

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5136TTS

RODNEY WEATHERSPOON,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case by video conference via Zoom on January 12, 2021, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michele Lara Jones, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
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Clearwater, Florida 33761-1526

STATEMENT OF THE ISSUE

Whether just cause exists to sustain Respondent's five-day suspension from employment without pay with the Petitioner based on the allegations in the Notice of Specific Charges.

PRELIMINARY STATEMENT

By letter dated November 19, 2020, the Miami-Dade County School Board ("Petitioner," "School Board," or "District") notified Rodney Weatherspoon ("Respondent" or "Weatherspoon") that on November 18, 2020, the School Board took action to suspend him without pay for five workdays.

On or about November 18, 2020, Respondent timely elected to dispute the reasons for the suspension and requested a hearing.

On November 20, 2020, the matter was referred to the Division of Administrative Hearings ("DOAH"). The matter was assigned to the undersigned administrative law judge.

On December 9, 2020, Petitioner filed its Notice of Specific Charges setting forth the factual and legal grounds for the proposed discipline.

The hearing proceeded as scheduled on January 12, 2021.

At hearing, Petitioner stipulated to proceed on the Notice of Specific Charges. Petitioner presented the testimony of five witnesses: Veronica Bello; Kendra Copeland-Howard; K.C.; B.C; and Maria Zabala. Petitioner's Exhibits 1 through 11 were admitted into evidence. Respondent testified on his own behalf and presented the testimony of one witness: Leonardo Wortman. Respondent's Exhibits 1 through 11 were admitted into evidence.

At the close of the hearing, the parties stipulated that the proposed recommended orders would be due ten days after the filing of the transcript. Both parties timely filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to the 2019 Florida Statutes version, which was in effect at the time of the alleged misconduct at issue in this proceeding.

FINDINGS OF FACT

1. Petitioner is a duly-constituted district school board charged with the duty to operate, control, and supervise all free public schools within Miami-Dade County, Florida. Article IX, § 4(b), Fla. Const.

2. At all times relevant to the proceeding, Respondent has been employed by the School Board pursuant to a collective bargaining agreement under the United Teachers of Dade ("UTD").

3. Weatherspoon has been a physical education teacher for 28 years with the School Board.

4. In 2013, Weatherspoon started working at Hibiscus Elementary School ("Hibiscus"). He is the only physical education teacher for grades two through five.

5. Weatherspoon runs a structured class. When students arrive at their physical education class, they are expected to stand in a straight quiet line, and then go into the physical education shelter, and sit down for taking roll.

6. Weatherspoon uses a chain of consequences for student misbehavior. It progresses from warnings, to exclusion from activities, to parent contact, then to detentions and referrals.

7. During the 2018-2019 school year at Hibiscus, K.C. was a fourth-grade student in Respondent's physical education class.

8. On or about March 5, 2019, K.C. and another student got into a physical fight. Weatherspoon excluded K.C. and the other student from activities and put them in time-out for two days, which meant K.C. had to sit next to the wall during the physical education class instead of participating.

9. After K.C.'s punishment was completed, he should have been rejoining the activities for the physical education class.

10. However, on March 7, 2019, when rejoining the class, K.C. attempted to be first in line and started fighting with student J to be first. Weatherspoon responded to K.C.'s second fight by instructing K.C. to go back to the time-out area against the wall because he was putting his hands on somebody again.

11. Weatherspoon also instructed student J to go to the time-out area for his misbehavior and student J went to time-out.

12. K.C. repeatedly told Weatherspoon "no" and refused to go back to the time-out area after Weatherspoon instructed him to do so.

13. Another student, B.C., walked over during Weatherspoon's attempt to have K.C. go back to time-out and then B.C. informed Weatherspoon that K.C. had done his time already. Weatherspoon responded to B.C., "Don't get involved with this. This is not your concern." Afterwards, B.C. immediately turned around, and walked back to sit down.

14. Next, Weatherspoon redirected his attention back to K.C., repeatedly instructing him to go sit at the wall. K.C. continued to respond "no" he was not going to sit at the wall. Weatherspoon firmly directed K.C. to sit at the wall with a raised voice. Upset, K.C. walked out of the gym instead of following Weatherspoon's instructions for his misbehavior.

15. Weatherspoon called security to report that K.C. had left the class early.

16. The next day, Weatherspoon attended a parent teacher conference with Principal Veronica Bello ("Bello") and K.C.'s parents about his interim failing grade in physical education. After the discussion about K.C.'s interim failing grade, the meeting turned confrontational and K.C.'s father accused Respondent of pushing K.C., which was the first time Weatherspoon was made aware of any allegation he pushed K.C.

17. The School Board investigated the K.C. pushing allegation. During the investigation, written statements were taken from five students, including B.C., that were in K.C.'s physical education class. None of the students reported witnessing Weatherspoon push K.C. on March 7, 2019.

18. K.C.'s written statement dated March 11, 2019, stated that Weatherspoon pushed him twice and that Weatherspoon also pushed B.C. once on March 7, 2019.

19. Ultimately, based on the investigation, probable cause was determined to support the allegation that Weatherspoon pushed K.C. On August 22, 2019, a conference-for-the-record ("CFR") meeting was held to discuss the investigative findings. Respondent was present at the CFR.

20. Following the CFR, the School Board adopted the recommendation that Respondent be suspended for five days for the March 7, 2019, incident because Respondent had been previously counseled and issued a directive not to interact with children by pushing them.

Prior Disciplinary History

21. On or about September 13, 2018, Weatherspoon received a written reprimand after a School Board investigation concluded that he shouted, kicked, and pushed a student. Weatherspoon's reprimand, in pertinent part, directed Respondent to:

1. Strictly adhere to all Miami-Dade School Board Policies; specifically, 3210, Standards of Ethical Conduct; 3210.01, Code of Ethics; and 3213, Student Supervision and Welfare.

2. Cease and desist from using physical means to discipline or redirect students while working for M-DCPS;

3. Cease and desist from placing your hands on students for any reason while working as an employee of M-DCPS; and

4. Safeguard emotional and physical well-being of students at all times while working as an employee of the District.

* * *

8. Conduct yourself; both in your employment and in the community, in a manner that will reflect credit upon yourself and M-DCPS. P9-10

Hearing

22. At hearing, K.C. admitted that "[he] got pretty upset" when he was told to go to time out again. K.C. unpersuasively claimed during the hearing that Respondent pushed him in the stomach one time. However, K.C.'s testimony is contrary to his written statement from the investigation where he wrote that Weatherspoon pushed him twice.¹ Similarly, K.C. also testified Weatherspoon pushed B.C., which conflicts with B.C.'s testimony at hearing that Respondent "did not touch [her]."² The undersigned does not credit K.C.'s testimony based on his contradictory statements about the events on the date of the alleged incident, which diminishes the trustworthiness of his testimony.

23. At hearing, Weatherspoon provided credible testimony regarding the events of March 7, 2019, and his interactions with K.C. Weatherspoon testified that an oral dispute occurred between K.C. and him. Weatherspoon credibly explained that after directing K.C. to go to time-out several times, K.C. repeatedly refused to go to the wall stating, "no," and then K.C. walked out of the physical education class. Weatherspoon also credibly made clear, "I did not touch him."

Findings of Ultimate Fact

24. Weatherspoon's reliable testimony precludes a finding that he acted in the fashion alleged in the Notice of Specific Charges. Accordingly, the undersigned finds that Weatherspoon's credible and persuasive testimony established that no physical contact was made with K.C. on March 7, 2019. Therefore, no competent substantial

¹ Pet. Ex. 8.

² The undersigned finds that B.C.'s testimony that Weatherspoon pushed K.C. is not credible because the evidence shows that B.C. was walking away back to her seat when the alleged incident occurred. Additionally, B.C. did not report any pushing incident in her original student statement. Moreover, B.C. only reported an alleged incident when questioned by an investigator approximately seven months later. Likewise, the undersigned rejects K.C.'s mother's testimony because if a parent had been informed that their child was pushed by a teacher, in all likelihood, that allegation would be the first thing and main topic discussed at the parent teacher meeting before any failing grades, not the discussion topic at the end of the meeting.

evidence established any factual basis for the School Board's proposal to suspend Respondent for five days for the offenses charged in the Notice of Specific Charges.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter of, and parties to, this case, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).

26. This is a disciplinary proceeding in which Petitioner seeks to suspend Respondent from his employment, without pay, for five workdays.

27. Petitioner has the burden of proving that it has "just cause" to suspend Respondent's employment as a physical education teacher.

28. "Just Cause" is defined to include misconduct in office by section 1012.33(1)(a), Florida Statutes.

29. Petitioner's burden to prove the charges in the Notice of Specific Charges against Respondent must be met by a preponderance of the evidence. *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).

30. The preponderance of the evidence standard "is defined as 'the greater weight of the evidence,' *Black's Law Dictionary* 1201 (7th ed. 1999), or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000). *See also Haines v. Dep't of Child. & Fams.*, 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

31. In the Notice of Specific Charges filed against Respondent in this proceeding, the School Board charges Respondent with violating a variety of School Board policies, as well as administrative rules, by alleging that Weatherspoon pushed the student in the stomach against the wall, which establishes "just cause" for Respondent's five-day suspension from employment.

32. Petitioner relies on Florida Administrative Code Rules 6A-5.056(2) and 6A-10.081, and School Board Policies 3210, 3210.01, and 3213 as the focal point of this case for Respondent's charges.

Misconduct in Office

33. The State Board of Education has defined the term "Misconduct in Office" by rule 6A-5.056(2), which provides, in relevant 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 ["Principles of Conduct"] 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.

Principles of Professional Conduct

34. Petitioner charged Respondent with violating the Principles of Conduct, rule 6A-10.081, which provides, in relevant 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 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.

* * *

(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.

School Board Policy 3210

35. Petitioner also charged Weatherspoon with a violation of School Board Policy 3210, Standards of Ethical Conduct, that establishes Petitioner's standards of employee conduct and provides, in relevant 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.

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;

School Board Policy 3210.01

36. The School Board also charged Respondent with a violation of School Board Policy 3210.01, Code of Ethics, which provides, in relevant part:

Fundamental Principles

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

* * *

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

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

* * *

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 obligation 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.

* * *

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;

School Board Policy 3213

37. Petitioner also charged Respondent with a violation of School Board Policy 3213, Student Supervision and Welfare, which provides, in relevant 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.

38. As set forth in the findings of fact above, the evidence, taken as a whole, demonstrates that Respondent was involved in an oral confrontation with K.C., who would neither adhere to the rules nor follow the directives or consequences for his misbehavior. The record establishes that after K.C. talked back to Weatherspoon and refused to follow his firm directives, K.C. left the gym upset. However, there is no evidence that Respondent pushed K.C. against the wall or acted in an inappropriate manner. Accordingly, Petitioner failed to prove by a preponderance of

the evidence that Respondent violated any of the specified statutes, rules, or School Board policies alleged in the Notice of Specific Charges.

RECOMMENDATION

Upon consideration of the Findings of Fact and Conclusions of Law reached, it is RECOMMENDED that the Miami-Dade County School Board enter a final order dismissing the Notice of Specific Charges, rescinding its previous decision to suspend Respondent without pay for five days, and awarding him back pay.

DONE AND ENTERED this 17th day of March, 2021, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
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this 17th day of March, 2021.

COPIES FURNISHED:

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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.