

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-3409TTS

JHONNY FELIX,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) on November 19, 2020, by Zoom video teleconference.

APPEARANCES

For Petitioner: V. Danielle Williams, Esquire  
Jean Marie Middleton, Esquire  
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School Board of Palm Beach County  
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For Respondent: Jhonny Felix, pro se  
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Lake Worth, Florida 33463

STATEMENT OF THE ISSUE

Whether just cause exists to suspend and terminate the employment of Respondent, a teacher, for the reasons set forth in the Administrative Complaint.

## PRELIMINARY STATEMENT

On June 17, 2020, at its scheduled meeting, Petitioner, the Palm Beach County School Board (“Board”), took action to suspend Respondent, Jhonny Felix, without pay and terminate him from his teaching position at Palm Beach Lakes High School (“PBLHS”). Respondent timely requested an administrative hearing. The Palm Beach County Public School System (“District”) referred the matter to DOAH on July 30, 2020, to assign an Administrative Law Judge to conduct the final hearing.

The final hearing was held November 19, 2020. At the final hearing, the Board presented the testimony of Respondent; Detective Eulises Munoz; and Brenda Johnson. Petitioner’s Exhibits 1 through 12, 14 through 33, 35, and 36 were admitted into evidence. Respondent testified on his own behalf and did not call any other witnesses. Respondent’s Exhibits 1 and 2 were admitted.

The final hearing Transcript was filed on January 7, 2021. The parties requested an extension of time within which to file their proposed recommended orders, which was granted. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to the versions in effect at the time of the alleged violations.

## FINDINGS OF FACT

### The Parties

1. The Board is the constitutional entity authorized to operate, control, and supervise the District. Pursuant to Article IX, section 4(b) of the Florida Constitution, and section 1001.32, Florida Statutes, the District has the authority to discipline employees pursuant to section 1012.22(1)(f), Florida Statutes.

2. Respondent began his employment with the District in November 2014. Respondent was employed as a math teacher for grades 9 through 12 at PBLHS until December 12, 2018, which was his last day in a classroom.

3. Respondent is an experienced teacher who was trained on the proper method of interacting with students, exercising best professional judgment, and following policies, rules, and directives. Respondent completed the orientation process for new employees of the District three times. Respondent signed the District's Code of Ethics each of the three times he received it and was aware it governed his behavior as an employee of the District.

#### Circumstances Giving Rise to Respondent's Discipline

4. Respondent met former student, S.E., in Haiti in 2015 when she was approximately 15 years old. S.E. and Respondent worked on a political campaign together. While in Haiti, Respondent became friendly with S.E. and her family. Respondent was aware that S.E. was planning to come to the United States to attend high school.

5. In 2018, while S.E. was an 11th grade student at PBLHS, Respondent was a teacher at the same school. Respondent exchanged phone numbers with S.E. so they could communicate outside of school hours. Respondent and S.E. frequently communicated outside of school hours between 5 p.m. and 11 p.m. by telephone and text messages in Haitian-Creole because S.E. did not speak English.

6. According to Respondent, these conversations were primarily personal, as they had "all kind of conversation from family matter[s], from life, from a sexual content, from – you know, everything. Everything like two normal people. Any conversation that two normal people would take. It was about everything."

7. On or about December 3, 2018, a student reported to school staff at PBLHS that Respondent sent S.E. an inappropriate text stating, "send me a picture in your underwear." Respondent allegedly also asked S.E. to go to a hotel with him.

8. Detective Eulises Munoz was called to PBLHS to conduct an investigation regarding Respondent. As a part of Detective Munoz's investigation, he conducted an audio recorded interview with S.E., with the assistance of an interpreter. As part of the investigation, Detective Munoz had the text messages between S.E. and Respondent extracted from S.E.'s phone and transcribed from Haitian-Creole to English.

9. S.E.'s cell phone call log report revealed 48 calls and 94 messages between S.E. and Respondent between October 26, 2018, and December 4, 2018.

10. Respondent admitted to asking S.E. on November 27, 2018, at 8:04 p.m., for "your picture while you are wearing only your underwear." S.E. refused but instead sent a picture of herself clothed. Respondent told S.E. that she was "mistreating" him because she would not send a naked picture of herself to him.

11. At the final hearing, Respondent admitted that he was aware that it was against Board policy to have asked S.E. for a photograph of her in her underwear while she was a student at PBLHS and he was a teacher at the same school.

12. The investigation also revealed that on December 4, 2018, Respondent told S.E. that she was having headaches because she was not having sex and then sent her an article regarding stress headaches being relieved by sex.

13. Respondent denied asking S.E. to meet him at a hotel.

#### Disciplinary Action

14. After Detective Munoz completed his investigation into the text conversations between Respondent and S.E., he drafted a criminal Probable Cause Affidavit, which was ultimately forwarded to Human Resource Manager Brenda Johnson for further investigation.

15. Ms. Johnson provided Respondent with a letter acknowledging opening an investigative file based on inappropriate interactions with a student. As of December 18, 2018, Respondent was removed from the

classroom and directed to have no further contact with students. He was instead assigned to a District warehouse.

16. Respondent was provided with a Pre-Determination Meeting (“PDM”) Notice dated March 9, 2020, signed by Vicki Evans-Pare, Director of Employee & Labor Relations, explaining to him that the investigation was concerning the allegations levied against him and that a meeting was needed to discuss the findings. Prior to the PDM, Respondent was provided with the PDM Notice, as well as a copy of the investigative file.

17. Respondent’s PDM was held on March 13, 2020, at which time he was given the opportunity to provide a response to the allegations against him.

18. After the PDM was completed, Ms. Johnson typed up the notes and summary from the PDM, which were provided to Respondent who was given three business days to review the documents and make any edits or revisions he felt were warranted and add any additional information relative to the investigation. Respondent did not make any changes to the PDM Summary or Notes.

19. After Respondent’s PDM, Ms. Evans-Pare decided to have the investigative file reviewed by the Employee Investigative Committee (EIC), which found the following allegations were substantiated: Soliciting an Inappropriate Relationship with a Student; Ethical Misconduct; Failure to Exercise Best Professional Judgment; and Failure to Follow Policy, Rule, or Directive.

20. The EIC recommendation was that Respondent’s employment be terminated despite Respondent not having any prior discipline history. The EIC proposed skipping the Progressive Discipline steps (verbal reprimand with written notation, written reprimand, and suspension) because Respondent’s inappropriate interactions with the student, his admission that he had the text conversations with the student, and his request to the student for a picture of her in her underwear posed a direct threat to the District and the student.

21. On May 21, 2020, Respondent was notified that Dr. Donald Fennoy, II, the District Superintendent, would recommend Respondent's termination to the Board at its June 17, 2020, meeting. Termination was the same disciplinary action that was taken against other employees who engaged in the same or similar conduct.

22. Respondent acknowledged that "[a]lmost everybody" at PBLHS found out about the text conversations between Respondent and S.E. Respondent knew that his co-workers knew about the text conversations because people were calling him and asking him about it. Respondent's co-workers lost confidence in him as a teacher after they learned about the text conversations between him and S.E. Respondent was also aware that S.E.'s guardians lost confidence in him as a teacher as a result of the sexual text conversations he had with S.E.

23. Respondent acknowledged during the final hearing that his conduct was inappropriate and in violation of the Board's policies. Respondent only contests the level of discipline (termination) as too harsh. He argued that the Board skipped intervening steps of the progressive discipline policy and claimed that his level of discipline was a result of his complaining that he was not physically capable of the work to which he was assigned in the warehouse.

#### CONCLUSIONS OF LAW

24. DOAH has jurisdiction over the parties and the subject matter of these proceedings pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).

25. This is a disciplinary proceeding in which the Board in its Administrative Complaint seeks to suspend Respondent from his teaching position, without pay, and terminate his employment for violating the following:

A. Soliciting an Inappropriate Relationship with a Student in violation of School Board Policy 3.02(5)(a)(iv), (5)(a)(vi), and (5)(a)(ix), Code of Ethics, and rule 6A-10.081(2)(a)(8) Florida Administrative Code.

B. Ethical Misconduct in violation of School Board Policy 3.02(4)(d) and (4)(g), Code of Ethics, and rule 6A-10.081(1)(c) Florida Administrative Code.

C. Failure to Exercise Best Professional Judgment in violation of rule 6A-10.081(1)(b) Florida Administrative Code.

D. Failure to Follow Policy, Rule, or Directive in violation of School Board Policy 1.013(1) Responsibilities of School District Personnel and Staff.

26. Respondent is an instructional employee, as that term is defined in section 1012.01(2). Section 1012.33(1)(a) and (6)(a) authorize the suspension and termination of instructional personnel only for “just cause.” “Just cause” is defined in section 1012.33(1)(a) to include “misconduct in office” and “gross insubordination.”

27. To suspend Respondent’s employment, Petitioner must prove that Respondent committed the acts alleged in the Administrative Complaint; that those acts violate the laws, rules, and policies cited in the Administrative Complaint; and that the violation of these laws, rules, and policies constitute just cause for his termination. § 1012.33(1)(a), (6), Fla. Stat.

28. Ordinarily, the evidentiary burden in disciplinary proceedings in which a school board proposes to suspend or terminate instructional personnel is a “preponderance of the evidence.” *See, e.g., McNeill v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Dileo v. Sch. Bd. of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990). However, where, as here, the Board has agreed through collective bargaining to a more demanding

evidentiary standard, it must act in accordance with the applicable contract. *See Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 672-73 (Fla. 1993); *Palm Beach Cty. Sch. Bd. v. Zedrick Barber*, Case No. 15-0047 (Fla. DOAH Aug. 31, 2015; PBCSB Oct. 13, 2015).

29. Article II, section M of the applicable collective bargaining agreement (“CBA”) provides that “disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence which supports the recommended disciplinary action.” Accordingly, Petitioner has the burden of proof in this proceeding by clear and convincing evidence.

30. This burden, described in *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), and later adopted by the Florida Supreme Court in *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994), requires the following:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

31. 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*, 66 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

A. Soliciting an Inappropriate Relationship with a Student

32. School Board Policy 3.02(5)(a)(iv), Ethical Standards, Abuse of Students, provides, in pertinent part:



[W]e are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships. Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to ... using one's professional relationship or authority with students for one's personal advantage."

33. School Board Policy 3.02(5)(a)(vi), Ethical Standards, Abuse of Students, provides, in pertinent part, "Unethical conduct includes but is not limited to ... engaging in any sexually related behavior with a student with or without consent of the student. Sexually related behavior shall include, but not limited to, such behaviors as sexual jokes; sexual remarks; sexual innuendo; pressure for dates or sexual favors ... ."

34. School Board Policy 3.02(5)(a)(ix), Ethical Standards, Abuse of Students, provides, in pertinent part, "Unethical conduct includes but is not limited to ... soliciting, encouraging, participating or consummating an inappropriate written, verbal, or physical relationship with a student."

35. Florida Administrative Code Rule 6A-10.081(2)(a)8., Principles of Professional Conduct for the Education Profession, states, in pertinent part, "Florida educators shall be guided by the following ethical principles: shall not exploit a relationship with a student for personal gain or advantage."

36. Respondent was a teacher within the District and S.E. was a student at PBLHS in the 11th grade when he obtained her cell phone number for the purpose of communicating after school hours from 5 p.m. to 11 p.m., and he ultimately requested for S.E. to send him a picture of her in her underwear. Respondent told S.E. that she was mistreating him when she refused to provide him with a picture of her in her underwear as a method of pressuring her to do so.

37. Respondent admitted that he and S.E. would engage in sexual banter, jokes, and innuendo while he was employed as a teacher with the District and S.E. was a student within the same District and school.

38. Respondent encouraged and participated in text messages with a student and sent her articles regarding sex relieving headaches and explained that she might have been having headaches because she was not having sex.

39. Respondent admitted that he was aware that his conduct was inappropriate and acknowledged that it violated the Board policies.

40. The record in this case, clearly and convincingly, establishes that Respondent committed the first charged violation, Soliciting an Inappropriate Relationship with a Student in violation of School Board Policy 3.02(5)(a)(iv), (5)(a)(vi), and (5)(a)(ix), Code of Ethics, and rule 6A-10.081(2)(a)8., Principles of Professional Conduct for the Education Profession in Florida.

#### B. Ethical Misconduct

41. School Board Policy 3.02(4)(d), Accountability and Compliance, states, in pertinent part, “each employee agrees to treat all students and individuals with respect and to strive to be fair in all matters.”

42. School Board Policy 3.02(4)(g), Accountability and Compliance, states in pertinent part, “each employee agrees to avoid conflict of interest or any appearance of impropriety.”

43. Rule 6A-10.081(1)(c), Principles of Professional Conduct for the Education Profession in Florida, states, in pertinent part, “Florida educators shall be guided by the following ethical principles: 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.”

44. Respondent did not treat S.E. with respect nor was he fair to her in all manners when he began having inappropriate sexual conversations with her while she was an 11th grade student at PBLHS.

45. Respondent did not avoid conflicts of interest or the appearance of impropriety that resulted from the public being made aware of the sexual text conversations that he held with S.E. Respondent acknowledged losing the respect of his colleagues and S.E.'s parents when they learned of the text conversations he was having with S.E., and that he did not sustain the highest degree of ethical conduct.

46. The record in this case, clearly and convincingly, establishes that Respondent committed the second charged violation, Ethical Misconduct, in violation of School Board Policy 3.02(4)(d) and (4)(g), Code of Ethics, and rule 6A-10.081(1)(c), Principles of Professional Conduct for the Education Profession in Florida.

#### C. Failure to Exercise Best Professional Judgment

47. Rule 6A-10.081(1)(b) states, in pertinent part, "Florida educators shall be guided by the following ethical principles: ... (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."

48. Respondent admitted to not being primarily concerned with S.E.'s development as a student when he communicated sexual text messages to the student. He did not strive for professional growth and did not exercise the best professional judgment and integrity while inappropriately communicating with S.E.

49. The record in this case, clearly and convincingly, establishes that Respondent committed the third charged violation, Failure to Exercise Best Professional Judgment in violation of rule 6A-10.081(1)(b), Principles of Professional Conduct for the Education Profession in Florida.

#### D. Failure to Follow Policy, Rule, or Directive

50. School Board Policy 1.013(1), Responsibilities of School District Personnel and Staff, states, in pertinent part, that "it shall be the

responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules.”

51. The record is clear that Respondent engaged in activity that he knew violated Board policies and was inappropriate. Respondent does not dispute that his actions were wrong and that he should be disciplined for the inappropriate communication with the student, S.E. Instead, Respondent claims that he should not be terminated and that the Board should follow its Progressive Discipline steps.

52. The record in this case, clearly and convincingly, establishes that Respondent committed the fourth charged violation, Failure to Follow Policy, Rule, or Directive in violation of School Board Policy 1.013(1), Responsibilities of School District Personnel and Staff.

#### E. Progressive Discipline

53. Respondent, as a teacher, was covered under the CBA between the District and the Classroom Teachers Association (“CTA”).

54. The CTA CBA has provisions that allows for the District to skip steps in progressive discipline when there is a clear danger to the District, an employee, and/or student, as well as when there are flagrant or purposeful violations of District rules and policies.

55. Respondent asserts that since he is a teacher with no prior disciplinary history, the District erroneously skipped intermediate disciplinary steps such as verbal or written warning, and suspension with pay. Respondent contends that the student was coerced into coming forward by her cousin; that she was 18 at the time of the inappropriate messages; and that this type of flirtatious communication is not uncommon in their culture. Respondent also suggests he was retaliated against for complaining about the working conditions in the warehouse.

56. Respondent presented no evidence to support his contentions that this behavior was welcomed by the student or that his level of discipline was impacted by his complaining about the warehouse work assignment.

57. Respondent's behavior warranted skipping steps to go directly to termination because his interaction with the student created an immediate danger not only to her, but to the District, and subjected it to potential liability and exposure if the relationship and communications continued, notwithstanding the student's age, because she was a student within the District that employed him.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Palm Beach County School Board uphold the suspension and termination of Respondent's employment.

DONE AND ENTERED this 8th day of March, 2021, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 8th day of March, 2021.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.