to give Respondent her cell phone because it contained the picture of him she knew she should not have taken. In an effort to avoid giving Respondent her cell phone, R.D. testified that she put the cell phone behind her back and started walking backwards away from him.[1]

9. R.D. maintains that at some point during Respondent's pursuit of her, she turned away from Respondent and began to run. R.D. further maintains that Respondent caught up with her from behind while she was trying to run away from him, pulled on her shirt, and at the same time put his foot behind her right ankle, and, as she was going forward, tripped her and pulled her backwards which caused her to fall backward onto her back and the floor.

[1] It is undisputed that there are circumstances when a teacher has the authority to confiscate a student's cell phone, and it is a student's responsibility to surrender the cell phone when asked by the teacher.

R.D. further maintains that she could see Respondent's foot behind her ankle before she fell backward onto her back and the floor.

10. E.P. testified that, upon entering the gym, he sat down with a group of other students and took pictures. E.P. testified that he observed Respondent approach R.D. from approximately 10 to 15 feet away from her after he had taken the picture identified as P-016 within the School Board's Exhibit 10. However, E.P. testified that his view of Respondent was blocked when he took the picture.

11. At one point, E.P. further testified that as Respondent approached R.D., he observed R.D. walking backwards. However, at another point in his testimony, E.P. equivocated and testified he was "not sure."[2] E.P. further testified that when Respondent was approximately three to five feet away from R.D., R.D. turned away from Respondent so that her back was to Respondent. E.P. further testified that from a distance of 40 to 50 feet, he observed Respondent and R.D. engage in a physical struggle over the cell phone for "one to two minutes," followed by Respondent's use of a "martial art or military takedown" technique and push against R.D., which caused her to fall to the floor. E.P. further testified that although he does not remember seeing Respondent pull on R.D.'s shirt prior to her fall, he claims to have seen Respondent push R.D., while she was either facing Respondent or they were "side by side," at which time, Respondent used the "martial art or military takedown" technique to trip and cause R.D. to fall to the floor.

---

[2] E.P. testified in this regard as follows:

> Q. Well, you have to answer my question. She may have been trying to leave, but was she leaving--was she going backwards?
> A. Do you mean walking backwards?
> Q. Yes, sir.
> A. I would say, yes.
> Q. You would say yes or you saw her walking backwards?
> A. Walking backwards.
> Q. You saw that?
> A. I'm not sure.

(T., pp. 52-53).

12. Respondent testified that when he first noticed R.D. attempting to take his picture, he took R.D.'s cell phone from her and reiterated to her that he did not want his picture taken. Moments later, Respondent returned the cell phone to R.D. After Respondent returned R.D.'s cell phone to her, she continued to try to photograph him.

13. Respondent further testified that at this point, he began walking toward R.D., from a distance of approximately four or five feet between them. While he approached R.D., Respondent put his hand out and told R.D. to give her cell phone to him. According to Respondent, R.D. began to walk backwards away from him as he approached her. Respondent testified that as he was reaching for R.D.'s phone, R.D. tripped and fell backwards onto the gym floor. As she was falling, Respondent caught R.D. by her arm to break her fall and guided her to the floor. Once on the floor, Respondent retrieved R.D.'s cell phone and walked away from R.D. After walking away from R.D., Respondent then approached J.B. and took away his camera. Respondent then walked out of the gym and into the adjacent hallway, where he left both the cell phone and camera.

14. Respondent vehemently denied pushing R.D., grabbing her shirt, putting his foot or leg behind R.D., and engaging in any physical contact which caused her to trip and fall to the floor.[3]

15. At hearing, the undersigned had the opportunity to observe the testimony and demeanor of Respondent, R.D., and E.P. The testimony of Respondent is credited and is more persuasive than the testimony of R.D. and E.P., which is not credited or persuasive.

16. Notably, E.P.'s testimony differed from R.D.'s testimony in key respects. According to E.P., R.D. was facing or "side-to-side" with Respondent when he tripped her. However, R.D. testified that she was walking away from

[3] Mr. Drummer approached R.D. while she was still lying on the floor and asked her twice if she was okay. Both times R.D. stated that she was fine, as Mr. Drummer helped her off the floor. After getting off the floor, R.D. retrieved her cell phone and J.B. retrieved his camera from the adjacent hallway, and R.D., E.P. and J.B. all walked back to Ms. Tobias's class.

Respondent when he tripped her. E.P. further testified that he observed Respondent push R.D., while R.D. testified Respondent pulled on her shirt. E.P. testified he did not see Respondent pull on R.D.'s shirt.

17. Moreover, E.P. equivocated with respect to whether R.D. was walking backward or not.

18. Had the incident occurred as testified about by E.P. or R.D., it is expected that at least one of the dozens of physical education students in the gym and another physical education teacher would have witnessed it. However, there is no indication that any of the dozens of physical education students or other teachers in the gym witnessed the incident as described by E.P. or R.D.

19. Moreover, had the incident occurred as testified about by E.P. or R.D., it is expected that E.P. or another student in the gym would have taken at least one picture of R.D. and Respondent engaged in the purported physical struggle over the cell phone while they were both standing, or another picture depicting Respondent's purported application of the "martial art or military takedown" technique. Instead, E.P. took only three pictures on the day of the incident that were offered into evidence at the hearing: P-014 within the School Board's Exhibit 10; P-015 within the School Board's Exhibit 10; and P016 within the School Board's Exhibit 10. None of these pictures depict R.D. and Respondent engaged in a physical struggle over the cell phone before R.D. was on the ground--a physical struggle which E.P. described as lasting one to two minutes. And none of these pictures show Respondent tripping or otherwise engaging in physical contact with R.D. which caused her to fall to the floor.

20. In sum, the persuasive and credible evidence adduced at hearing demonstrates that Respondent did not push, pull, trip, or otherwise make physical contact with R.D., which caused her to fall to the floor. Respondent's conduct in the gym on April 18, 2018, with respect to R.D., does not

constitute misconduct in office, incompetency, inefficiency, or a violation of School Board Policy 4008.[4]

CONCLUSIONS OF LAW

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

22. 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 instructional employees pursuant to sections 1012.33(1)(a) and 1012.33(6)(a).

23. The School Board has the burden of proving, by a preponderance of the evidence, that Respondent committed the violations alleged in the Administrative Complaint and that such violations constitute "just cause" for a three-day suspension. §§ 1012.33(1)(a) and (6)(a), Fla. Stat.; *Dileo v. Sch. Bd. of Dade Cty*., 569 So. 2d 883, 884 (Fla. 3rd DCA 1990).

24. 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

[4] J.B. did not testify at the hearing. However, a hearsay statement purportedly authored by J.B. was received into evidence at the final hearing as the School Board's Exhibit 3. 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 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. Furthermore, the statement does 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 statement could be used by the undersigned, however, it would not be given any weight based on the live testimony presented by Respondent at the final hearing. Unlike J.B., who did not testify, the undersigned had an opportunity to judge the demeanor of the live witnesses who testified. Unlike J.B., 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 R.D. and E.P. The live testimony of Respondent is also credited over the hearsay statement of J.B., who did not testify.

certification. *Cisneros v. Sch. Bd. of Miami-Dade Cty*., 990 So. 2d 1179 (Fla. 3rd DCA 2008).

25. 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).

26. Sections 1012.33(1)(a) and (6)(a) 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)(a), Fla. Stat. "Just cause" is defined in section 1012.33(1)(a) to include "misconduct in office" and "incompetency."

27. 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.

28. 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.

29. Florida Administrative Code Rule 6A-10.080, titled "Code of Ethics of the Education Profession in Florida," was repealed, effective March 23, 2016, and reenacted in Florida Administrative Code Rule 6A-10.081(1)(a)-(c). Rule 6A-10.081(1)(a)-(c) provides:

> (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 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.

30. While rule 6A-5.056(2)(a) still provides that violation of the Code of Ethics, "as adopted in [r]ule 6A-10.080," constitutes "misconduct," it has been frequently noted that the precepts set forth in the "Code of Ethics" are "so general and so obviously aspirational as to be of little practical use in defining normative behavior." *Miami-Dade Cty. Sch. Bd. v. Lantz*, Case No. 12-3970 (Fla. DOAH July 29, 2014).

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

> (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.

32. Consistent with its rulemaking authority, the State Board of Education has defined "incompetency" in rule 6A-5.056(3), which provides, in pertinent part:

> (3) "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

33. Consistent with its rulemaking authority, the State Board of Education has defined "inefficiency" in rule 6A-5.056(3)(a), which provides, in pertinent part:

> (a) "Inefficiency" means one or more of the following:
>
> 1. Failure to perform duties prescribed by law;
>
> 2. Failure to communicate appropriately with and relate to students.

34. School Board Policy 4008 is a "rule" within the meaning of rule 6A-5.056(2)(c). School Board Policy 4008 provides, in pertinent part:

> B. DUTIES OF INSTRUCTIONAL PERSONNEL
> The members of instructional staff shall perform the following functions:
>
> 1. Comply with the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.
>
> * * *

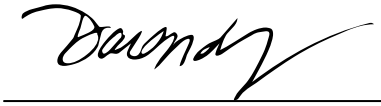
> 4. Treat all students with kindness, consideration and humanity, administering discipline in accordance with regulations of the State Board and the School Board; provided that in no case shall cruel or inhuman punishment be administered to any child attending the public schools.
>
> * * *
>
> 8. Conform to all rules and regulations that may be prescribed by the State Board and by the School Board.

35. Turning to the instant case, the School Board failed to prove, by a preponderance of the evidence, that Respondent's conduct with regard to R.D. on April 18, 2018, in the gym, constitutes misconduct in office, incompetency, inefficiency, or a violation of School Board Policy 4008. As detailed above, Respondent did not push, pull, trip, or otherwise make physical contact with R.D., which caused her to fall to the floor as alleged in the Administrative Complaint.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Broward County School Board, enter a final order rescinding the three-day suspension of Respondent, Antonio Dwight Beckham, and provide Respondent with back pay.

DONE AND ENTERED this 9th day of March, 2020, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2020.

COPIES FURNISHED:

Robert F. McKee, Esquire
Robert F. McKee, P.A.
1718 East Seventh Avenue, Suite 301
Tampa, Florida 33675
(eServed)

Douglas G. Griffin, Esquire
School Board of Broward County
600 Southeast 3rd Avenue, 11th Floor
Fort Lauderdale, Florida 33301
(eServed)

Katherine A. Heffner, Esquire
Robert F. McKee, P.A.
1718 East 7th Avenue, Suite 301
Tampa, Florida 33605
(eServed)

Andrew Carrabis, Esquire
Broward County School Board
600 Southeast 3rd Avenue, 11th Floor
Fort Lauderdale, Florida 33301
(eServed)

Robert W. Runcie, Superintendent
Broward County School Board
600 Southeast Third Avenue, Tenth Floor
Ft. Lauderdale, Florida 33301

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.