

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-5417

SAMUEL DEAN,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge ("ALJ") Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings ("DOAH") on March 9, 2021, by Zoom conference.

APPEARANCES

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

For Respondent: Branden M. Vicari, 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 to suspend Respondent's employment for the reasons set forth in Petitioner's Notice of Specific Charges.

PRELIMINARY STATEMENT

In correspondence dated December 10, 2020, Miami-Dade County School Board ("Petitioner" or "School Board") issued a letter informing Samuel Dean ("Respondent") that the School Board had taken action at its December 9, 2020, meeting to suspend his employment for ten workdays without pay. On December 15, 2020, Respondent requested a hearing. Because the initial letter from the School Board lacked sufficient detail, the undersigned ordered Petitioner to file a Notice of Specific Charges ("Notice"), which Petitioner did on January 21, 2021. The basis for the School Board's action, as stated in the Notice, was that just cause existed for Respondent to be disciplined for Misconduct in Office, which is a violation of Florida Administrative Code Rules 6A-5.056(2) and 6A-10.081 and School Board Policies 4210 and 4210.01.

The final hearing took place on March 9, 2021. At the hearing, Petitioner offered the live testimony of Cassandra Mederos ("Ms. Mederos"), A.G., and Carlos Diaz. Petitioner's Exhibits 5 and 7 through 23 were admitted into evidence. Respondent testified on his own behalf and did not introduce any exhibits. Both parties submitted proposed recommended orders, which have been duly considered in the preparation of this Recommended Order.

All references to Florida Statutes are to the 2019 codification in effect at the time of the matters relevant to these proceedings.

FINDINGS OF FACT

1. Petitioner is a duly constituted School Board charged with the duty to operate, control, and supervise all free public schools within the school district of Miami-Dade County, Florida.

2. At all relevant times, Respondent was employed by Petitioner as a school security monitor at Hialeah Middle School ("Hialeah"), and was

subject to the collective bargaining agreement between Petitioner and the United Teachers of Dade, which provides Petitioner with the authority to suspend or dismiss Respondent.

Respondent's Disciplinary History

3. Prior to the events that are the subject of this case, Respondent has received multiple reprimands based on his conduct in the workplace.

4. On November 10, 1994, Respondent received a reprimand for insubordination, specifically, for his refusal to attend meetings, repeated tardiness, and falsification of payroll documents.

5. On May 25, 1995, Respondent received a reprimand for failing to remain in his assigned area of supervision on 26 occasions, being tardy to work 16 times, failing to return to work from lunch on seven occasions, failing to properly supervise the parking lot, and failing to respond to radio calls directed to his attention on 13 occasions.

6. On October 16, 1995, Respondent received a reprimand for failing to report to work on time on nine occasions.

7. On September 15, 1997, Respondent received a reprimand for contacting a student at her home by telephone and in person on several occasions. Respondent was directed to refrain from contacting the student, refrain from socializing with students on or off campus, and refrain from inappropriate actions in the course of his employment.

8. On June 5, 1999, Respondent was issued a Summary of Conference for threatening a co-worker with violence and using profanity in the presence of students.

9. On January 12, 2001, Respondent received a reprimand for using abusive and profane language in the workplace and refusing to comply with a reasonable direct order from an administrator.

10. On January 12, 2005, Respondent received a reprimand for creating a hostile work environment, inciting a volatile situation for students, and

creating an unsafe environment for the students, staff, and parents who were present.

11. On February 22, 2006, Respondent received a reprimand for creating a hostile work environment, inciting a volatile situation for colleagues, and an unsafe environment for the staff who were present.

Respondent's Interaction with A.G.

12. Ms. Mederos is a language arts teacher at Hialeah, where she worked with Respondent during the 2019-2020 school year.

13. A.G. was a student in Ms. Mederos's class for the 2019-2020 school year. At the time of the hearing, A.G. was thirteen years old.

14. On February 28, 2020, A.G. testified that she left Ms. Mederos's class to go downstairs and purchase a bag of chips. When A.G. was downstairs, Respondent approached her and told her that her mom was "pretty" and had a "nice figure." Respondent also initiated a "fist bump" with A.G.

15. Although it was credible standing alone, A.G.'s testimony was corroborated by Ms. Mederos, who witnessed the conversation between A.G. and Respondent. Ms. Mederos could not hear the content of the exchange, but saw the "fist bump" between the two and observed that A.G. appeared to be uncomfortable.

16. Respondent denied that the incident with A.G. occurred, and testified that he had never met or seen A.G. or her parents as of February 28, 2020. Respondents' testimony on this subject was not credible and is rejected.

CONCLUSIONS OF LAW

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

18. The School Board is responsible for the operation, control, administration, and supervision of all free public schools within the district. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.32, Fla. Stat. The School

Board's powers and duties include providing for the suspension of employees.
§ 1012.22(1)(a), (f), Fla. Stat.

19. Petitioner bears the burden of proving the allegations against Respondent set forth in the Notice by a preponderance, or greater weight, of the evidence. *See McNeil v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996).

20. Rule 6A-5.056(2) defines Misconduct in Office as one or more of the following:

(a) A violation of the Code of Ethics of the Education Profession in Florida adopted in Rule 6A-10.080, F. A. C;

(b) A violation of the Principles of Professional conduct for the Education Profession 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.

21. School Board Policy 4210, Standards of Ethical Conduct, 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.

A. A support staff member shall:

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

22. "Unseemly" is defined as:

- a. not according with established standards of good form or taste
- b. not suitable for time or place

"Unseemly," *Merriam-Webster Dictionary* (<http://www.Merriam-Webster.com>)(last visited May 18, 2021).

23. It is plainly outside of established standards of good form or taste for an adult male to make a comment about the physical appearance of a female child's mother to the female child. Furthermore, to make such a comment on a middle school campus, as an employee of the middle school, to a middle school student during her instructional day, is certainly not suitable for time or place.

24. Petitioner proved, by a preponderance of the evidence, that Respondent violated the unambiguous language of School Board Policy 4210, which is tantamount to Misconduct in Office under rule 6A-5.056(2), as charged in the Notice. Prior to the Misconduct in Office in the present case, Respondent had a significant disciplinary history over the course of his employment with Petitioner. Accordingly, just cause exists to suspend Respondent's employment for ten workdays without pay.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that The School Board of Miami-Dade County, Florida, enter a Final Order suspending Respondent's employment with the School Board for ten workdays without pay.

DONE AND ENTERED this 20th day of May, 2021, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of May, 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.