

STATE OF FLORIDA
DISTRICT SCHOOL BOARD OF CLAY COUNTY

CHARLIE VAN ZANT, Superintendent
of Schools, Clay County, Florida,

Petitioner,

CASE NO.: 2013-001 CCSB

vs.

MICHAEL FORD,

Respondent.

PETITIONER CHARLIE VAN ZANT, SUPERINTENDENT OF SCHOOLS'
PROPOSED HEARING OFFICER RECOMMENDED ORDER

Pursuant to the Hearing Officer's instructions during the October 1 and 2, 2013 final hearing in the above-styled action, Petitioner, Charlie Van Zant, Superintendent of Schools for the Clay County School District ("Superintendent"), submits his Proposed Hearing Officer Recommended Order.

I. PRELIMINARY STATEMENT

On May 7, 2013, the Superintendent issued to Respondent, Michael J. Ford ("Ford") and to the Clay County School Board ("School Board") a notice and recommendation for the termination of Mr. Ford's employment. The recommendation was based on charges that, on April 3, 2013, Mr. Ford violated School Board policies, the Florida Department of Education's ("FDOE") Code of Ethics of the Education Profession in Florida ("Code of Ethics"), Fla. Admin. Code R. 6A-10.080, and the FDOE's Principles of Professional Conduct of the Education Profession in Florida ("Principles of Professional Conduct"), Fla. Admin. Code R. 6A-10.081, by threatening physical harm to and improperly physically restraining a student.

If the charges related to the April 3, 2013 incident between Mr. Ford and the student are supported by competent and substantial evidence meeting the preponderance of the evidence standard, then Mr. Ford's termination was for "cause" and should be upheld.

II. WITNESSES AND DOCUMENTARY EVIDENCE

At the hearing, the parties stipulated to entry of eight "joint" exhibits into evidence. The Superintendent presented testimony of the following witnesses at the final hearing: Jessica Strunz, Bridgett Payne, Jennifer Zimmerman, and Toni A. McCabe. The Superintendent also offered and introduced 21 exhibits into evidence. Mr. Ford testified and presented the testimony of the following the final hearing: Stacy Francisco, Bonnie Lawrence, Janet Rowe, Antonette Lavette Walker-Ford, Crystal Weidner, April Martin, Randy T. Lefko, and Tracy Butler. Mr. Ford introduced two exhibits for demonstrative purposes and offered and introduced two additional exhibits into evidence.

The Transcript of the final hearing was served upon the parties on October 15, 2013. This Proposed Hearing Officer Recommended Order is timely filed.

III. PROPOSED FINDINGS OF FACT¹

1. Mr. Ford began his employment with the Clay County School District ("District") as a physical education teacher in August, 2004. Tr. 143:8-14, 316:20 to 317:7. Mr. Ford worked for the District in that capacity until May 17, 2013 when his employment was terminated. Tr. 143:15-17, 316:16-19; J. Ex. 6.

¹ References to the transcript of the two day hearing held on October 1 and 2, 2013 are indicated by the designation "Tr." followed by the appropriate page and line numbers. References to the Petitioner and Respondent exhibits are indicated by the designation "P. Ex." and "R. Ex.", respectively, followed by the appropriate exhibit number and, when necessary, the appropriate page number. References to the parties joint exhibits are indicated by the designation "J. Ex." followed by the appropriate exhibit number and, when necessary, the appropriate page number.

2. When hired, Mr. Ford received a copy of the FDOE's Code of Ethics and Principles of Professional Conduct. Tr. 171: 22 to 173:6; P. Ex. 6. Mr. Ford acknowledged that violation of the FDOE's Code of Ethics/Principles of Professional Conduct could result in the termination of his employment with the District. P. Ex. 6. Additionally, Mr. Ford attended District sponsored training on the FDOE's Code of Ethics/Principles of Professional Conduct. Tr. 138:21 to 139:2, 8-13; P. Ex. 33. During this training session, Mr. Ford was advised on, among other things, physical restraint of students and not to employ excessive or unreasonable force in situations involving students. Tr. 138:17 to 139:2.

3. Mr. Ford also received a copy of the District's Employee Handbook during his employment. Tr. 170:22-24, 171:16-21, 172:3-6; P. Ex. 5. The Employee Handbook contains various District policies and procedures including, *inter alia*, Clay County School Board Policy 6GX-10-2.17 A – Discipline (“Discipline Policy”) and Clay County School Board Policy 6GX-10-2.32 – Use of Reasonable Force Policy (“Reasonable Force Policy”). Tr. 168:18-23, 169:23 to 170:12; J. Ex. 2; P. Ex. 2. Mr. Ford acknowledged his receipt and review of the District's policies contained in the Employee Handbook as recently as November 1, 2012. P. Ex. 5.

4. The District's Discipline Policy emphasizes, in pertinent part, that the School Board may dismiss any employee for just cause. J. Ex. 2 at 62; P. Ex. 2 at 62. The Discipline Policy further states that “just cause shall include, but is not limited to,” action which brings the school system into disrepute, misconduct in office, and non-compliance with regulations and policies of the School Board, State Board of Education, or the laws of Florida. J. Ex. 2 at 62-63; P. Ex. 2 at 62-63. The District's Discipline Policy also incorporates and reiterates the standards established by the FDOE's Code of Ethics/Principles of Professional Conduct. J. Ex. 2 at 63; P. Ex. 2 at 63. Specifically, the Discipline Policy states that District teachers are obligated to,

among other things, make reasonable efforts to protect students from conditions harmful to their mental and/or physical health and/or safety, not intentionally expose any student to unnecessary embarrassment or disparagement, and not intentionally violate or deny a student's legal rights. J. Ex. 2 at 63; P. Ex. 2 at 63.

5. The District also maintains a Reasonable Force Policy which establishes general standards and parameters for use of "reasonable force" by District teachers. J. Ex. 2 at 84-85. This policy states that teachers may use "reasonable force" to protect students from conditions harmful to their learning, mental health, physical health, and/or safety. *Id.* at 84. The Reasonable Force Policy also establishes a non-exhaustive list of criteria for the District to review when determining the reasonableness of a teacher's use of physical force. *Id.* These criteria include: (i) the severity of offense; (ii) size and physical condition of participants; (iii) patterns of behavior; (iv) potential danger; (v) availability of assistance; (vi) other circumstances; and (vii) actions taken prior to use of physical force. *Id.* at 84-85.

6. The District recognizes physical restraint of students as a subset of "reasonable force" and maintains an additional policy governing use of physical restraints on students. Tr. 132:24 to 133:21, 198:24 to 199:6. Specifically, if physical restraint of a student is necessary, as opposed to merely making physical contact with a student, the District requires use of the Safe Crisis Management ("SCM") system. Tr. 88:22-25; P. Ex. 4 at 254-259.

7. The District adopted SCM in the 1980's as the curriculum for training, certifying, and regulating its employees in crisis management situations involving students. Tr. 88:22-25, 119:5-12, 126:14-17, 129:16-22; P. Ex. 4 at 254. Specifically, SCM trainees are taught various de-escalation tactics including encouragement strategies, discussion strategies, directive strategies, and nonverbal strategies. Tr. 120:24 to 121:9. SCM trainees are also taught a variety

of specific, approved manual physical restraints.² *Id.*; *see also* Tr. 124:12-19. Finally, SCM trainees are taught how to escape from certain “chokeholds” including a forearm chokehold applied from behind.³ Tr. 122:24 to 123:17. Notably, SCM trainees are taught not to physically restrain a student in response to profane language. Tr. 121:25 to 122:3. SCM training has been made available to all District teachers, but is required for Emotional Behavioral Disorder (“EBD”)⁴ teachers and Exceptional Student Education (“ESE”) Behavioral Assistants. Tr. 25:21-24, 89:1-5, 127:18-20.

8. The District’s SCM Policy defines “manual physical restraint” as referring to use of “physical force applied by a teacher or other staff member to restrict the movement or all or part of a student’s body.” P. Ex. 4. at 254. Under the District’s SCM Policy, “manual physical restraint shall be used only in an emergency when there is imminent risk of serious injury or death to [the] student or others.” P. Ex. 4 at 254. More precisely, SCM can only be employed when a student is being self-injurious or if a student is harming someone else. Tr. 27:17 to 28:7, 45:21 to 46:5, 89:9-13, 125:9-14, 126:18-21, 388:15 to 389:1. However, the SCM Policy notes that very few situations could be termed a “crisis.” P. Ex. 4 at 254. Further, the SCM Policy expressly states that “situations which involve property damage or other non-compliant behaviors (and do not meet the stated criteria for serious risk [*i.e.*, laceration, bone fracture, substantial hematoma, or other injury to internal organs, or death]) are not occasions for which crisis management would be appropriate.” P. Ex. 4 at 254. Indeed, ESE Program Specialist for EBD and District SCM trainer, Jennifer Zimmerman, testified during the hearing that “[t]here are

² Notably, SCM neither currently has, nor had in 2008, any approved hold or assist that involves restraining a person from behind by placing an arm across that person’s upper chest, shoulders, or neck. Tr. 46:10-13, 124:20 to 125:8.

³ The chokeholds used during SCM training are not approved methods of restraint. Tr. 123:18-20.

⁴ EBD is a term used in the education field to identify students in the exceptional student area who have behavioral or emotional disabilities that prevent them performing as a regular student would in the traditional classroom setting. Tr. 87:15-24, 117:21 to 118:1

no physical assists that would be appropriate for verbal aggression.” Tr. 117:11-18, 119:16-23, 121:10-12,122:11-21.

9. Only SCM certified school personnel can engage in manual physical restraint of a student, and the certification must be current at the time the school personnel physically restrain a student. Tr. 89:14-18, 90:15-17, 127:4-7, 141:2-10, 389:2-9; P. Ex. 4 at 255. School personnel must attend annual recertification classes to maintain their SCM certification. Tr. 129:23 to 130:1; P. Ex. 4 at 255.

10. The District’s SCM Policy was in effect during the 2012-2013 school year. Tr. 90:18-20, 127:1-3, 141:11-18.

11. Mr. Ford was trained and certified in SCM in November, 2008.⁵ Tr. 144:15-17, 144:23 to 145:5, 150:2-5, 325:22 to 326:2, 407:21 to 408:16; P. Ex. 33. Mr. Ford was not, however, certified in SCM in April, 2013 because he had not attended any recertification class since 2008. Tr. 144:18-22; P. 26 at 5.

12. In April, 2013, Mr. Ford worked for the District at Oakleaf Junior High School and taught sixth grade physical education. Tr. 28:13-18, 143:13-19, 317:8-12. Oakleaf Junior High School is attended by students in grades six through eight. Tr. 26:12-16, 87:12-14, 247:5-7, 316:20 to 317:7.

13. On April 3, 2013, Mr. Ford was supervising his class of students from the sidewalk bordering the Oakleaf Junior High outdoor basketball courts and tennis courts. Tr. 337:23 to 338:15. Mr. Ford’s class was approximately 60 feet from where an EBD student, D.O., in another physical education class on Oakleaf Junior High’s baseball field, had been placed in timeout by his teacher, “Coach” Brett Rountree. Tr. 28:19-29:24, 30:1-9, 338:22 to 339:6; P.

⁵ Mr. Ford also received similar crisis management training while employed as a teacher with Pasco County. Tr. 386:19 to 387:6, 406:9-15.

Exs. 13 at 1, 14 at 2, 15, 16 at 2, 26 at 5. An ESE Behavioral Assistant, Jessica Strunz, was monitoring D.O. from just outside of the baseball field backstop fencing. Tr. 25:15 to 26:8, 28:19 to 29:12, 35:7-10, 61:22-24, 62:12-14, 64-10; P. Ex. 26 at 5.

14. As an ESE Behavioral Aid, Ms. Strunz was trained and has been certified in SCM since November, 2012. Tr. 26:17 to 27:16, 60:25 to 61:4, 79:15-17; J. Ex. 3; *see also* P. Ex. 4 at 255.

15. Mr. Ford was not D.O.'s teacher on April 3, 2013. Tr. 96:24 to 97:2, 344:22-24; P. Ex. 26 at 5.

16. While sitting in a plastic chair designated for timeout on the interior of Oakleaf Junior High's baseball field by the first-base side dugout, D.O. began yelling to another student in his physical education class that the student was "gay" and that his father/dad was "gay." Tr. 30:1-16, 31:16 to 32:8; P. Exs. 13 at 1, 14 at 2, 26 at 5. D.O. was angry after being placed in timeout and began cursing and making comments regarding how he hated the school. Tr. 31:16-25, 32:10-19. Mr. Ford could hear D.O. yelling to the student(s) in D.O.'s class from his location on the sidewalk bordering the basketball and tennis courts. Tr. 337:20-22.

17. At some point during the class hour, Mr. Ford left his class and approached Ms. Strunz and D.O. to calm him down. Tr. 32:24 to 33:1, 195:19 to 196:1, 343:17 to 344:4; P. Exs. 13 at 1, 14 at 2, 26 at 5. Mr. Ford told D.O. that he needed to sit in the timeout chair, get it under control, and make better choices. Tr. 33:15-19, 343:17 to 344:4. Nonetheless, D.O. continued cursing and yelling before standing up, kicking the plastic timeout chair, and throwing the chair to the ground a few feet away. Tr. 32:10-19, 82:19 to 83:3, 340:9-10, 341:3-5; P. Exs. 13 at 1, 14 at 2, 26 at 5. D.O. did not throw the plastic chair at any other student or individual. Tr. 34:7-9, 396:7-9. Ms. Strunz asked D.O. to calm down, but D.O. ignored her. Tr. 33:5-9; P. Exs. 13 at 1,

14 at 2. Instead, D.O. proceeded to walk across the baseball field toward a gate near the third base dugout adjacent to the tennis courts. Tr. 33:5-14.

18. Before D.O. moved from the timeout chair, Mr. Ford asked Ms. Strunz if D.O. was physically abusive in the classroom. Tr. 30:17-25. Ms. Strunz testified that she responded to Mr. Ford's question by telling him that D.O. was not physically abusive and that D.O. verbalizes his feelings instead of expressing them physically.⁶ Tr. 31:25 to 32:4.

19. When he arrived at the gate adjacent to the tennis courts, D.O. grabbed Coach Rountree's grade book which had been stuck in the fencing, walked behind the third base dugout, and threw Coach Rountree's grade book to the ground. Tr. 33:20 to 34:1, 34:14-19, 342:11-25; P. Exs. 13 at 1, 14 at 2. D.O. did not throw Coach Rountree's grade book at any student or other individual. Tr. 34:7-9, 396:10-13. D.O. continued walking past the third base dugout and sat on bleachers behind the baseball field's home plate/backstop fencing toward the Oakleaf Junior High Physical Education ("P.E.") building where he continued to curse and make comments about hating the school. Tr. 34:10-22, 35:13-22. Shortly thereafter, D.O. got up from the bleachers and began walking down the open-air sidewalk behind the baseball field toward the nearby P.E. building. Tr. 35:13 to 36:13; P. Exs. 13 at 1, 14 at 2. Ms. Strunz promptly followed D.O. toward the P.E. building. Tr. 35:23 to 36:13.

20. By the time Ms. Strunz and D.O. had reached the covered walkway leading to the P.E. building, Mr. Ford joined the pair and began walking side-by-side with D.O. and talking to him. Tr. 36:17-24, 354:23 to 355:5; P. Exs. 13 at 1, 14 at 2. Ms. Strunz was approximately three

⁶ Ms. Strunz testified that she had been assigned to assist D.O. several times before the April 3, 2013 incident and had observed D.O. in the past. Tr. 31:5-10. Ms. Strunz further testified that D.O. had never acted physically aggressive toward any other student or person. Tr. 31:11-15. Likewise, Bonnie Lawrence, another District physical education teacher working at Oakleaf Junior High School during the 2012-2013 school year, testified during the hearing that D.O. would blurt things out and run around when he became angry, but that she never saw him attack, hit or try to hit anyone else. Tr. 201:4-13, 224:6 to 225:2.

feet behind Mr. Ford and D.O. as the group proceeded down the covered walkway toward the P.E. building. Tr. 36:25 to 37:4. Mr. Ford continued walking next to D.O. until they reached the beginning of a portable classroom located just outside of the P.E. building. Tr. 37:5-19. At that point, Mr. Ford turned around to face D.O. and began walking backwards while talking to D.O. *Id.*; P. Exs. 13 at 1, 14 at 2. Ms. Strunz was still approximately three feet from Mr. Ford and D.O. when Mr. Ford began walking backwards. Tr. 37:20 to 38:1.

21. Around that time, Ms. Strunz saw Mr. Ford become angry and clearly heard Mr. Ford tell D.O. that Mr. Ford would look for D.O. if he found paint on his car and put D.O. in the hospital. Tr. 38:2-13; P. Exs. 13 at 1, 14 at 2, 26 at 5. Further, Ms. Strunz heard Mr. Ford tell D.O. that “you don’t know what I’m capable of.” Tr. 38:10-13; P. Exs. 13 at 1, 14 at 2, 26 at 5. Ms. Strunz could see Mr. Ford’s face as he made those statements to D.O., and she clearly remembers hearing Mr. Ford make the same because of their shocking nature. Tr. 38:14-22, 161:18 to 162:5.

22. Despite possessing a handheld radio (and likely a cell phone) and the availability of Ms. Strunz, a trained professional certified in SCM,⁷ Mr. Ford never requested assistance with D.O. while walking with him from the field area to the P.E. building. Tr. 199:7-13, 223:21-23, 240:24 to 241:17, 346:20 to 349:3, 391:8-16.

23. As D.O., Mr. Ford and Ms. Strunz neared the entrance into the P.E. building, Mr. Ford stepped to the side and allowed D.O. to continue walking past him. Tr. 38:23 to 39:2. Mr. Ford testified that he allowed D.O. to pass him approximately 12 feet before the P.E. building entrance. Tr. 392:14 to 393:3, 393:13-19.

⁷ Mr. Ford admitted that, on April 3, 2013, he knew that Ms. Strunz was an ESE Behavioral Aid, as such, was required to be trained in SCM. Tr. 390:17 to 391:3.

24. D.O. approached the entrance, banged his left hand on the closed left double-door, placed his right hand on the right door's handle and told Mr. Ford to "shut the f*** up" as he began to open the right-double door.⁸ Tr. 38:23 to 39:9, 394:6-12, 397:5-11; P. Exs. 13 at 1, 14 at 2. Approximately one to two seconds later, Mr. Ford grabbed D.O. from behind and put him in a "chokehold." Tr. 39:14 to 40:4, 375:25 to 376:12, 394:13-15; P. Exs. 13 at 1, 14 at 2, 26 at 5. Specifically, Mr. Ford wrapped his right arm around D.O.'s neck and pulled D.O.'s neck backward. Tr. 39:14 to 40:19, 64:13-17, 65:13-19, 163:6-23. While Ms. Strunz testified that she was not entirely certain where Mr. Ford had placed his left arm, Ms. Strunz was adamant that Mr. Ford's right arm was around D.O.'s neck. Tr. 40:5-19, 63:24 to 64:17, 65:5-19. As Mr. Ford admitted, the restraint he applied was not an approved SCM hold. Tr. 46:6-13, 124:20 to 125:8; 387:7-14; *see also* P. Ex. 26 at p. 5. Further, according to Ms. Strunz, this was not a situation where she would have used a SCM restraint on D.O. Tr. 45:21 to 46:5.

25. Mr. Ford pulled D.O. back from the P.E. building entrance, turned D.O. to the left, and pushed D.O. face first toward a railing attached to the nearby portable classroom structure until D.O. was pinned against the railing with his head turned to the left. Tr. 40:5 to 41:18, 42:4-9; P. Ex. 13 at 1, 14 at 2, 15, 16 at 2. D.O. did not struggle while Mr. Ford physically restrained him. P. Ex. 15, 16 at 2. D.O. appeared shocked and scared while Mr. Ford restrained him. Tr. 196:9-18.

26. Mr. Ford kept D.O. restrained for approximately 30 seconds. Tr. 299:9-15, 373:15-21. At that time, Mr. Ford informed D.O. that he was going to release him and to stay calm, and D.O. complied. Tr. 42:10-16. After releasing D.O., Mr. Ford instructed D.O. to stand

⁸ Ms. Lawrence and her class were inside of the P.E. building throughout the entire fifth hour on April 3, 2013 and, therefore, were present by the time that D.O. reached the entrance to the P. E. building. Tr. 215:21-24, 216:3-1380:10-14.

against the P.E. building wall and not to move. *Id.*; P. Ex. 13 at 1-2, 14 at 2-3. D.O. calmly went and stood against the P.E. building exterior wall as instructed. Tr. 42:17-22.

27. The incident between Mr. Ford and D.O. occurred at the end of the fifth class hour, and other students were in the vicinity when Mr. Ford physically restrained D.O. Tr. 41:19-24, 173:8-12, 184:21 to 185:8; P. Exs. 15, 16 at 2. Those other students were able to see the encounter between Mr. Ford and D.O. and made comments about the incident. Tr. 41:25 to 42:3.

28. D.O. had not threatened any student during his walk from the Oakleaf Junior High baseball field to the P.E. building entrance. Tr. 44:6-9. D.O. was not attacking or trying to strike any other student or individual when Mr. Ford physically restrained him. Tr. 44:3-5, 396:17-20. D.O. did not attack or do anything to physically harm Mr. Ford before Mr. Ford physically restrained him. Tr. 43:22 to 44:2, 396:14-16. D.O. was not harming himself before Mr. Ford physically restrained him. Tr. 396:21 to 397:16.

29. Despite admittedly having a loud voice that carries well, Tr. 399:12-18, no evidence suggests that Mr. Ford ever yelled for or otherwise told D.O. to "stop" opening the door to P.E. building before Mr. Ford physically restrained D.O. Tr. 394:22 to 395:7.

30. Mr. Ford was not looking at Ms. Strunz when he was restraining D.O. and pushing him over to the portable classroom railing. Tr. 401:15-21.

31. D.O.'s demeanor fluctuated between agitated and calm after Mr. Ford restrained him. P. Exs. 15 16 at 2. D.O.'s attitude worsened when he noticed that his right elbow was bleeding while standing against the P.E. building wall. Tr. 45:7-20; P. Exs. 9, 12, 13 at 2, 14 at 3, 15, 16 at 2. D.O. quickly left the P.E. building area and began walking toward the front of the Oakleaf Junior High School. Tr. 45:16-20; P. Exs. 13 at 2, 14 at 2, 15, 16 at 2. Ms. Strunz and Coach Rountree, who had since joined D.O. at the P.E. building entrance, followed D.O. to the

office of Oakleaf Junior High School Assistant Principal, Bridgett Payne, where he reported the incident. Tr. 50:8-21, 51:2 to 52:1, 87:1-9; P. Exs. 13 at 2, 14 at 2, 15, 16 at 2.

32. D.O. entered Ms. Payne's office and stated "Look at what one of your teachers did to me" while holding up his arm.⁹ Tr. 91:8-15; P. Exs. 10-11. Ms. Payne saw that D.O.'s arm had been cut and that there was fresh blood. Tr. 91:16-20; P. Exs. 10-11. Ms. Payne also observed a red mark approximately four inches long extending across the front of D.O.'s neck between his Adam's apple and collarbone area. Tr. 93:13 to 94:2; P. Exs. 9-11. D.O.'s face was not flush, and Ms. Payne did not observe any other areas of redness or discoloration on D.O.'s body. Tr. 94:3-7. When Ms. Payne asked D.O. to tell her what happened, D.O. stated that Mr. Ford had put him in a chokehold and pressed him into the portable classroom's railing. 91:21 to 92:4; P. Exs. 10-11. D.O. also told Ms. Payne that Mr. Ford threatened to put him in the hospital and that he did not know what Mr. Ford was capable of. Tr. 54:9-16, 94:9-11; P. Ex. 11.

33. After verifying D.O.'s allegations with Ms. Strunz, Ms. Payne sent D.O. to the school's clinic to be examined by the then Oakleaf Junior High School Nurse, Mary Blazek. Tr. 52:9-22, 54:17-20, 55:2-13, 94:12-16, 94:23-25; P. Exs. 9-11. Ms. Blazek noted during her assessment of D.O. that he had been brought to the clinic after being restrained in P.E. class, that the middle of his neck was reddened, and that he had a small scrape on his right elbow. P. Ex. 9.

34. While D.O. was being treated at the school's clinic, Ms. Payne contacted D.O.'s mother concerning Mr. Ford's encounter with her son during P.E. class and notified D.O.'s mother that he sustained a cut to his elbow. Tr. 95:1-3; P. Exs. 10-11. Upon arriving at the school to pick up her son, D.O.'s mother learned of Mr. Ford's threat to put D.O. in the hospital. P. Ex. 11. Thereafter, D.O.'s mother filed criminal charges against Mr. Ford with the Clay County Sheriff's Office. Tr. 152:1-13; P. Exs. 11, 16 at 5.

⁹ Mr. Ford was 42 years old at the time of the incident. J. Exs. 4-5. D.O. was only 13 years old. *See id.*

35. Ms. Payne spoke with Mr. Ford later that afternoon to inform him that the police were coming to Oakleaf Junior High School. Tr. 95:11-21. Mr. Ford never asked Ms. Payne why the police were coming to the school. Tr. 95:22-24. Likewise, Mr. Ford never defended his conduct toward D.O. to Ms. Payne. Tr. 95:25 to 96:2.

36. Deputy Officers with Clay County Sheriff's Office interviewed Mr. Ford as part of their investigation into the incident between Mr. Ford and D.O. Tr. 383:20 to 384:4. Mr. Ford declined to answer several of the deputies' questions regarding his encounter with D.O., including whether his training taught him to grab a student for using profane language. Tr. 384:5 to 386:10. The Clay County Sheriff's Office later arrested Mr. Ford on April 8, 2013 and charged him with felony child abuse. Tr. 178:9-17, 180:7 to 181:3; P. Exs. 20, 22, 26 at 5.

37. On June 4, 2013, Mr. Ford freely and voluntarily executed and entered into a Plea of Guilty and Negotiated Sentence ("Guilty Plea") with the State Attorney's Office and the Clay County Circuit Court wherein Mr. Ford admitted that he was guilty of felony child abuse. P. Ex. 20. Specifically, Mr. Ford acknowledged in his Guilty Plea that he was not "threatened, coerced, or intimidated by any person...or in any way...." before entering into the Plea. *Id.* at p 1. Mr. Ford also represented under oath in his Guilty Plea and to Court that he "entered into and signed [the] plea of guilty and negotiated sentence freely and voluntarily," that the Guilty Plea "is true and correct in all respects," including the fact that he pled guilty "because I am guilty." *Id.*

38. Mr. Ford was permitted to enter into post-plea felony pre-trial intervention whereupon he was directed to complete an anger management program (which consisted of eight sessions), have no contact with D.O., and pay a monetary fine. Tr. 106:24 to 107:8, 385:20 to 386:10; P. Ex. 20 at 1.

39. The District suspended Mr. Ford with pay at the end of his workday on April 3, 2013 pending investigation of the incident between Mr. Ford and D.O. Tr. 152:14 to 153:1. The District provided Mr. Ford with formal notice of suspension with pay relative to the outcome of the District's investigation on April 4, 2013. Tr. 153:2-12; P. Ex. 25.

40. Toni McCabe,¹⁰ the District's Assistant Superintendent for Human Resources, conducted an investigation of the April 3, 2013 incident between Mr. Ford and D.O. Tr. 137:17 to 138:4, 152:1-23; *see also* P. Exs. 25, 26 at 5. Ms. McCabe's investigation included an onsite inspection of the area at Oakleaf Junior High School where the incident occurred, as well as interviews of Ms. Strunz, Ms. Payne, Coach Rountree, and Ms. Blazek. Tr. 153:25 to 154:14. Ms. McCabe also obtained the Accident Report Form from the school's clinic and gathered written statements from Ms. Strunz, Ms. Payne, and Coach Rountree. Tr. 154:15 to 155:8, 156:22 to 157:8, 157:18-158:2; P. Exs. 9, 11, 13, 15. Further, Ms. McCabe obtained information from the Clay County Sheriff's Office concerning its investigation into the incident between Mr. Ford and D.O.¹¹ Tr. 164:3-14, 164:22 to 165:2, 166:14-19; P. Exs. 10, 14, 16.

41. Ms. McCabe's investigation of the incident also included two fact finding meetings with Mr. Ford and Tracy Butler, the service unit director with the Clay County Education Association¹² ("CCEA") on April 10 and April 22, 2013. Tr. 159:2-8, 281:2-5, 286:13-17, 291:8-10; P. Ex. 26 at 5. During those meetings, Mr. Ford verbally described and physically demonstrated the restraint he claimed to have used on D.O. Tr. 159:12-22, 299:22-25. The hold Mr. Ford described and demonstrated to Ms. McCabe during the fact finding

¹⁰ Ms. McCabe was trained and received her certification in SCM in 2000. Tr. 143:20-22, 144:1-3. While not currently certified in SCM, Ms. McCabe's SCM training was consistent with the guidelines established by the District's SCM Policy. Tr. 144:4-8, 198:8-10.

¹¹ Ms. McCabe testified that the information that she obtained from the Clay County Sheriff's Office concerning the encounter between Mr. Ford and D.O. was consistent with the factual information that she received during her own investigation into the incident. Tr. 167:6-10.

¹² The CCEA is the recognized labor organization for the District's teachers. Tr. 281:6-8.

meeting(s), which included wrapping his right arm from behind across the upper chest of Ms. Butler, was not an approved SCM restraint. Tr. 159:23 to 160:12, 160:18-24, 161:13-17, 304:18 to 305:18, 369:19-23; 387:7-14. Further, Ms. McCabe, Mr. Ford, and Ms. Butler discussed the District's SCM policy and Mr. Ford's previous training in SCM. Tr. 387:24 to 388:6, 406:9-15; P. Ex. 26 at 5.

42. Ultimately, Ms. McCabe's determined that Mr. Ford exceeded the scope of his authority and violated District policies and the FDOE's Code of Ethics/Principles of Professional Conduct when he (i) threatened to physically harm and place D.O. "in the hospital" and (ii) physically restrained D.O. by using a non-SCM chokehold. Tr. 167:17 to 168:17, 172:16 to 173:7, 175:4-13; P. Ex. 26 at 5. Based on the findings of the investigation, Ms. McCabe recommended to the Superintendent that Mr. Ford's employment be terminated for cause. Tr. 167:11-16, 177:8-15; P. Ex. 26 at 4-5. Before making this recommendation, Ms. McCabe held a final disposition meeting with Mr. Ford and Ms. Butler during which they were presented with a summary of the investigation's fact finding. Tr. 286:18 to 287:8. Ms. Butler only requested that one correction be made to Ms. McCabe's fact finding summary: clarification that D.O. "kicked" the plastic timeout chair instead stating that D.O. merely "knocked over" the chair. Tr. 288:17 to 289:10. Neither Mr. Ford nor Ms. Butler ever raised the District's Reasonable Force Policy during any fact finding or final disposition meeting. Tr. 310:22 to 311:1, 406:3-8.

43. On May 7, 2013, the Superintendent recommended to the School Board that it terminate Mr. Ford's employment effective May 17, 2013 based on Mr. Ford's failure to protect D.O. from conditions harmful to his physical and emotional safety, intentionally exposing D.O.

to unnecessary embarrassment or disparagement, bringing the school system into disrepute,¹³ misconduct in office, and violations of District policies and the FDOE's Code of Ethics/Principles of Professional Conduct. P. Ex. 26.

44. On May 16, 2013, the School Board accepted the Superintendent's recommendation and terminated Mr. Ford's employment for cause effective May 17, 2013. Tr. 177:16 to 178:3; J. Ex. 6.

45. Mr. Ford was a professional services contract teacher at the time of his termination in May, 2013. Tr. 176:8-18. Accordingly, Mr. Ford was covered under the District's 2011-2014 Master Contract/Collective Bargaining Agreement ("Agreement") with the CCEA. Tr. 176:19-21; J. Ex. 1.

46. The District had placed Mr. Ford on notice concerning being overly physical with students before the April 3, 2013 incident involving D.O. Tr. 145:6-8. Specifically, Mr. Ford received a memorandum in April, 2008 from then Oakleaf Junior High School Principal, Larry Davis, concerning Mr. Ford's possible use of an unreasonable restraint on a student during a locker room incident in March, 2008. Tr. 376:23 to 377:21; P. Ex. 30. In that memorandum, Mr. Davis expressed his concern that Mr. Ford's "version of this situation with regard to restraint is different from the witnesses in the locker room," and expressly directed Mr. Ford "to be careful in restraining students and using inappropriate words which may cause unnecessary stress or embarrassment of a student." P. Ex. 30.

47. Mr. Ford's involvement in the March, 2008 locker room incident also resulted in a complaint to the FDOE and the Florida Department of Children and Families ("DCF"). Tr. 378:12-15; P. Ex. 31. At the conclusion of its investigation into Mr. Ford's conduct, DCF sent

¹³ Mr. Ford's physical restraint of D.O. while employed by the District and subsequent arrest was reported by several media outlets, including the Clay Leader, the Clay Today, and the Florida Times-Union. Tr. 175:5 to 176:7; J. Exs. 4-5.

Mr. Davis and Mr. Ford a letter informing them that there were some indicators of abuse. P. Ex. 31 at 2. DCF recommended that Mr. Ford “receive additional/update training on appropriate ways to address his students when behavioral issues arise as well as reasonable use of force in responding to student confrontations.” *Id.* Additionally, DCF recommended that Mr. Ford complete anger management counseling. *Id.* Mr. Ford received SCM training and attended anger management counseling because of the March, 2008 incident and subsequent DCF recommendations. Tr. 144:9-14, 148:1-17, 379:6-7.

48. Thereafter, in October, 2008, Mr. Ford was placed on notice that he should use proper SCM techniques after the Oakleaf Junior High School administration received a complaint from a parent alleging that Mr. Ford had grabbed a female student by the arm during a situation in the school’s cafeteria. Tr. 149:4-7; P. Ex. 31. Then Vice Principal Nancy Crowder drafted a letter to Mr. Ford confirming her discussion with him, stating that “we do not place our hands on a student unless we are using proper Safe Crisis Management techniques after other conflict resolution methods have not achieved an acceptable result.” Tr. 149:8-13; P. Ex. 31.

IV. CONCLUSIONS OF LAW

1. The School Board has jurisdiction over the subject matter of this action and the parties thereto pursuant to § 120.569, Fla. Stat. (2011) and § 120.57(1), Fla. Stat. (2011).

2. “In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards [have the authority to] operate, control, and supervise all free public schools within their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.” § 1001.32(2), Fla. Stat. (2008); *see also* § 1001.33, Fla. Stat. (2006) (“Except as otherwise provided by law, all public schools conducted within the district shall be under the direction and control of the district school board with the

district school superintendent as executive officer.”). Such authority extends to personnel matters and includes the power to suspend and/or dismiss employees. *See* §§ 1001.42(5), Fla. Stat. (2013), 1012.22(1)(f), Fla. Stat. (2013).

3. Consistent with this authority, district school boards have the right to “adopt rules governing personnel matters.” § 1012.23(1), Fla. Stat. (2002); *see also* § 1001.42(6), (27).

4. Here, the “rules governing personnel matters” that have been adopted by the School Board include, *inter alia*, School Board Policy 6GX-10-2.17 A – Discipline (“Discipline Policy”), School Board Policy 6GX-10-2.32 – Use of Reasonable Force Policy, and the Safe Crisis Management Policy discussed above.

5. A district school board is deemed to be the “public employer,” as the term is used in Chapter 447, Part II, Florida Statutes, “with respect to all employees of the school district.” § 447.203(2), Fla. Stat. (2013). Therefore, a district school board has the right “to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons,” provided it exercises these powers in a manner that is consistent with the requirements of law. § 447.209, Fla. Stat. (1974); *see also* J. Ex. 1 at 12 (stating that it is the right of the public employer to “exercise control and discretion over its organization and operations” and “take disciplinary action for proper cause.”).

6. Material to this case, the School Board has the right under § 1012.33, Fla. Stat. (2011), Article XIX, Section A of the Agreement, and the Discipline Policy to dismiss teachers like Mr. Ford for “just cause.” *See* J. Ex. 1 at 38; J. Ex. 2 at 3 (“Subject to the requirements of Chapter 1001, Florida Statutes, the School Board may dismiss any employee for just cause.”); P. Ex. 2 at 3 (same).

7. “Just cause,” as used in § 1012.33 has been legislatively defined to include, “but is not limited to, ...immorality, misconduct in office, incompetency, ...gross insubordination, willful neglect of duties, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.” § 1012.33(1)(a). “Just cause for discipline, up to and including termination, is not limited to the list of offensive conduct set forth in *Section 1012.33, Florida Statutes.*” *Sarasota County Sch. Bd. v. Berry*, No. 09-3557, 2010 Fla. Div. Adm. Hear. LEXIS 396, *15-*16 (Fla. DOAH Jan. 27, 2010) (citing *Dietz v. Lee County Sch. Bd.*, 647 So. 2d 217 (Fla. 2d DCA 1994)).

8. Indeed, “[j]ust cause for discipline is the reason which is rationally and logically related to an employee’s conduct in the performance of the employee’s job duties and which is concerned with inefficiency, delinquency, poor leadership, lack of role modeling or misconduct.” *Id.* (quoting *Lee County Sch. Bd. v. Hall*, No. 08-5409, 2009 Fla. Div. Adm. Hear. LEXIS 377, *16 (Fla. DOAH June 29, 2009); *see also Brevard County Sch. Bd. v. Jones*, No. 06-1033, 2006 Fla. Div. Adm. Hear. LEXIS 287, *16 (Fla. DOAH June 30, 2006) (noting that “[c]ourts have found just cause to support discharge where the employee violates a universal standard of behavior that an employer has a right to expect from its employees.”).

9. Consistent with its statutory authority and the flexible parameters of what “just cause” may be, the School Board expanded upon § 1012.33(1)(a)’s definition of “just cause” by including the following, without limitation, within Section 3 of its Discipline Policy:

- a. Abandonment or neglect of position.
- b. Action which brings the school system into disrepute.
- c. Conviction of a felony.
- d. Dishonesty.
- e. Failure to fulfill contractual obligations.
- f. Falsification of School Board forms, including application for employment.
- g. Gross insubordination.

- h. Immorality.
- i. Incompetence.
- j. Misappropriation or willful destruction of public property.
- k. Misconduct in office.
- l. Willful neglect of duty.
- m. Possession, consumption or sale of alcohol, drugs or narcotics on School Board property.
- n. Non-compliance with the regulations and policies of the School Board, State Board of Education, or the laws of Florida.

J. Ex. 2 at 3-4; P. Ex. 2 at 3-4.

10. The Superintendent has the burden of proving by a preponderance of the evidence that just cause exists to terminate Mr. Ford's employment as a physical education teacher.¹⁴ See *Cisneros v. Sch. Bd. of Miami-Dade County*, 990 So. 2d 1178, 1183 (Fla. 3d DCA 2008) (citing *Allen v. Sch. Bd. of Dade County*, 571 So. 2d 568, 569 (Fla. 3d DCA 1990)); *McNeil v. Pinellas County Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Sublett v. Sumter County Sch. Bd.*, 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); *Dileo v. Sch. Bd. of Dad County*, 569 So. 2d 883, 884 (Fla. 3d DCA 1990). This burden "does not require proof that is clear and convincing, much less beyond a reasonable doubt." *Miami-Dade County Sch. Bd. v. Grey*, No. 10-9324, 2011 Fla. Div. Adm. Hear. LEXIS 18, *37 (Fla. DOAH Mar. 8, 2011) (citing *Fitzpatrick v. Miami Beach*, 328 So. 2d 578, 579 (Fla. 3d DCA 1976); *Fla. Dep't of Health and Rehab. Servs. v. Career Serv. Comm'n*, 289 So. 2d 412, 415 (Fla. 4th DCA 1974)).

11. In determining whether the Superintendent has met his burden of proof, the Superintendent's evidentiary presentation must be evaluated in light of the specific allegations contained in the written notice of charges. *Grey*, 2011 Fla. Div. Adm. Hear. LEXIS 18 at *38.

¹⁴ "While the standard of proof applied to license revocation cases is clear and convincing evidence, the standard of proof applied to employment termination cases [such as the present] is a preponderance of evidence." *Duval County Sch. Bd. v. Paul*, No. 09-3548, 2010 Fla. Div. Adm. Hear. LEXIS 395, *29 (Fla. DOAH May 6, 2010) (internal citations omitted). Further, where a district school board, through its collective bargaining process, has agreed to bear a more demanding standard, it must honor and act in accordance with its agreement. *Grey*, 2011 Fla. Div. Adm. Hear. LEXIS 18 at *37 n. 27 (internal citations omitted). Here, the Agreement does not provide for any such elevated burden of proof. See generally J. Ex. 1.

“Due process prohibits a district school board from disciplining a teacher based on matters not specifically alleged in the notice of charges, unless those matters have been tried by consent.” *Id.* (citing *Dep’t of Revenue v. Vanjaria Enters.*, 675 So. 2d 252, 254 (Fla. 5th DCA 1996); *Pilla v. Sch. Bd. of Dade County*, 655 So. 2d 1312, 1314 (Fla. 3d DCA 1995); *Texton v. Hancock*, 359 So. 2d 895, 897 n. 2 (Fla. 1st DCA 1978)).

12. Here, the Superintendent has alleged in his notice that “just cause” existed to terminate Mr. Ford’s employment as a professional service contract teacher with the District because, on April 3, 2013, Mr. Ford threatened physical harm to an EBD student and restrained the student by using a non-SCM chokehold. P. Ex. 26. According to the Superintendent’s notice, Mr. Ford’s conduct violated School Board Policy 6GX-10-2.17A3(a) by failing to “make reasonable efforts to protected the student from conditions harmful to the learning and/or to the student’s mental and/or physical health and/or safety;” violated School Board Policy 6GX-10-2.17A3(e) by “intentionally expos[ing] a student to unnecessary embarrassment or disparagement;” violated School Board Policy 6GX-10-2.17A3b by “bring[ing] the school system into disrepute;” violated School Board Policy 6GX-10-2.17A3k by committing “misconduct in office;” violated School Board Policy 6GX-10-2.17A3n because of “[n]on-compliance with the regulations and policies of the School Board, State Board of Education, or the laws of Florida;” and violated the FDOE’s Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida. P. Ex. 26 at 2.

13. At all times material to this action, “misconduct in office” has been defined by the State Board of Education as “one or more of the following:”

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

- (b) A violation of the Principles of Professional Conduct of the Education Profession in Florida as adopted in [*Rule 6A-10.081*], F.A.C.;
- (c) A violation of school board rules;
- (d) Behavior that disrupts the student's learning environment; or
- (e) Behavior that reduces the teacher's ability or his colleague's ability to perform duties.

Fla. Admin. Code R. 6A-5.056(2)(a)-(e) (emphasis added). "The term 'misconduct' under FDOE [*Rule 6A-5.056*] is to be broadly interpreted to achieve the underlying intention of the Code of Ethics: to maintain a high moral standard for members of the education profession." *Paul*, 2010 Fla. Div. Adm. Hear. LEXIS 395 at *33-*34 (citing *Adams v. State Prof'l Practices Counsel*, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981); *Negrich v. Dade County Bd. of Public Instruction*, 143 So. 2d 498 (Fla. 3d DCA 1960)).

14. The Code of Ethics provides:

- (1) 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.
- (2) 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.
- (3) 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.

Fla. Admin. Code R. 6A-10.080(1)-(3).

15. The Principles of Professional Conduct provides, in pertinent part:

- (1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

- (3) Obligation to the student requires that the individual:
- (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.

Fla. Admin. Code R. 6A-10.081(1), (3)(a), (e).

16. Notably, the precepts set forth in the Code of Ethics are “so general and aspirational as to be of little practical use in defining normative behavior.” *Duval County Sch. Bd. v. Howard*, No. 13-1505TTS, 2013 Fla. Div. Adm. Hear. LEXIS 703, *27 (Fla. DOAH Oct. 15, 2013) (quoting *Miami-Dade County Sch. Bd. v. Brenes*, No. 06-1758 (Fla. DOAH Feb. 27, 2007)). “Attention should therefore be directed toward any violation of the Principles of Professional Conduct for the Education Profession in Florida, because violations of one of these specific Principles would necessarily also violate the more general and aspirational Code of Ethics.” *Id.* “Any conduct which violates the Principles of Professional Conduct for the Education Profession in Florida supports dismissal of a teacher.” *Paul*, 2010 Fla. Div. Adm. Hear. LEXIS 395 at *33 (internal citations omitted).

17. “It is axiomatic that the duty of a teacher to protect students from conditions ‘harmful to their physical health or safety’ is completely breached when it is the ‘protecting’ teacher who resorts to physical acts against a student.” *Duval County Sch. Bd. v. Hunter*, No. 12-2080TTS, 2012 Fla. Div. Adm. Hear. LEXIS 605, *27 (Fla. DOAH Oct. 3, 2012). Consequently, “[p]hysical conduct against a student is grounds for termination of a teacher because it violates

the teacher's Code of Ethics, [the Principles of Professional Conduct], impairs the effectiveness as a teacher, and constitutes misconduct in the office." *Accord. Paul*, 2010 Fla. Div. Adm. Hear. LEXIS 395 at *37-*38; *Howard*, 2013 Fla. Div. Adm. Hear. LEXIS 703 (teacher's act of hitting kindergarten-aged students in her classroom violated Rule 6A-10.081(3)(a) and the Code of Ethics); *Miami-Dade County Sch. Bd. v. Pusey*, No. 12-0808TTS, 2012 Fla. Div. Adm. Hear. LEXIS 820 (Fla. DOAH Dec. 26, 2012) (teacher who unjustifiably punched student violated school board policy 3210 [adopting Rule 6A-10.081(3)(a)] and was guilty of "misconduct in office"); *Hunter*, 2012 Fla. Div. Adm. Hear. LEXIS 605 (teacher who shoved, picked up, and shook student committed misconduct in office constituting just cause for dismissal); *Duval County Sch. Bd. v. Brown*, No. 11-1040, Fla. Div. Adm. Hear. LEXIS 231 (Fla. DOAH Sept. 12, 2011) (striking of student in hallway by teacher was violation of Rule 6A-10.081(3)(a) and misconduct in office); *Lee County Sch. Bd. v. Strawder*, No. 08-5085, 2009 Fla. Div. Adm. Hear. LEXIS 353 (Fla. DOAH April 13, 2009) (striking of student by food service worker was misconduct in violation of Rule 6A-10.081(3)(a) and just cause for termination); *Palm Beach County Sch. Bd. v. Howard*, No. 01-2345, 2002 Fla. Div. Adm. Hear. LEXIS 157 (Fla. DOAH Feb. 4, 2002) (school board had just cause to terminate teacher who committed misconduct in office by reacting to profane student by using unjustified physical force to restrain student, grabbing the student by the neck, and forcing the student to a nearby fence); *Castor v. Likins*, No. 93-0045, 1993 Fla. Div. Adm. Hear. LEXIS 5511 (Fla. DOAH Sept. 23, 1993) (teacher's act of grabbing student by the feet and pulling him from under the teacher's desk that resulted in injury violated Rule 6A-10.081(3)(a) and failed to protect student from harm); *Orange County School Board v. Bingham*, No. 92-3138, 1993 Fla. Div. Adm. Hear. LEXIS 5087 (Fla. DOAH Aug. 27, 1993) (shoving of student into locker after receiving directives regarding maintaining

class order caused school board to lose confidence in teacher's effectiveness and justified termination).

18. Here, the record establishes that Mr. Ford violated Rule 6A-10.081(3)(a) and (e) of the Principles of Professional Conduct, thus committing misconduct in office and violating the Code of Ethics and Discipline Policy sections 2.17A3(a), 2.17A3(e), 2.17A3k, and 2.17A3n.

19. Concerning Rule 6A-10.081(3)(a), the record establishes that Mr. Ford has historically had an issue with controlling his temper, having attended anger management counseling in 2008 and 2013 after physical altercations with students. Persuasive evidence demonstrates that Mr. Ford, after appearing visibly angry at D.O. and within seconds of being told to "shut the f*** up," impulsively, aggressively, and intentionally used a non-SCM physical restraint on D.O. whereby wrapping his right arm around D.O.'s neck and pulling D.O. backward by his neck and injuring him.¹⁵ By engaging in such inappropriate physical contact with D.O., Mr. Ford acted contrary to his obligations under Rule 6A-10.081(3)(a). Instead of reasonably protecting D.O., Mr. Ford actually fostered and created conditions harmful to D.O.'s mental and/or physical health and/or safety. The resultant physical injury to D.O. supports this conclusion. The record is clear: D.O. was left with an approximately four inch red mark extending across the fleshy part of his neck between his Adam's apple and collar bone and bleeding from a cut to his right elbow. Again, this is exactly the type of conduct that the Principles of Professional Conduct prohibits and seeks to eradicate from the educational system.

¹⁵ Indeed, Mr. Ford's impulsive behavior was readily apparent during the hearing on this matter. Specifically, Mr. Ford was reprimanded for interrupting the Superintendent's counsel during its direct examination of Ms. Payne, calling the question "ridiculous" and further stating "Yeah, you should" in response to the Superintendent's counsel's willingness to withdraw the question. Tr. 96:3-22. Mr. Ford was reprimanded again later during the hearing for inappropriately directing his testimony toward the Hearing Officer without the Hearing Officer ever posing a question to Mr. Ford. Tr. 345:2 to 346:7. Finally, Mr. Ford was repeatedly cautioned for moving around the hearing room without permission and had to be instructed on several occasions to sit down. *See e.g.*, Tr. 358:9-22, 360:6-10, 373:15-21, 401:1-16.

20. Likewise, the record clearly establishes that Mr. Ford's actions toward D.O. violated Rule 6A-10.081(3)(e) (and thus Discipline Policy 2.17A3(e)). As noted above, the incident between Mr. Ford and D.O. occurred at the end of the fifth class hour. Documentary and testimonial evidence show that other students were in the vicinity while Mr. Ford had D.O. physically restrained. *See e.g.*, P. Exs. 15-16. Those other students were able to see the encounter between Mr. Ford and D.O. and made comments about the incident. Thus, by restraining D.O., Mr. Ford intentionally exposed D.O. to unnecessary embarrassment and disparagement.

21. Finally, the record establishes that Mr. Ford's conduct violated the District's SCM Policy (and thus Discipline Policy section 2.17A3n). It is undisputed that, at all times material to this action, the District maintained its SCM Policy whereby requiring that SCM only be used by a teacher when a student is harming themselves or someone else. It is equally undisputed that Mr. Ford was trained and certified in SCM in 2008. Mr. Ford was knowledgeable about the District's SCM policy during the hearing, expressly testifying about the SCM curriculum and standard for use. *See* Tr. 388:16 to 389:1. More precisely, Mr. Ford testified that he knew that a person was not supposed to use a SCM restraint if they were not certified and that the student would need to be "harming themselves" or "harming someone else" before an SCM restraint would be appropriate. *See id.* Mr. Ford was not certified in SCM on April 3, 2013, and the physical restraint he used on D.O. on April 3, 2013 was not an SCM approved hold. Tr. 387:7-14. This admission, coupled with the unrebutted evidence that D.O. was not harming himself or others at the time Mr. Ford restrained him, unequivocally establish that Mr. Ford violated the District's SCM Policy, subjecting him to dismissal for cause.

22. Mr. Ford, as would be expected, disputes that his conduct toward D.O. on April 3, 2013 violated Rules 6A-10.081(3)(a) or (e), the Code of Ethics, the SCM Policy, or the

Discipline Policy. Instead, Mr. Ford contends that he was justified in physically restraining D.O. and acted appropriately on April 3, 2013 under the District's Reasonable Force Policy.

23. Florida law recognizes, in some circumstances, that teachers might be required to use physical force to protect themselves or others from danger. For example, § 1003.32(1)(j), Fla. Stat. (2003), authorizes teachers to use "reasonable force, according to adopted by the State Board of Education, to protect himself or herself or others from injury." *See also* § 1006.11(1), Fla. Stat. (2002) ("The State Board of Education shall adopt standards for the use of reasonable force by district school board personnel to maintain a safe and orderly learning environment.").¹⁶

24. The District maintains a Reasonable Force Policy which establishes standards for when a teacher may use "reasonable force" during the course of their employment. J. Ex. 2 at 8-9. Under that policy, "reasonable force" is defined as "appropriate professional conduct including physical force as necessary to maintain a safe and orderly learning environment." *Id.* at 8. The Reasonable Force Policy further states that teachers may use "reasonable force" to protect students from conditions harmful to their learning, mental health, physical health, and/or safety. *Id.* Finally, the Reasonable Force Policy provides a non-exhaustive set of guidelines for the District to review when determining the reasonableness of a teacher's use of physical force. *See id.* at 8-9. These criteria include: (i) the severity of offense; (ii) size and physical condition of participants; (iii) patterns of behavior; (iv) potential danger; (v) availability of assistance; (vi) other circumstances; and (vii) actions taken prior to use of physical force. *Id.* at 9.

25. Mr. Ford's actions against D.O. are unreasonable in light of the aforementioned policy guidelines and, therefore, not sanctioned under the District's Reasonable Force Policy. D.O.'s conduct on April 3, 2013 just before reaching the P.E. building was not severe enough to

¹⁶ The Hearing Officer notes that no evidence indicates that the State Board of Education has adopted standards related to the use of reasonable force in the classroom.

warrant physical restraint. Indeed, Ms. Strunz testified during the hearing that the circumstances surrounding the April 3, 2013 incident were not such where she would have used a SCM restraint on D.O. Ms. Strunz's testimony is bolstered by the undisputed evidence which demonstrates that: (i) D.O. did not kick or throw the plastic timeout chair at any student or teacher; (ii) D.O. did not throw Coach Rountree's grade book at any other student or teacher; (iii) D.O. had not threatened any student during his walk from the Oakleaf Junior High baseball field to the P.E. building entrance; (iv) D.O. was not attacking or trying to strike any other student or individual before Mr. Ford physically restrained him; (v) D.O. did not attack or do anything to physically harm Mr. Ford before Mr. Ford physically restrained him; and (vi) D.O. was not harming himself before Mr. Ford physically restrained him. While D.O. was verbally disrespectful toward Mr. Ford and engaged in other referable offenses, the evidence here shows that, even cumulatively, D.O.'s conduct was not severe enough to justify Mr. Ford's use of physical force.

26. Further, the record evidence establishes that Mr. Ford was a 42 year old physical education teacher at the time of the incident on April 3, 2012. J. Exs. 4-5. Mr. Ford holds a Masters Degree in Adapted Physical Education and previously coached track at the grade school and collegiate levels. Tr. 318:16 to 319:15, 320:18-25, 322:5 to 323:3. Conversely, D.O. was a 13 year old EBD junior high school student. While the record demonstrates that D.O. was taller than Mr. Ford, Tr. 48:17 to 49:6, the disparity between Mr. Ford and D.O.'s respective ages and corollary physical maturity and conditions militates against a finding that the force used by Mr. Ford against D.O. was "reasonable."

27. Equally persuasive is D.O.'s "pattern of behavior." Unrebutted record evidence establishes that Mr. Ford expressly asked Ms. Strunz on April 3, 2013 during the fifth hour class

period while D.O. was still on the Oakleaf Junior High baseball field whether D.O. was physically abusive in the classroom. Ms. Strunz informed Mr. Ford at that time that D.O. was (i) not physically abusive and (ii) that D.O. verbalizes his feelings rather than expressing them physically. Indeed, Mr. Ford's own witness, Bonnie Lawrence, corroborated this description of D.O.'s behavior. Specifically, Ms. Lawrence testified that D.O. would blurt things out and run around when he became angry, but that she never saw D.O. act physically aggressive toward anyone else. Mr. Ford's knowing this before physically restraining D.O. weighs against a determination that the use of such force was "reasonable."

28. Mr. Ford claimed that he physically restrained D.O. because of the "potential danger" D.O. posed to other students inside of the P.E. building at the end of the fifth hour class period. Tr. 359:21 to 360:22. However, Mr. Ford's statements concerning the "potential danger" that D.O. could have caused amount to nothing more than sheer speculation and conjecture which the record evidence does not support. For example, the record establishes that D.O.'s behavior, while loud and animated, was not aggressive or violent. Therefore, the potential for D.O. to harm himself or any other student by entering the P.E. building on April 3, 2013 was speculative at best. Absent a more elevated risk of "potential danger," the undersigned cannot find that Mr. Ford's use of physical force against D.O. on April 3, 2013 was "reasonable."

29. Mr. Ford's argument that he was justified in restraining D.O. under the District's Reasonable Force Policy is further undermined by the "availability of assistance" and "actions taken [by Mr. Ford] prior to use of physical force." The record is clear: Ms. Strunz, a SCM trained and certified ESE Behavior Assistant, was monitoring D.O. throughout the entire ordeal on April 3, 2013. The evidence here further establishes that Ms. Strunz was approximately three feet away from D.O. and Mr. Ford during their walk down the covered sidewalk toward the P.E.

building. Despite Ms. Strunz's SCM certification and being readily available and Mr. Ford's knowledge of her SCM training, Mr. Ford never requested that Ms. Strunz assist him with D.O. before physically restraining him. Further, despite possessing a District issued handheld radio (and likely a cell phone), Mr. Ford never contacted the Oakleaf Junior High front office to request assistance with D.O. while walking with him from the field area to the P.E. building. Even more troubling, no evidence suggests that Mr. Ford even took the basic step of yelling for or otherwise telling D.O. to "stop" before physically restraining him. Tr. 394:22 to 395:7.

30. Based on the totality of the circumstances, the record evidence unequivocally establishes that Mr. Ford's actions toward D.O. on April 3, 2013 were unreasonable, excessive, and not sanctioned by the District's Reasonable Force Policy.

31. Notably, Mr. Ford's "reasonable force" argument only addresses and attempts to justify his physical restraint of D.O.; it does nothing to obviate the fact that he made physically threatening statements to D.O., acted inconsistent with Florida law, and/or engaged in conduct bringing the District into disrepute.

32. Making inappropriate and threatening comments violates the Code of Ethics and Principles of Professional Conduct, constitutes "misconduct in office," and is grounds for termination. *See Berry*, 2010 Fla. Div. Adm. Hear. LEXIS 396 at *17-*18 (finding that teacher's threatening comments violated Rules 6A-10.081(3)(a) and (e) and justified termination of teacher's employment); *Paul*, 2010 Fla. Div. Adm. Hear. LEXIS 395 at *36-*37; *Duval County Sch. Bd. v. Altee*, No. 08-4819, 2009 Fla. Div. Adm. Hear. LEXIS 419 (Fla. DOAH May 5, 2009) (boorish comments and threatening behavior towards students constitutes a violation of Rule [6A-10.081(3)(e)]); *see also* Fla. Admin. Code R. 6A-5.056(2)(a)-(c) (defining

“misconduct in office” as that which violates the Code of Ethics, the Principles of Professional Conduct, or a school board’s rules).

33. Here, during the course of their walk from the Oakleaf Junior High field area to the P.E. building on April 3, 2013, Mr. Ford threatened that D.O. would end up in the hospital if Mr. Ford found any paint on his car. Credible evidence further demonstrates that Mr. Ford reinforced this threat by telling D.O. “You don’t know what I’m capable of.” By directing such physically threatening statements toward D.O., Mr. Ford yet again violated his obligations (i) to protect D.O. from conditions harmful to his physical and/or mental health and/or safety and (ii) to refrain from exposing D.O. to unnecessary disparagement. In doing so, Mr. Ford simultaneously violated Discipline Policy sections 2.17A3(a), 2.17A3(e), 2.17A3k, and 2.17A3n and committed “misconduct in office” under Rule 6A-5.056(2) – all of which provided the School Board with just cause to terminate Mr. Ford’s employment.

34. When Mr. Ford physically restrained D.O. using an unauthorized chokehold, Mr. Ford engaged in conduct inconsistent with Florida law. *See* P. Exs. 20, 22. Specifically, Florida statutes state that “[a] person who commits aggravated child abuse commits a felony of the first degree....” § 827.03(2)(a), Fla. Stat. (2012). Likewise, “[a] person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability or permanent disfigurement to the child commits a felony of the third degree....” § 827.03(2)(c). Here, the Clay County Sheriff’s Office arrested Mr. Ford on April 8, 2013 and charged with felony child abuse because of his encounter with D.O. On June 4, 2013, Mr. Ford freely and voluntarily entered into a Guilty Plea with the State Attorney’s Office and the Clay County Circuit Court wherein Mr. Ford admitted that he was guilty of felony child abuse. P. Ex. 20. Notably, the Superintendent did not charge Mr. Ford with violating Discipline Policy section 2.17A3c for

“conviction of a felony.” Instead, the Superintendent’s notice is clear: Mr. Ford was charged with violating Discipline Policy 2.17A3n – non-compliance with the laws of Florida. *See* P. Ex. 26. Consequently, the legal ramifications of Mr. Ford’s entry into the Guilty Plea do not override that his actions toward D.O. on April 3, 2013 did not comply with Florida law.¹⁷ Thus, just cause existed to terminate Mr. Ford on May 17, 2013 for violation of District Discipline Policy section 2.17A3n.

35. Finally, Mr. Ford’s encounter with D.O. on April 3, 2013 was subsequently reported in the media. *See e.g.*, J. Exs. 4-5. Specifically, those media reports contained information regarding, *inter alia*, Mr. Ford’s status as a District junior high school gym teacher; Mr. Ford’s telling the student that the student would “end up in the hospital;” Mr. Ford’s use of a chokehold to restrain the student; and Mr. Ford shoving the student against a guard rail. *See id.* The notoriety the District received from the media coverage of Mr. Ford’s encounter with D.O. on April 3, 2013 directly discredits the District’s reputation of providing a safe learning environment for students. The preponderance of the evidence establish that Mr. Ford’s physically threatening comments to D.O., manual physical restraint of D.O. via a non-SCM chokehold, and subsequently criminal arrest for the same are all acts which brought “the school system into disrepute,” thus warranting Mr. Ford’s termination for cause pursuant to Discipline Policy section 2.17A3b.

36. In a last ditch effort to stave off dismissal, Mr. Ford argues that even if termination might otherwise be appropriate in analogous situations, it cannot be imposed here because there has been no progressive discipline.

¹⁷ Indeed, Mr. Ford’s admission of being guilty of felony child abuse, coupled with previously being placed on notice to refrain from being physically aggressive with students, presents the District with the potential for a negligent retention claim if Mr. Ford is reinstated and again injured someone. *See Tallahassee Furniture Co., Inc. v. Harrison*, 583 So.2d 744 (Fla. 1st DCA 1991), *rev. denied*, 595 So.2d 558 (Fla. 1992); *School Bd. of Orange Cty. v. Coffey*, 524 So.2d 1052 (Fla. 5th DCA 1988).

37. Article XIX of the Agreement entitled "Teacher Discipline" provides, in relevant part:

A. Just Cause

2. The warnings procedure of Paragraph B of this Article will be followed prior to official disciplinary action (reprimand, suspension or dismissal) where the misconduct is not so aggravated, per the recommendation of the Superintendent, as to call for immediate reprimand, suspension or dismissal.

B. Warnings

1. Oral warnings may be given at the discretion of the principal but do not constitute official disciplinary action. Such warning must be given in the presence of a witness. There is no restriction on the number of oral warnings a principal may give. An oral warning shall normally precede a written warning advising the teacher that he/she is in danger of or is violating district policy or contract rules.
2. The first written warning will not be considered a disciplinary action nor be considered part of the teacher's personnel file.
3. A second written warning on the same or like occurrence will be considered a reprimand and will become part of the teacher's personnel file.

J. Ex. 1 at 38.

38. While ample evidence was presented regarding Mr. Ford being previously placed on notice about being overly physical with students to use proper SCM techniques when circumstances dictate, no evidence indicated that Mr. Ford was progressively disciplined for inappropriate physical contact with or making threatening statements toward students. The Superintendent contends that this case falls within the Agreement's specified exception for "aggravated misconduct," and that termination is therefore justified.

39. “Protection of the health and safety of the students entrusted to their care is perhaps the most fundamental duty of instructional personnel in the public schools.” *Hunter*, 2012 Fla. Div. Adm. Hear. LEXIS 605 at *31. “When that duty has been breached through a teacher’s acts of physical force against a student because of frustration and anger, there can be no doubt that this constitutes a [aggravated misconduct] to warrant circumvention of the ‘progressive discipline’ policy within the meaning of the Collective Bargaining Agreement.” *Id.*; *see also Berry*, 2010 Fla. Div. Adm. Hear. LEXIS 396 at *17 (finding that threats of violence justified termination of a teacher’s employment without the need for progressive discipline). Consequently, Mr. Ford’s argument that his termination is invalid because of the lack of progressive discipline must fail.

40. The preponderance of the evidence establishes that, on April 3, 2013, Mr. Ford, in an effort to control D.O., physically restrained D.O. by placing him in a non-SCM approved chokehold, threatened to find and put D.O. in the hospital if Mr. Ford found paint on his car, and that Mr. Ford did so despite having been placed on notice in previous years directing him to cease using these types of measures toward his students.


41. By dealing with D.O. in such a manner, Mr. Ford engaged in the wrongdoing charged in the Superintendent’s notice.

42. Having established that Mr. Ford engaged in such wrongdoing, the School Board had “just cause” as defined in § 1012.33(1)(a) to terminate Mr. Ford’s employment pursuant to § 1012.33(6)(a) effective May 17, 2013.

V. RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Clay County School Board enter an order affirming the May 17, 2013 termination of Michael J. Ford.

Respectfully submitted this 2nd day of December, 2013.

By: 
Eric J. Holshouser
Florida Bar No.: 0307734
Email: eric.holshouser@fowlerwhite.com

Michael J. Lufkin
Florida Bar No.: 0030492
Email: michael.lufkin@fowlerwhite.com

FOWLER WHITE BOGGS P.A.
50 North Laura Street, Suite 2800
Jacksonville, FL 32202
(904) 598-3100 – Telephone
(904) 598-3131 – Facsimile

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of Petitioner's Proposed Hearing Officer Recommended Order was served this 2nd day of December, 2013 by e-mail and U.S.

Mail on the following:

Anthony D. Demma, Esq.
Meyer Brooks Demma & Blohm, P.A.
P.O. Box 1547
Tallahassee, FL 32302
(850) 878-5212 – Telephone
(850) 656-6750 – Facsimile
E-mail: tdemma@meyerbrookslaw.com

Attorneys for Respondent



Attorney