



THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA
Landings Administrative Complex
1980 Landings Blvd.
9:00 AM

April 5, 2023 Board Meeting Minutes

Call to Order

The Chair convened the April 5, 2023 Special Board Meeting (DOAH Hearing) at 9:00 a.m.

The Chair recessed the meeting at 9:01 a.m.

The Chair reconvened the meeting at 9:04 a.m.

Present:

- Bridget Ziegler, Chair
- Karen Rose, Vice Chair
- Tom Edwards
- Tim Enos
- Robyn Marinelli

Flag Salute

New Business

1. OVERVIEW

Description

On January 25, 2023, Administrative Law Judge (Lynne A. Quimby-Pennock) issued a Recommended Order in the matter of School Board of Sarasota County vs. Garen Schaefer, state of Florida Division of Administrative Hearings Case Number 22-0484TTS. Melissa Mihok, Esq., Ms. Schaefer's attorney, has filed FIFTEEN (15) written exceptions to the Recommended Order pursuant to Florida Statute 120.57(1)(l). The Board must enter a specific ruling regarding each written exception. After considering the exceptions, the Board will consider and rule upon the Recommended Order in light of any exceptions granted by the Board. The Board has the ability to adopt, reject or modify any findings of fact, conclusions of law, or the recommended penalty in the Order.

Recommendation

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

2. AGENDA ITEM 1

Description

Recommended Order (pg. 7-8, paragraph 13)

Respondent never notified the School Board's human resource department concerning her MS,10 and Respondent never requested any accommodations associated with her MS. Respondent's testimony that her Union representatives discouraged her from providing a physician's letter¹¹ about her medical condition to the School Board's human resource department is implausible.

Schaefer Written Exception 1 (pg. 3, paragraph 5)

The Respondent takes exception to Finding of Fact No. 13 inasmuch as the ALJ determined that the Respondent never notified the School Board's human resource department that she suffered from MS or requested any accommodations. The Respondent credibly testified that many individuals who worked for the district were aware that she could not lift things and that others would help her lifting books and pushing carts. (Tr. 436) Further, the medical documentation from the Respondent's doctors stating that she could not lift over twenty pounds and suffered from MS was provided to the School Board during the course of this proceeding and was introduced as evidence at the hearing.

(Resp. Ex. 2) Thus, the School Board was aware of the Respondent's condition and that she could not lift over twenty pounds.

District Written Response to Schaefer Written Exception 1 (pg. 8)

Respondent's first Exception is to RO Finding of Fact No. 13. Specifically, the ALJ found Respondent never notified the School Board's human resource department of her M.S diagnosis or the limitations related to said diagnosis. Her evidence to the contrary is her own testimony that she told others in the District about this condition and letters from her doctors. It should be noted Respondent never testified what M.S. was.

The ALJ's finding is supported by competent substantial evidence. Al Harayda, the District employee relations and equity administrator, testified his review of Respondent's personnel record revealed no mention of any disabilities or requests for accommodation. "T. Pg. 35.- The employees who allegedly had knowledge of the disability never testified. The paraprofessionals who did work with Respondent at Tatum Ridge Elementary testified Respondent never said anything about M.S. "T. Pg. 213 and 270" The medical letters identified as "R. Ex. 2 and 4" were dated after the incident occurred leading to Respondent's termination.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

3. AGENDA ITEM 2

Description

Recommended Order (pg. 7, footnote 11)

11 Respondent's exhibits provided by two physicians regarding her medical condition are dated after the facts alleged in the AAC and no weight has been given to them.

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Schaefer Written Exception 2 (pg. 3, paragraph 6)

The Respondent takes exception to footnote 11 to the extent that the ALJ afforded no weight to the medical documentation submitted by the Respondent because they were dated after the facts alleged in the Amended Administrative Complaint. The documents should have been afforded great weight, as they were provided prior to the hearing and/or issuance of the RO and establish that the Respondent could not have lifted a child off the ground by his ankles. (Tr. 436-37)

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District Written Response to Schaefer Written Exception 2 (pg. 8-9)

Respondent's second Exception is not to either a finding of fact or conclusion of law but to a footnote. The School Board is thus not required to rule on this Exception.

If the School Board elects to consider Exception 2. RO footnote 11 denotes that no weight was given to the two (2) Doctors letters on Respondent's alleged medical condition as they were dated after the facts alleged in the amended administrative complaint. In considering this footnote the School Board cannot re-weigh evidence rejected by the ALJ. *Gross*, 819 So.2d at 1001.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

4. AGENDA ITEM 3

Description

Recommended Order (pgs. 8-10, paragraphs 17-19)

17. In late October 2017, two SMS students were involved in a physical altercation: the "Aggressor," and the "Victim." Respondent was directed to take the Aggressor to Respondent's office. After 20 minutes in Respondent's office, she attempted to take the Aggressor to get some drinking water and to get a band-aid for his knees, which "were dripping blood." Respondent had the key in the clinic door when she was stopped by the school resource officer, and prohibited from entering the clinic where the Victim was being treated.

18. Shortly thereafter, Respondent was notified to attend a Weingarten hearing ("Weingarten"). A Weingarten is conducted as a fact-finding meeting where an employee is asked to attend and answer questions about whatever situation is being investigated. The employee may appear with or without representation. Based on the facts obtained during a Weingarten, including responses provided by the employee, and the

investigation, a determination is made whether any disciplinary action is necessary.

19. A duly noticed Weingarten was held. Prior to the Weingarten, Respondent was provided written questions about the incident. Respondent was accompanied to the Weingarten by Barry Dubin, the executive director and member of the Union. As the Weingarten progressed Respondent answered the written questions posed. As a result of the Weingarten, Respondent was issued a "Verbal Reprimand." The Verbal Reprimand issued by the SMS principal provided in part:

I have concluded from this information that you did not effectively supervise the student and that you did not effectively follow procedures for serious incidents related to the safety and well-being of students ... it is necessary for me to share administration's expectation that sound professional judgment is used in relation to student safety and well-being. Therefore, please consider this memorandum a written notation of a Verbal Reprimand consistent with Article XXV of the Instructional Bargaining Agreement.

Although Respondent maintained she followed the directions to take the Aggressor to Respondent's office, she denied she was told to "hold" the Aggressor for any length of time. There is no dispute that the Verbal Reprimand was issued.

Schaefer Written Exception 3 (pg. 4, paragraph 7)

The Respondent takes exception to Finding of Fact Nos. 17-19

District Written Response to Schaefer Written Exception 3 (pg. 9)

Respondent's third Exception is to RO Finding of Fact Nos. 17-19. There is no explanation as to the legal nature of the exception. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

5. AGENDA ITEM 4

Description

Recommended Order (pg. 10, paragraphs 20-22)

20. In late November 2017, a SMS teacher reported a concern about a student's self-harming behavior. The concern was provided to the school's counselors, including Respondent. Respondent had previously been given the procedure to follow in a self-harming matter which included the participation of the school's medical staff to document any injury.

21. Although Respondent engaged the student, Respondent did not follow the School Board's stated procedures, which included her failure to include the school nurse when she engaged the student in conversation. As part of the School Board's stated procedure, Respondent was to complete a "Duty to Inform" document, to inform the parents of the student's self-harm. Respondent did not timely complete the Duty to Inform.

22. A duly noticed Weingarten was held. Prior to the Weingarten, Respondent was provided written questions to be answered. Respondent was accompanied to the Weingarten by Mr. Dubin and Pat Gardner, both members of the Union. Respondent admitted she had not read the note

or letter that the student had written prior to meeting with the student. As a result of the Weingarten, Respondent was issued a "Written Reprimand." This Written Reprimand issued by the SMS principal provided in part:

I have concluded from this information that you did not effectively follow procedures for serious incidents related to the safety and well-being of students ... it is necessary for me to share administration's expectation that sound professional judgment is used in relation to student safety and well-being. Therefore, please consider this memorandum a written notation of a Written Reprimand consistent with Article XXV of the Instructional Bargaining Agreement.

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Schaefer Written Exception 4 (pg. 4, paragraph 8)

The Respondent takes exception to Finding of Fact Nos. 20-22 regarding an incident that is alleged to have occurred in October 2017 as irrelevant. The allegations were many years ago, when the Respondent was working in a different position, at a different school. Further, the allegations are not similar in any way to the allegation at issue and thus should not have been considered.

District Written Response to Schaefer Written Exception 4 (pg. 9)

Respondent's fourth Exception is to RO Finding of Fact Nos. 20-22. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k). Florida Statutes. If the School Board elects to consider Exception 4, Respondent claims her prior disciplinary history is irrelevant. In Collective Bargaining Agreement's (CBA), an employee's disciplinary history may be cited if the previous acts are reasonably related. "P. Ex. 4 and 4A p. 51- The ALJ found all these acts related to the health, safety, and welfare of students. In addition, Respondent claimed the School Board did not follow the CBA requirement of progressive discipline. Her defense made relevant any discipline considered progressive discipline by the School Board.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

6. AGENDA ITEM 5

Description

Recommended Order (pg. 11, paragraph 23)

Both the Verbal Reprimand (as alleged in AAC paragraphs 44 through 46) and the Written Reprimand (as alleged in AAC paragraphs 59 through 61) involved the health, safety, and welfare of students.

Schaefer Written Exception 5 (pg. 5, paragraph 9)

Both the Verbal Reprimand (as alleged in AAC paragraphs 44 through 46) and the Written Reprimand (as alleged in AAC paragraphs 59 through 61) involved the health, safety, and welfare of students.

District Written Response to Schaefer Written Exception 5 (pgs. 9-10)

Respondent's fifth Exception is to RO Finding of Fact No. 23. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 5. Respondent claims her prior discipline characterized as involving the "health, safety, and welfare of students" is too broad. All that is required is they be reasonably related. Each of Respondents disciplinary incidents involved a student's health, safety, and welfare. None involved Respondent's performance,

evaluations, off duty conduct, criminal activities or any other area of potential discipline.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

7. AGENDA ITEM 6

Description

Recommended Order (pg. 11, paragraph 24)

Respondent had the right to file a grievance to either the Verbal Reprimand or Written Reprimand, however she did not. Respondent is a veteran teacher working with the School Board under a PSC. Her position that she did not know or her Union had not told her she could grieve any letter of reprimand is implausible as the grievance procedure is clearly spelled out in the CBA.

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Schaefer Written Exception 6 (pgs. 4-5, paragraph 10)

The Respondent takes exception to Finding of Fact No. 24 to the extent that the ALJ found it was "implausible" for the Respondent to not know that she could grieve the discipline. First, there was no testimony presented to the contrary, i.e., that she did know. Further, it is plausible because the Collective Bargaining Agreement specifically states that "the union retains the right to file a grievance." (Pet. Ex. 4A, Art. XXIII(A)(2). It does not state that an employee can file a grievance.

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District Written Response to Schaefer Written Exception 6 (pg. 10)

Respondent's sixth Exception is to RO Finding of Fact No. 24. Here, the ALJ found it implausible that Respondent did not know, or her Union had not told her she could grieve any letter of reprimand.

The ALJ cites to the grievance procedure spelled out in the CBA. "P. Ex 4 and 4A" Article XXV provides "A teacher against whom disciplinary action is to be taken may appeal the proposed action through the grievance procedure." No where does it mention that right is exclusive to the Union. The provision in XXIII cited by Respondent's counsel relates to a Unions right to file a grievance on any misapplication of this Agreement or practices and policies affecting the terms or conditions of employment. It has no bearing on an employee's right to file a grievance.

In addition, the ALJ found Respondent was a veteran teacher working under a PSC (professional service contract). Those facts are not in dispute. Respondent was a 20-year employee with the School Board. "T. Pg. 432." She is employed pursuant to a professional service contract. "T. Pg. 14." Here, the ALJ judged the credibility and veracity of the testimony of Respondent on this issue. Judging the credibility of the witnesses is not the role of the agency in reviewing a RO. *Gross*, 819 So.2d at 1001.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon

competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

8. AGENDA ITEM 7

Description

Recommended Order (pg. 11, paragraphs 25-27)

25. Another incident occurred at the end of November 2017. This incident involved a student posting a picture of her wrist covered with fake blood. Ms. Tinkis asked Respondent to meet with the student and Respondent attempted to do so. The student was concerned about missing class and they met several days later, without the school's nurse presence. The overriding concern was for the student's wellbeing, health, and safety. Further, Respondent did not complete the Duty to Inform paperwork.

26. Another duly noticed Weingarten was held on December 17, 2017. Prior to the Weingarten, Respondent was provided written questions to be answered. Respondent was again accompanied to the Weingarten by Mr. Dubin and Ms. Gardner. As a result of the Weingarten, the SMS principal provided a recommendation that Respondent should serve a three-day suspension.

27. In February 2018, the then Superintendent issued Respondent a letter finding that progressive discipline had been followed and recommending that Respondent be suspended for three days without pay. This letter provided that the discipline could be disputed, which the Union did on Respondent's behalf.

Schaefer Written Exception 7 (pg. 5, paragraph 11)

The Respondent takes exception to Finding of Fact Nos. 25-27 regarding an allegation related to a student taking a picture with fake blood in November 2017 as irrelevant. Again, the allegations were long ago, at another school, when the Respondent was working as a guidance counselor. There was no evidence introduced that the Respondent had a duty to report a student taking a picture with fake blood; there was no self-harm to report.

District Written Response to Schaefer Written Exception 7 (pgs. 10-11)

Respondent's seventh Exception is to RO Finding of Fact Nos. 25-27. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes.

If the School Board elects to consider Exception 7, Respondent claims prior discipline November 2017 is irrelevant to these proceedings. We have already covered the issue that prior discipline is relevant as long as its reasonably related. Here Respondent's failure to follow all necessary procedures for a student's potential self-harm does relate to a student's health, safety, and welfare.

Respondent's attempt to rehash what happened to warrant her previous disciplines is barred by the doctrine of "administrative finality," which holds that agency orders must become final and no longer subject to change or modifications. See *Delray, Med. Center v. Stale*, 5 So. 3d 26 (Fla. 4th DCA 2009) (comparing administrative finality to res judicata). The credibility and persuasiveness of the evidence supporting past disciplinary actions, as well as whether the discipline was appropriate, were issues previously litigated (or could have been litigated) and decided. Respondent may not relitigate these issues in this proceeding, especially when she had been provided due process and union representation. See *Fla. Power Corp v. Garcia*, 780 So. 2d 34, 44 (Fla. 2001) (noting there must be a "terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein,") *Reedy Creek Utils. Co. v. Fla. Pub. Set-v. Comm'n*, 418 So. 2d 249, 254 (Fla. 1982) (an underlying purpose of the doctrine of [administrative] finality is to protect those who rely on a judgement or ruling").

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

9. AGENDA ITEM 8

Description

Recommended Order (pgs. 12-13, paragraph 31)

Respondent claims she was never suspended, and while technically accurate, the recommendation was made for her to be suspended. As a result of the MOU settlement agreement, the proposed suspension was withdrawn and, in its place, a written reprimand was issued. The MOU demonstrates that the CBA grievance proceeding was working and progressive discipline was imposed.

Schaefer Written Exception 8 (pg. 5, paragraph 12)

The Respondent takes exception to Finding of Fact No. 31 inasmuch as the ALJ found progressive discipline was followed. Progressive discipline was not followed as the Respondent was never suspended. Although the

Superintendent once recommended suspension.

District Written Response to Schaefer Written Exception 8 (pg. 11)

Respondent's seventh Exception is to RO Finding of Fact No. 31. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 8, Respondent claims the ALJ was incorrect in deciding progressive discipline was imposed. They cite no facts or case law in support of their argument. The issue of progressive discipline was thoroughly considered by the ALJ. A suspension without pay was recommended by the superintendent to an incident occurring while Respondent was at Sarasota Middle School. "P. Ex. 16 and 17" It was eventually settled resulting in Respondent transferring to Ashton Elementary school, dismissing her pending EEOC claims against the School Board and in return the School Board reduced the discipline to a written reprimand. P. Ex. 18." The ALJ's point is the purpose behind progressive discipline was served in this case. See also "P. Ex. 4 and 4A.P.51" (".....progressive discipline shall be administered as follows:")

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

10. AGENDA ITEM 9

Description

Recommended Order (pgs. 14-15, paragraphs 40-41)

40. When she obtained the TRES ESY position, Ms. Carr knew she was going to be working with ESE students. Ms. Carr was under the impression that the ESE classroom would have “a very structured school day.” The students were to come in, “have a morning meeting, do a small lesson, [and] do sensory small groups.” However, during the three full days Respondent was present, Ms. Carr felt the school day was “very unstructured.” The television was “used pretty much throughout the entire day. And there was [sic] children shows [sic] playing on the TV. Specifically the show Cocomelon[14] was playing the majority of the time.” Ms. Carr thought Cocomelon was “more for distraction ... just to give them something to do.” Ms. Schilling believed the purpose of Cocomelon was to capture the students “attention to get them to sit still and be calm.”

41. Ms. Schilling briefly reviewed the students’ IEPs,¹⁵ which set out certain goals to be met by each student. The IEPs included group goals and student participation goals such as moving around the classroom to engage in various centers or to experience sensory things such as to touch, feel, create, or smell different things. Ms. Schilling did not hear Respondent provide instruction to the students.

Schaefer Written Exception 9 (pg. 5, paragraph 13)

The Respondent takes exception to Finding of Fact Nos. 40-41 inasmuch as the ALJ found that no instruction was given. This finding is contrary to Findings 42, 43, and 53, which each witness indicated that there were stories read, and centers, arts, crafts and puzzles used by the students.

District Written Response to Schaefer Written Exception 9 (pgs. 12-13)

Respondent's ninth Exception is to R0 Finding of Fact Nos. 40-41. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k). Florida Statutes.

If the School Board elects to consider Exception 9, Respondent claims the ALJ found no instruction was given in the classroom. A review of these two (2) paragraphs does not reveal any such finding. The ALJ does recount the testimony of both Anna Meinke-Carr and Hanna Schilling as to their classroom expectations versus what transpired in the classroom. Paragraphs 42 and 43 recount the testimony of both Respondent's children who volunteered in the classroom. Paragraph 53 mentions classroom events going on in the background during the incident with student M.R. There is competent substantial evidence to support the credible testimony of Carr and Schilling. "Tr. Pg. 218. 275." There is no testimony from Respondent nor her children denying the TV was frequently used in the classroom or that Cocomelon video were played. Furthermore, to the extent paragraphs 40-41 conflict with other findings of fact those conflicts were resolved by the ALJ in favor of the School Board.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

11. AGENDA ITEM 10**Description****Recommended Order (pg. 16-17, paragraph 45)**

On Tuesday, the second day of the ESY, Ms. Schilling heard Respondent comment about M.F.'s appearance. Although the comment was made "just out in the classroom," Ms. Schilling was uncertain if M.F. heard or understood the comment. Ms. Carr credibly testified she heard Respondent state that M.F. was ugly. Although Respondent's daughter testified she did not hear Respondent make such an unflattering statement, M.S. was not at school on Tuesday, and could not have heard the comment. A.S. also testified he did not hear the comment. He added that the classroom was quiet, and he would have heard any comment. However, with Cocomelon playing the majority of the time the students were in the classroom, the classroom was not quiet all the time. A.S.'s contrary testimony was not credible.

Schaefer Written Exception 10 (pg. 5-6, paragraph 14)

The Respondent takes exception to Finding of Fact No. 45 inasmuch as the ALJ found A.S.'s testimony that he did not hear the alleged offensive comment not credible because "Cocomelon" was playing a majority of the time. There was no evidence presented that the television or anything else was loud enough to make it so that A.S. could not hear a comment made in the same room as he.

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District Written Response to Schaefer Written Exception 10 (pg. 13)

Respondent's tenth Exception is to RO Finding of Fact No. 45. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 10, Respondent claims there was no evidence presented as to the noise levels in the classroom and how that might affect the hearing of Respondent's son, A.S. In fact, the ALJ makes no such finding. The ALJ does make a determination that the testimony of A.S. was not credible that the classroom was quiet, and he would have heard any derogatory comments made by Respondent. The ALJ found the classroom could not have always been quiet with Cocomelon videos playing. The determination of a witness's credibility is solely for the ALJ. *Gross*, 819 So.2d at 1001.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

12. AGENDA ITEM 11

Description

Recommended Order (pg. 18, paragraph 52)

Ms. Carr observed this table event as she was sitting on the floor, changing a diaper. Respondent was in a chair close to the table when M.R. was on the table. Ms. Carr observed Respondent wrap her arms around M.R. and place M.R. in Respondent's lap. Although initially Ms. Carr did not think the initial contact between Respondent and M.R. was malicious or forceful, Ms. Carr's thoughts changed when Respondent put M.R. down on the floor and put her hands around his ankles. Respondent then picked M.R. off the ground by his ankles as M.R. was screaming. Respondent then placed him back on the floor, and M.R. ran to a corner of the room. Ms. Carr's detailed description was clear and

credible, and is credited.

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Schaefer Written Exception 11 (pg. 6, paragraph 15)

The Respondent takes exception to Finding of Fact No. 52 inasmuch as the ALJ found that the Respondent picked up M.R. by his ankles. The Respondent's testimony, supported by the medical documentation provided as exhibits at the hearing, establish that she cannot lift more than twenty pounds. This testimony and evidence is un rebutted and should have been credited.

District Written Response to Schaefer Written Exception 11 (pgs. 13-14)

Respondent's eleventh Exception is to RO Finding of Fact No. 52. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 11, Respondent claims the ALJ didn't credit Respondent's testimony supported by the medical documentation as to whether she could have picked up student M.R. by the feet. There are no citations to the record in support. Paragraph 52 is a factual summary of the testimony of Carr relating to the M.R. incident. Her testimony as she describes this "horrrifying" event can be found at "Tr. Pg. 285-288." To the extent the Respondent testified differently the ALJ weighed that testimony and found Carr and Schilling to be more credible. The determination of a witness's credibility is solely for the ALJ. *Gross*, 819 So.2d at 1001.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

13. AGENDA ITEM 12

Description

Recommended Order (pg. 19, paragraph 54)

After M.R. ran to the corner, Ms. Schilling approached M.R., Ms. Schilling communicated with Ms. Carr asking for her assistance with M.R.

Thereafter, Ms. Schilling and Ms. Carr observed that M.R.'s ankles had very red marks on them from where Respondent held him up.

Schaefer Written Exception 12 (pg. 6, paragraph 16)

The Respondent takes exception to Finding of Fact No. 54 inasmuch as the ALJ found that M.R. had red marks on his ankles due to the Respondent holding him up. There was no testimony or evidence presented as to when or how the purported red marks appeared. Nor was there documentary evidence presented that there even were red marks on M.R.'s ankles.

District Written Response to Schaefer Written Exception 12 (pg. 14)

Respondent's twelfth Exception is to RO Finding of Fact No. 54. There are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 12, Respondent claims there was no testimony or documentary evidence concerning the red marks on student M.R.'s ankles. There is competent substantial evidence to support the credible testimony of Carr and Schilling. Both witnessed the red marks on student M.R.'s ankles immediately after the incident. - Tr. Pg. 232 and 287."

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

14. AGENDA ITEM 13

Description

Recommended Order (pg. 19, paragraph 56)

Respondent's actions or behavior threatened the health, safety, and welfare of M.R.

Schaefer Written Exception 13 (pg. 6, paragraph 7)

The Respondent takes exception to Finding of Fact No. 56 inasmuch as the ALJ found that the Respondent's actions threatened the health safety and welfare of M.R. As stated above, there is no competent substantial evidence to support a finding that the Respondent engaged in the conduct, thus there is no evidence to support Finding 56.

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District Written Response to Schaefer Written Exception 13 (pg. 14)

Respondent's thirteenth Exception is to RO Finding of Fact No. 56. There

are no citations to the record or transcript. The School Board is thus not required to rule on this Exception. Section 120.57(1)(k), Florida Statutes. If the School Board elects to consider Exception 12, Respondent claims, without citation, there is no competent substantial evidence to support a finding that Respondents actions threaten the health, safety, and welfare of student M.R. The findings of fact contained in RO paragraphs 49-54 more than establish Respondent's reprehensible behavior toward student M.R. that drove him from the classroom never to return. Those paragraphs are supported by competent substantial evidence as outline above.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

15. AGENDA ITEM 14

Description

Recommended Order Conclusions of Law (pgs. 22-23, paragraphs 68-71)

68. The School Board proved, by a preponderance of the evidence, that Respondent received progressive discipline prior to the Superintendent's letter recommending her employment termination.

69. Further, the School Board proved, by a preponderance of the evidence, that Respondent violated the Principles of Professional Conduct for the Education Profession in Florida when she engaged in conduct that constitutes misconduct in office, gross insubordination, and willful neglect of duty, as alleged in the AAC.

70. Respondent's actions on June 23, 2021, were a flagrant violation because it threatened the student's health, safety, and welfare. Progressive discipline was followed, but is not required because of Respondent's flagrant violation.

71. Having considered all of the facts set forth above, the undersigned concludes that Petitioner has just cause in this matter to terminate Respondent's employment.

Schaefer Written Exception 14 (pg. 7)

A. Standard of Review

18. An agency may reject an ALJ's conclusions of law and substitute its conclusions as long as the substituted conclusions are as or more reasonable than those of the ALJ. E.g., *Wise v. Dept. of Management Servs.*, 930 So. 2d 867, 871 (Fla. 2d DCA 2006) An agency's determination is given greater deference when it is regarding a matter "infused with overriding policy considerations." E.g., *Gross v. Dept. of Health*, 819 So. 2d at 1002.

B. Exceptions to Conclusions of Law

19. The Respondent takes exception to Conclusions of Law Nos. 68-71 for the reasons detailed above and based upon the citations to the record cited above.

20. The Conclusions stated in Paragraphs 68-71 are not as or more reasonable than the Respondent's position that she did not violate any applicable law, rule, statute, or policy, and should be rejected.

District Written Response to Schaefer Written Exception 14 (pg. 15)

In the fourteenth (14) exception, Respondent takes issue with RO Conclusions of Law Nos. 68-71. The ALJ's conclusions in Nos. 68-71 determine the School Board met its burden of proof as to progressive

discipline, violation of the Principles of Professional Conduct (misconduct in office, gross insubordination, and willful neglect of duty) and flagrant violation.

The School Board may reject or modify the conclusions of law found in the RO over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the School Board must state with peculiarity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Section §120.57(1)(1), Florida Statutes The ALJ Conclusions of Law are based on the extensive findings of fact contain within the RO. Respondent would have the School Board reject those conclusions based on her own self-serving testimony and that of her dependent children. To do so would not be as or more reasonable than that of the ALJ.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

16. AGENDA ITEM 15

Description

Recommended Order Recommendation (pg. 23)

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order finding Respondent guilty of misconduct in office and terminating Respondent's employment as an employee for the School Board of Sarasota County, Florida.

Schaefer Written Exception 15 (pgs. 7-8)

III. Recommended Penalty

A. Standard of Review

21. The School Board may reject the Recommended Penalty of an ALJ and substitute a more reasonable penalty based upon a complete review of the record and stating the reasons therefore. E.g., *Stokes v. State, Bd. of Professional Engineers*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007).

B. Exception to the Recommended Penalty

22. Based upon the Respondent's Exceptions to the above-referenced Findings of Fact and Conclusions of Law, the Respondent further takes exception to the ALJ's recommended penalty of termination. Because there was no violation of the cited laws, rules, statutes, or policies, (as detailed above), the recommendation should have been to dismiss the Administrative Complaint.

District Written Response to Schaefer Written Exception 15 (pg. 10)

In the fifteenth (15) exception, Respondent takes issue with the RO recommended penalty of termination. The School Board may accept the recommended penalty in a RO, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action. Section §120.57(1)(1), Fla. Statutes.

Respondent again seeks to have the School Board accept their version of the facts while ignoring the mountain of evidence found by the ALF supporting termination. That evidence included multiple prior disciplinary incidents all putting the health, safety, and well-being of her students at risk. The School Board's witness, Jody Dumas, said it best that he found from her personnel records and disciplinary history an escalation of Respondent's behavior to a physical level toward the most vulnerable of the district's students. Termination is the only penalty which assures no further children are placed in harms way.

Recommendation

To evaluate the exception and rule on it after consideration of all written and oral comment.

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

The Board may accept or modify the exception and reject or modify this specific provision of the Recommended Order based on the entire record.

The Board may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

Financial Impact:

Contact:

MCKINLEY / DUGGAN

Strategic Plan Reference

Motion: (Voice Vote)

The Board may reject the exception which will result in upholding of this specific provision of the Recommended Order.

MOTION Passed

Vote Results:

Ayes: Edwards, Enos, Marinelli, Rose, Ziegler

Announcements/Comments

Mr. Robinson to submit Final Order.

Adjournment

The Chair adjourned the Special Board Meeting (DOAH Hearing) at 9:49 a.m.

We certify that the foregoing minutes are a true account of the Special Board Meeting held on April 5, 2023 and approved at the Regular Board Meeting on April 18, 2023.

Dr. Allison Foster, Secretary

Bridget Ziegler, Chair