

Office of Superintendent of Schools
Board Meeting of April 18, 2001

April 16, 2001

Office of School Board Attorney
Johnny Brown, Board Attorney

SUBJECT: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA v. JOSE H. MARTINEZ - CASE NO.: DH 99-012 MCKINNEY

On March 15, 2000, the School Board suspended school police officer Jose H. Martinez from his employment with The School Board of Miami-Dade County, Florida, and initiated dismissal proceedings against him. A hearing was requested and the case was tried on December 13-14, 2000, before Local Hearing Officer Robert McKinney in Miami, Florida. By recommended order entered March 30, 2001, the Hearing Officer sustained the School Board's charge of conduct unbecoming a School Board employee and recommended that the School Board enter a final order sustaining the dismissal of Jose H. Martinez from employment with the School Board. Notwithstanding this recommendation, the Hearing Officer also recommended that the School Board overturn Jose H. Martinez's suspension, without pay, on March 15, 2000, and award him back pay for the period of his suspension. Finally, the Hearing Officer did not sustain the School Board's charge against Jose H. Martinez that he violated the School Board's employee/student relationship rule because the Hearing Officer found that the employee did not intentionally date a student.] added

Exceptions to the recommended order have been filed on behalf of the Petitioner School Board. The School Board's exceptions, along with the recommended order and complete record in this case, have been forwarded to the School Board members under separate cover. The School Board's exceptions challenge the Hearing Officer's recommendation that the employee should receive back pay despite being found guilty of conduct unbecoming a School Board employee, and the Hearing Officer's conclusion of law that the employee did not violate the School Board's employee/student relationship rule because the employee did not intentionally date a student. The School Board's exceptions seek to have the Hearing Officer's recommended order modified and have Jose H. Martinez's suspension without pay upheld, and have the Hearing Officer's conclusions of law modified to find that Jose H. Martinez did violate the School Board's employee/student relationship rule.

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Respondent's exceptions challenge the Hearing Officer's recommendation that the employee be dismissed based on the finding of fact that Jose H. Martinez knew the student was 17 when he allowed her to visit his home in September, 2000. Respondent argues that finding of fact is not based on competent substantial evidence because the student was actually 18 at the time of the home visit. Accordingly, Respondent's exceptions seek to have the Hearing Officer's recommended order modified and have Jose H. Martinez's dismissal overruled, and have the Hearing Officer's findings of fact and conclusions of law modified to find that Jose H. Martinez did not violate any School Board rules. Respondent requests that the School Board reinstate his employment and award him back pay in the amount of \$70,000.

added

RECOMMENDED: That The School Board of Miami-Dade County, Florida enter its final order in the case of The School Board of Miami-Dade County, Florida v. Jose H. Martinez, Case No. DH 99-012 McKinney, accepting the recommendation of the Hearing Officer, accepting the exceptions set forth in the School Board's Exceptions to Recommended Order, or accepting the exceptions set forth in the Respondent's Exceptions to Recommended Order.

added