STATE OF FLORIDA
DISTRICT SCHOOL BOARD OF CLAY COUNTY

CHARLES E. VAN ZANT, JR.,
Superintendent of Schools,
Clay County, Florida,

Petitioner,

vs. **Case No. 2013-001 CCSB**

MIKE FORD,

Respondent.
_____/

RESPONDENT'S EXCEPTIONS TO HEARING OFFICER'S RECOMMENDED ORDER

Pursuant to the provisions of Section 28-106.217(1), Respondent Mike Ford, by and through the undersigned counsel, hereby files his Exceptions to the Hearing Officer's Recommended Order ("the HORO"). In support, Respondent states the following:

EXCEPTIONS

1. The HORO consists of a verbatim restatement of virtually every word of Petitioner's 42 paragraph 35 page Proposed Recommended Order, and fails to fully or clearly resolve significant factual and legal contentions raised in the Respondent's Proposed Recommended Order (e.g., whether or not D.O.'s conduct presented a dangerous situation in the PE hallway, whether or not the SCM Program relied upon so heavily by the Petitioner is relevant to the reasonable force questions presented by this case). Respondent contends that this state of affairs raises questions the School Board should address about the adequacy of due process

afforded to Mr. Ford, particularly in the context of a school board hearing process held to determine whether or not the School Board must reinstate Mr. Ford and pay him a substantial amount of back pay. *cf.* Perlow vs. Berg-Perlow, 875 So. 2d 383 (Fla. 2004).

2. Respondent excepts to the portion of Finding of Fact 7 on pages 4-5 of the HORO that asserts "SCM training has been made available to all District teachers..." because that assertion is not based on competent substantial evidence. On this matter, the HORO references only a vague statement by District witness Jennifer Zimmerman that "general education teachers are not prevented from taking SCM training." (Transcript at page 127, lines 18-20) (emphasis added). That tangential and inconclusive testimony, however, is neither competent nor substantial to support a finding that SCM training is affirmatively made available to general education teachers in the face of the direct hearing testimony of three general education teachers (i.e., Mr. Ford, Ms. Rowe, and Mr. Huffman) that they specifically requested SCM training from the District at different times and were denied such training. [See record citations of paragraphs included in Findings of Fact at paragraphs 11-14, pages 7-8 of Respondent's Proposed Recommended Order and Supporting Argument (hereinafter referred to as "Ford PRO") attached hereto as Exhibit A for convenient review of referenced testimonial and documentary evidence]

3. Respondent excepts to Finding of Fact 18 on page 8 of the HORO that Strunz told Mr. Ford upon his inquiry that D.O. was not physically abusive because it is not based on competent substantial evidence. Strunz wrote two statements about the Ford – D.O. incident, within a day of its occurrence, neither of which included any reference to an alleged discussion with Mr. Ford about whether or not D.O. could become physically abusive, and Ms. McCabe's Fact Finding report makes no mention of such a discussion between Strunz and Mr. Ford despite her having personally interviewed Strunz about the incident. (See Petitioner's Exhibits 13, 14,

and last page of Petitioner's Exhibit See 26). Strunz has displayed a history of changing details, forgetting details, and giving varying accounts of the incident throughout the investigation and litigation of this termination matter and related Unemployment Compensation hearing, and this comment is another aspect of her ever-evolving testimony that should not be credited. (See Strunz testimony Transcript at pages 62-72; Ford PRO discussion at pages 27-28).

4. Respondent excepts to the assertion in Finding of Fact 22 at page 9 of the HORO that Mr. Ford did not request help by using his hand-held radio to seek assistance as that conclusion is not based on competent or substantial evidence. To the contrary, it is unrefuted in the record that Mr. Ford made at least two efforts to radio for help, and that he got no response (See Transcript at pages 347-349; Ford PRO at page 11, Findings of Fact at paragraph 23). The veracity of Mr. Ford's testimony about his unsuccessful radio call efforts on 4/3/13 is supported by the extensive and undisputed record testimony that hand-held radio calls at Oak Leaf Junior High School (hereinafter referred to as "OLJHS") often went unheard because of the consistently bad radio reception the school has experienced for years. (See Transcript at pages 205-206, 241, 347; Ford PRO at page 6, Findings of Fact at paragraph 10).

5. Respondent excepts to the inclusion of Finding of Fact 35 at page 13 of the HORO in its entirety because it does not comply with the essential requirements of law. The inference created by this Finding is that Mr. Ford acknowledged being guilty of misconduct toward D.O. by not defending his conduct when Ms. Payne informed him that the police were coming to interview him later on the afternoon of the incident, and/or an inference that Mr. Ford had behaved improperly toward D.O. simply because he did not ask Ms. Payne why police were coming to interview him that same afternoon. Any such inference runs contrary to fundamental notions of due process and the presumption of innocence, as no teacher or other citizen can be

presumed guilty simply for failing to immediately explain actions about which he could even possibly be subjected to criminal charges, particularly before having had a chance to seek legal counsel. (See Transcript at page 403, lines 14-25). Respondent, therefore, seeks to have this paragraph omitted from the Final Order as an irrelevant, improper inference.

6. Respondent excepts to all but the last sentence of Finding of Fact 36 at page 13 of the HORO because it does not comply with the essential requirements of law. The inference created by the first two sentences of this paragraph is that Mr. Ford had done something wrong to D.O. because he declined to answer certain questions asked of him by Sheriff's Deputies shortly after the incident with D.O. For the same reasons noted in Exception 5 above, and because Mr. Ford provided unrefuted testimony that he did not have his attorney present when he was questioned by Deputies, and that he understood himself to be at risk of criminal prosecution based on D.O.'s allegations (Transcript at page 403, lines 14-25), Respondent asks that the first two sentences of this paragraph be omitted from the Final Order.

7. Respondent excepts to the entirety of paragraph 37 at page 13 of the HORO concerning Mr. Ford's alleged Guilty Plea because it is based wholly upon Petitioner's Exhibit 20 which was erroneously admitted into evidence at the hearing over strenuous objections by the undersigned counsel on relevance and authenticity grounds. The use of the document in support of HORO Finding of Fact 37 is contrary to the unrefuted hearing testimony provided by Mr. Ford's former Department of Corrections Probation Officer, Stacy Francisco, to the effect that Petitioner's Exhibit 20 was not an official plea that was never intended to be entered onto the Circuit Court's pleading docket unless Mr. Ford failed to abide by the terms of the pre-trial intervention program (PTI) that she supervised. Ms. Francisco also testified, without dispute, that Mr. Ford had officially completed all PTI terms as of the hearing date (October 1, 2013), and

that the criminal charge against him would be dismissed soon thereafter because she had just notified the Prosecutor that Mr. Ford met all of those conditions. (See Transcript at pages 105-108, 113-114, 402; Ford PRO at page 16, Findings of Fact at paragraph 36).

Furthermore, this finding ignores the fact that the charge was officially dismissed on October 9, 2013, and that the Circuit Court's official docketing record of this matter includes no entry of any Guilty Plea. The Respondent asked the Hearing Officer on November 18, 2013 to take judicial notice of certified Circuit Court records showing the official dismissal of the charge and the absence from the final Circuit Court docket of the conditional plea of convenience represented by Petitioner's Exhibit 20. No objection to the taking of such Judicial Notice has been asserted by Petitioner's Counsel, nor has any response from the Hearing Officer to Respondent's Request for Judicial Notice been provided. (Respondent's Request for Judicial Notice and the same certified Court Records previously provided to the Hearing Officer are provided herewith as Composite Exhibit B). On the basis of these Court records and the hearing testimony of Ms. Francisco referenced above, the Respondent asks that paragraph 37 be removed from the Final Order. At a minimum, however, Respondent asks the School Board to take Judicial Notice of these Circuit Court records and to reflect the outcome of the criminal matter and absence of a Guilty Plea docket entry in the Final Order.

8. Respondent excepts to inclusion of the last sentence of Finding of Fact 42 at page 15 of the HORO as not being based on competent substantial evidence. That sentence creates an improper inference that the District's Reasonable Force policy should not be applied to the facts and circumstances of this case because Ms. Butler and Mr. Ford did not mention that policy specifically to Ms. McCabe during the brief final investigative disposition meeting at which she first provided them with voluminous investigative and personnel file documents about this matter

and prior events they had inadequate time to review and assess. (See Transcript at pages 287-289). Respondent, therefore, asks the School Board to remove that sentence from the Final Order.

9. Respondent excepts to the entirety of Finding of Fact 46 at page 16 of the HORO that purports to describe alleged, prior conduct by Mr. Ford about which he was not subjected to employment disciplinary action because this Finding is not based on competent substantial evidence. Rather, this description of a 2008 incident is derived from a document that constitutes uncorroborated hearsay, ostensibly written by a former administrator of Mr. Ford's who did not provide testimony at the hearing, about an old matter that was deemed inadequately substantial to warrant disciplinary action. The introduction of this document was objected to at the hearing because it references a matter not remotely similar to the incident involving D.O., yet is being used in this HORO to inaccurately portray a pattern of inappropriate conduct on Mr. Ford's part.

10. Respondent excepts to Finding of Fact 47 at page 17 of the HORO because it does not comply with the essential requirements of law. This paragraph glaringly omits two very significant aspects of the 2008 incident described to create a misleading impression of Mr. Ford's past conduct not substantiated by the 2008 matter's outcome. First, it fails to fairly reflect that the School District imposed no employment sanctions for this incident, and second, it fails to note that the FDOE's review of the matter resulted in a finding of "No Probable Cause" to take action against Mr. Ford's teaching certificate for any teacher ethics violations. (See Transcript at pages 377-379; Ford PRO at page 4, Findings of Fact at paragraphs 3 and 4).

11. Respondent excepts to the entirety of Finding of Fact 48 at page 17 of the HORO that purports to describe alleged, prior conduct by Mr. Ford for which he was not subjected to District disciplinary action because it is not based on competent substantial evidence. This

document's description of a 2008 incident is uncorroborated hearsay written by a former administrator of Mr. Ford's who did not provide testimony at the hearing, and it presents a one-sided version of an old incident that was deemed inadequately substantial to warrant disciplinary action in 2008. This document was objected to at the hearing, had not been provided to Mr. Ford until May of 2013, five years after the incident, did not constitute disciplinary action, and concerned a matter that was not remotely similar to the incident involving D.O. Therefore, the document does not constitute competent substantial evidence and this Finding of Fact based upon its content should be excluded from the Final Order. (See Transcript at bottom of page 328 – top of page 329; Ford PRO at pages 4-5, Findings of Fact at paragraph 4).

12. Respondent excepts to Conclusion of Law 4 at page 18 of the HORO which purports that the Safe Crisis Management Training Program is on equal footing with the officially adopted and statutorily-based School Board policy explaining the use of Reasonable Force by District Staff. There is simply no factual basis in the record to support this legal conclusion, as it is undisputed in the record that Safe Crisis Management materials are only available through a corporate contractor, are not readily accessible, much less known, to regular classroom teachers, are specifically provided only to those ESE teachers and/or ESE aides who are encouraged or required to take the SCM course, and are not included in the District's Handbook with a policy reference number as are officially adopted District policies such as the one applicable to the use of Reasonable Force. (See Ford PRO at pages 7-8, Findings of Fact at paragraphs 11-15 and Supporting Argument text at page 15).

13. Respondent excepts to Conclusion of Law 9 at pages 19-20 of the HORO because it does not comply with essential requirements of law by its failure to take into account that the Principles of Professional Conduct and closely related Board policies generally involve actions

harmful to students that were undertaken by teachers with an intent to cause harm. If Mr. Ford exercised reasonable force with the intent only to protect the health and safety of dozens of P.E. students in the hallway, as he testified without rebuttal, then he is not guilty of these various offenses of bad intent simply because D.O. was somehow affected by his exercise of reasonable force (e.g., intentional embarrassment or disparagement of students, failure to protect students from conditions harmful to learning) [See Broward County School Board v. Deering, Case Number 05-2842 (DOAH 2006)]. (Charge of failure to protect students from harmful conditions refers only to dangerous or harmful conditions not caused by the teacher, but known to the teacher and not addressed; charge of subjecting a student to unnecessary embarrassment requires evidence that teacher's alleged actions were motivated by a desire to embarrass a student). Deering also stands for the proposition that mere evidence of some media coverage of the teacher's conduct is insufficient to sustain a charge related to public disrepute or lost effectiveness.

14. Respondent excepts to Conclusion of Law 18 at page 25 of the HORO because it erroneously presumes that, if D.O. was embarrassed in any way, and/or if he was slightly injured as a consequence of Mr. Ford's good faith efforts to protect all students in the area from serious physical harm, that Mr. Ford engaged in serious misconduct in violation of various Principles of Professional Conduct. Put another way, Conclusion of Law 18 fails to acknowledge that proper application of the District's Reasonable Force Policy can sometimes have the effect of allowing a teacher to intervene physically to protect students, even if doing so exposes a student to potential embarrassment or unintended injury. (See Broward County School Board v. Deering, Case Number 05-2842 (DOAH 2006).

15. The Respondent excepts to Conclusion of Law 19 at pages 25-26 of the HORO for the same reasons referenced in Exception 14 above, and Respondent hereby incorporates by reference the entire text of Exception 14 above as if stated fully herein as part of this Exception.

16. The Respondent excepts to Conclusion of Law 20 at page 26 of the HORO as an erroneous legal conclusion that is not based on competent or substantial record evidence. The District presented no testimony from D.O. concerning any embarrassment he experienced. Any hypothetical embarrassment D.O. experienced was brought about by his own outrageous, continuous misconduct throughout that class period. There was also no hearing testimony from any student claiming to have either seen the incident, or to have formed a negative opinion about D.O. because of anything Mr. Ford did to protect D.O. and the other students in the doorway that day. Further, as noted above, Mr. Ford acted as he did to protect many students from anticipated physical injury, not to intentionally embarrass D.O.

17. The Respondent excepts to Conclusion of Law 21 at pages 26-27 of the HORO on several grounds. First, the essential factual assertion underlying Conclusion of Law 21 that Mr. Ford violated the District's SCM policy is incorrect and should not be relied upon here for the reasons outlined in the text of Exception 12 above. Second, this legal conclusion erroneously treats SCM, a training program known and provided only to a handful of ESE employees in the District, as if it supersedes the significance of the District's official, codified Reasonable Force Policy that applies to, and is generally known to, all teachers and staff in the District. (See Ford PRO at pages 7-9, Findings of Fact at paragraphs 11-15).

18. The Respondent excepts to Conclusion of Law 25 at page 28 of the HORO because it misapprehends, and/or avoids, key parts of the Board's own Reasonable Force Policy which defines reasonable force to include "physical force as necessary to maintain a safe and

orderly learning environment." Despite the fact that the HORO credits Strunz's account of the incident, it is nonetheless absurd to conclude that D.O.'s destructive, angry, profane, and ultimately enraged entry into a crowded hallway in close proximity to dozens of junior high boys standing there awaiting the class change bell did not activate Mr. Ford's responsibilities to "maintain a safe and orderly learning environment" at that moment. This HORO conclusion ignores the eye-witness testimony of Ms. Lawrence confirming Mr. Ford's testimony to the effect that the area near the doorway where this incident took place was extremely crowded and dangerous at the end of 5th period on the day of the incident, (See transcript at pages 215-217), and the extensive testimony from Ms. Rowe, Mr. Lefko, and Mr. Ford to the effect that the area in the immediate vicinity of the doorway D.O. began to enter in an enraged state is typically an extremely crowded trouble spot on the OLJHS campus at the end of every PE class period. (Ford PRO at pages 5-6, Findings of Fact at paragraphs 6-9).

The part of this legal conclusion that cavalierly deems the situation Mr. Ford faced at that moment "not severe enough to warrant physical restraint" fails to reasonably respect Mr. Ford's professional judgment about the imminent danger he perceived D.O. to present to the students he saw gathered right near the doorway when D.O. angrily flung the door open and took a step into that crowded hallway. Respondent contends that the School Board should avoid second-guessing its teachers in such situations whenever possible, including in this case.

Finally, even though the Hearing Officer credits Strunz's assertions that Mr. Ford uttered a verbal threat shortly before he acted to restrain D.O. (a threat denied by Mr. Ford), the fact remains that D.O. actually created a dangerous situation for any number of innocent students as he proceeded in and enraged state to enter that P.E. Building hallway. Mr. Ford acted as he did at the very moment D.O. opened the PE hallway door revealing what Mr. Ford viewed in his

professional judgment and experience to be a dangerous situation, not because D.O. had cursed at him or painted his wife's truck (which Mr. Ford and D.O. knew he had not done). The inference that frustration on Mr. Ford's part served as the motivating factor for the restraint fails to take into account the actual danger Mr. Ford reasonably foresaw, and about which he credibly testified. Neither Strunz nor any other witness disputed Mr. Ford's testimony, supported by Respondent's other witnesses, that D.O. was about to angrily plow his way through a sea of male junior high school bodies as he walked into the doorway. (Ford PRO at pages 5-6, Findings of Fact at paragraphs 6-9).

19. The Respondent excepts to Conclusion of Law 28 at page 29 of the HORO because it is wholly inconsistent with substantial record evidence about the obvious danger D.O. presented in the hallway. It is not based on any legal precedent or logical proposition that teachers cannot or should not take proactive steps, as a few teachers testified at the hearing they must sometimes do, to avoid or prevent situations they feel present serious risk of harm to students, and/or to use reasonable force to preserve a safe and orderly learning environment under the District's Reasonable Force Policy. (Ford PRO at page 5, Findings of Fact at paragraph 6).

This Conclusion of Law ignores all testimony about the likely danger D.O. presented to himself and the students standing around the doorway, illogically as if the Reasonable Force Policy only applies when punches are being thrown, weapons are seen or used, or direct threats to harm others are made by a student. To the contrary, the entirety of the situation presented what Mr. Ford determined to be a serious risk of harm to D.O. and other students, irrespective of whether D.O. intended to, or would certainly have caused injury or started a melee in the hallway. Mr. Ford never testified that he believed D.O. intended to hurt someone in the hallway;

instead he stated that his professional judgment caused him to conclude the circumstances of the situation were fraught with a high probability of multiple student injuries when a physical contact and an angry confrontation between and among D.O. and other students in the hallway appeared imminent to him. (Ford PRO at pages 13-15, Findings of Fact at paragraphs 27-35).

20. The Respondent excepts to Conclusion of Law 38 at page 34 of the HORO in the context that it concludes the circumstances here constitute aggravated misconduct so as to invoke the exception to the progressive discipline practices outlined in the applicable School Board – CCEA bargaining agreement despite the fact that Mr. Ford had not previously been subject to employment discipline. (See Transcript at pages 282-285; Joint Exhibit 1 at page 38).

The HORO proposes to skip all formal disciplinary action steps, including a written reprimand, written reprimand with additional training and/or counseling, short suspension without pay (e.g., 1-5 days), and lengthy suspension (e.g., 6-20 days), and move immediately to a termination. The Respondent contends that the circumstances and mitigating factors of this case, especially Mr. Ford's intention to protect innocent students from an enraged, disruptive student, justify at most a penalty far less severe than termination under the normal scheme of progressive discipline.

Even if the Board concludes that this situation warrants the application of the misconduct exception, the penalty of termination is still an excessive one, as it is undisputed in the record that Mr. Ford has never previously been disciplined, that D.O. was enraged when he entered the hallway, that Mr. Ford ended the physical intervention as soon as D.O. calmed down, that Mr. Ford did not intend to injure D.O., that any injuries D.O. sustained were minor and required no treatment, and that Mr. Ford's actions had the effect of ensuring the safety of dozens of other students. At a minimum, the Board should rely upon such factors of record to exercise its

employment penalty reduction discretion under Section 120.57(1)(l), Florida Statutes (2013) to impose a less severe penalty that does not so drastically affect Mr. Ford's future as an educator.

Respectfully submitted,

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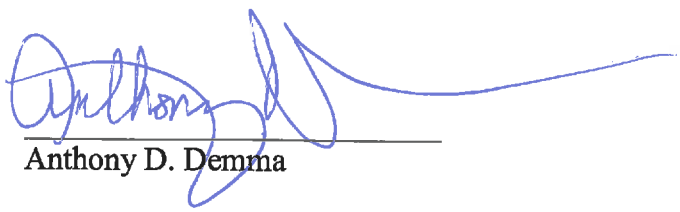
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 14th day of February, 2014, to: Eric Holshouser, Esquire, and Michael Lufkin, Esquire, Fowler White Boggs, P.A., 50 North Laura Street, Suite 2800, Jacksonville, FL 32202, (eric.holshouser@fowlerwhite.com; michael.lufkin@fowlerwhite.com); J. Bruce Bickner, Esquire, attorney for the School Board of Clay County, Florida, 3383 Olympic Drive, Green Cove Springs, FL 32043-8097, (jbbickner@oneclay.net and biclaw106@aol.com); and by U.S. Mail to School Board Chairman, Ms. Carol Studdard, 900 Walnut Street, Green Cove Springs, FL, 32043.



Anthony D. Demma

BEFORE THE
DISTRICT SCHOOL BOARD OF CLAY COUNTY

CHARLES E. VANZANT, JR.,
Superintendent of Schools,
Clay County Florida,

Petitioner,

v. Case No.: 2013-001 CCSB

MIKE FORD,

Respondent.
_____/

RESPONDENT'S PROPOSED RECOMMENDED ORDER AND SUPPORTING ARGUMENT

Respondent, Mike Ford, submits his Proposed Recommended Order (PRO) pursuant to the instructions of the Hearing Officer at the close of the hearing on October 2, 2013, and pursuant to Section 28-106.215, Florida Administrative Code.

APPEARANCES

For Petitioner: Eric Holshouser, Esquire
Michael Lufkin, Esquire
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For Respondent: Anthony D. Demma, Esquire
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EXHIBIT
A

STATEMENT OF THE ISSUES

Whether the restraint of student D.O. by Mr. Ford on April 3, 2013, under all circumstances surrounding that action, constitutes just cause for the termination of his employment on any or all of the grounds asserted by the Petitioner and memorialized as part of Pet. Exh. 26.

PRELIMINARY STATEMENT

On May 16, 2013, the Clay County School Board approved, by a 3-2 vote, Superintendent Van Zant's recommendation for the termination of Mr. Ford's Professional Services Contract of employment with the School District of Clay County (hereinafter "the District"). Mr. Ford timely requested an administrative hearing at which to contest the termination action. On August 19, 2013, an order was issued scheduling the hearing of this matter to begin October 1, 2013, continuing each day thereafter until completed. The hearing was held on October 1-2, 2013 as scheduled.

The Petitioner called four witnesses during its case-in-chief, Respondent called ten witnesses during his case, including Mr. Ford. The Petitioner then re-called District Human Resources Director Toni Ann McCabe as its lone rebuttal witness.

The parties admitted eight Joint Exhibits into evidence. Petitioner had twenty separate exhibits admitted into evidence during its case-in-chief. Respondent admitted four exhibits for identification, and two of those exhibits were offered into evidence. The Petitioner had one exhibit admitted into evidence during its rebuttal case. The parties also relied upon an aerial

satellite map of the OLJHS PE grounds, and a DVD taken at OLJHS showing those same areas from ground level as demonstrative exhibits. The Respondent submitted two post-hearing certified Circuit Court records regarding the outcome of the related criminal matter of which the Hearing Officer takes judicial notice.

Upon the conclusion of the hearing on October 2, 2013, the Hearing Officer gave the parties 45 days from the date of the filing of the hearing transcript during which to submit Proposed Recommended Orders (hereinafter PROs), and both parties ordered transcripts of the hearing. The transcript of the hearing was filed on October 14, 2013, making the parties' PROs due for filing not later than the close of business on December 2, 2013 (the Monday following the last day of the briefing period that fell on Thanksgiving Day). Both parties timely filed their PROs, and supporting arguments, and both post-hearing documents were given careful consideration in arriving at this recommended order.

PROPOSED FINDINGS OF FACT

1. Mike Ford is an experienced, respected physical education (PE) teacher and track coach who holds a Masters Degree in Adapted Physical Education, has taught at the high school, junior high school, and college levels over the course of the last 20 years, and who has been a successful junior high school teacher in Clay County since 2006 at Oak Leaf Junior High School (OLJHS) (T. at 203, 223, 243, 250, 253, 264-265, 268-269, 278-279, 316-324; Respondent's Exhibit 4)[1].

[1] References to Hearing testimony found in the transcript will be reflected by the letter "T. at", followed by pertinent transcript page numbers where the testimony can be found. References to Hearing exhibits will be denoted as follows: "Pet. Exh." followed by the exhibit number for Petitioner's Exhibits, "Resp. Exh." followed by exhibit number for the Respondent's Exhibits, and "Jt. Exh." followed by the exhibit number for Joint Exhibits.

2. Bonnie Lawrence (Lawrence) and Janet Rowe (Rowe) are veteran PE teachers at OLJHS who have each served there as PE Department Chair over the years, and who have worked closely with Mike Ford for several years. Smitty Huffman (Huffman) is a veteran Clay County classroom teacher who worked with Mike Ford as an OLJHS PE teacher for two years, and who also served as the PE Department Chair at OLJHS when the school opened. Randy Lefko (Lefko) has served as a substitute PE teacher at OLJHS many times, and has been a PE substitute at several other District middle schools. Antonette Walker-Ford (Walker-Ford) is a veteran Language Arts teacher whose teaching experience includes seven years at OLJHS where she was named Teacher of the Year in 2010-11. (T. at 201-202, 227-228, 246-247, 251-252, 271-272, 278).

3. The operative Collective Bargaining Agreement (the "CBA") between the Clay County School District (the District) and the Clay County Education Association (CCEA) includes a provision that employment discipline be imposed only for just cause. As part of its just cause analysis in each disciplinary action, the District imposes a level of discipline based on the employee's prior record applying principles of progressive discipline. The CBA authorizes teachers to exercise such force as is necessary to prevent injury to another student, and does not mention Safe Crisis Management training or guidelines. (T. at 184, 281-284; Jt. Exh. 1; Article XIX at page 38, Article X C. at page 18).

4. In 2008, Mr. Ford's school administrators at OLJHS authored two separate letters ostensibly advising him to be careful about physical interactions with students. Mr. Ford never even saw Ms. Crowder's 10/29/08 letter until his meeting with Ms. McCabe about this incident in early May, 2013. Neither warning letter constituted formal disciplinary action. (T. at 147, 281-284; 328-330, 377-379, Jt. Exh. 1; Article XIX A., B. at page 38; Pet. Exh. 30, 32).

5. Junior high school students are, generally speaking, at a transitional point in development and are prone to physical confrontations flowing from insults, verbal misunderstandings, and bumping or pushing incidents, any of which easily can escalate into more serious matters. In that context, teachers of junior high school age students need to be vigilant and proactive to prevent silly disputes from turning into injury-causing events. Such concerns are all the more prevalent for junior high school PE teachers because of the large number of students typically enrolled in PE classes, the greater level of physical activity and physical contact associated with PE classes, and the need for more frequent transitions of students from class areas to locker room areas, to field areas, back to locker room areas, and on to the students' next classes at the end of each PE class period. (T. at 203, 218, 231, 248-249, 259, 325, 360-362).

6. Junior high school teachers, especially PE teachers, often find themselves in the position of having to intervene physically to prevent the escalation of brewing fights, and of having to break up fights already in progress. Whether or not an individual teacher's physical intervention to prevent or break up a fight is ultimately deemed an appropriate use of force depends on an analysis of the District's reasonable force policy factors. (T. at 188-189, 218, 229, 248, 253-254, 259, 261, 285-286, 361-362; Jt. Exh. 2 at pages 84-85).

7. The end-of-period protocol for PE classes at OLJHS in the 2012-13 school year involved having at least five and often six PE teachers gradually conclude their various class activities, orderly line students up after their activities, and have students return to locker rooms to dress for their next classes over the course of the last 10 minutes of each period, all under teacher supervision. On a routine basis, a male PE teacher and a female PE teacher were assigned to open the school's gender-specific locker room areas when adequate supervision of

those separate, cramped areas could be maintained. In the last few minutes of each PE class period, large numbers of students congregated in the PE Building hall to get into the locker room to change, while large numbers of other students who had already changed also waited in that same hallway area. That crowd of students was then required to remain in the PE Building hall doorway where they ultimately exited to go to their next classes when the class change bell rang. (T. at 206-220, 232-242, 274-276, 330-333, 360).

8. The way that end-of-class protocol worked at the time of this incident, the hallway off the double doors closest to the PE Field area was the one to which boys went to await the ringing of the bell signaling they could go to the next classes. Boys in that hallway congregated close to the doorway in order to facilitate a quick exit from the PE area to their next classes. Students waiting in the PE hallway were supposed to sit against the walls with their knees tucked toward their chests, but frequently did not follow that direction, and either stood around or sat with their legs stretched out across the hallway. (T. at 203, 209-220, 232-233, 237-239, 275-276, 330-333, 359-360).

9. The always hectic end-of-period student flow logistics were hard to control with precision because any number of complications could arise that caused, for example, the teacher assigned to open the locker room to be late in arriving, one or more teachers to be a little early or late getting students to the PE Building hallway to change, or one or more teachers being late getting students into or out of the locker rooms. (T. at 211, 235-236, 242, 274-276, 330-333).

10. PE teachers regularly carried walkie-talkies (radios) to facilitate communications between and among them and school administrators, and to help them deal with potential emergency situations; however, radio reception at OLJHS has been poor and unreliable during the entire history of the school, and was the worst it had ever been in the 2012-2013 school year

because the District condensed three radio channels into two that school year. (T. at 205-206, 241, 347).

11. The District uses guidelines and training materials offered by JKM, Inc., a private consulting company, to help train Special Education staff, most particularly Emotional Behavior Disorder (EBD) and Autistic Spectrum Disorder (ASD) behavior assistants (aides), in managing the behavior of the more volatile students they are assigned to supervise through a program of de-escalation and approved restraints known as Safe Crisis Management (SCM). SCM initial training/annual update training is a job requirement for EBD and ASD aides, and is also offered to some EBD and ASD self-contained classroom teachers; however, SCM training is neither required nor encouraged for regular classroom teachers such as PE teachers, and very few regular teachers in Clay County are SCM trained. Under JKM's guidelines, teachers and staff members are not allowed to use SCM restraints unless they have completed the initial SCM training program, and have thereafter received annual SCM protocol update training. Within the protocols set forth for the use of SCM by trained SCM staff, restraints are not to be used unless a properly-trained staff member believes restraint is needed to prevent imminent risk of serious injury to a student or staff member. (T. at 102, 119-120, 126, 129-131, 296).

12. The JKM, Inc. policy manual for SCM is provided to EBD and ASD staff when they attend SCM training, but is not made accessible to regular classroom teachers. Even under SCM protocol, determinations about whether or not a misbehaving student's conduct creates an imminent risk of serious injury to the misbehaving student or to others in the vicinity requires the exercise of judgment by the staff member. (T. at 126, 131-132, 134-135,142, 204, 234, 249-250, 254)

13. Neither Lawrence, Rowe, Huffman, nor Walker-Ford has ever taken the SCM training program, nor were any of them offered an opportunity to avail themselves of SCM training. (T. at 204, 234, 249-250, 254; Resp. Exh. 3).

14. In August, 2009 Mr. Ford asked Zimmerman for SCM update training, and was informed that recent budget cuts caused a District-wide decision not to provide SCM training to non-ESE staff.[2] Later in 2009 or in 2010, then OLJHS PE Department Chair Rowe communicated with District officials seeking SCM training for the entire OLJHS PE Department, but was told the training was being offered only to ESE staff. In 2011, the President of CCEA presented ideas to District officials to help the District get more regular classroom teachers trained in SCM, but those ideas never came to fruition. In 2013, Huffman expressed his desire for SCM training directly to Dr. Terry Roth, the District's Director of ESE, because of the ever-increasing number of difficult ESE students being assigned to his regular classes, but Mr. Huffman's request was also rebuffed because the ESE Director believed that regular classroom teachers did not need SCM training. (T. at 234-235, 254-258, 296-297, 327; Resp. Exh. 3).

15. JKM, Inc.'s proprietary guidelines for SCM used by the District are separate from the Board's statutorily-grounded reasonable force policy (i.e., Board Policy 6GX-10-2.32). Policy 6GX-10-2.32 applies to all teachers and school staff confronted with circumstances that, in their professional judgment, require force to protect students and staff from harm and/or to maintain a safe and orderly learning environment. The standards, guidelines and restrictions of SCM apply specifically to those staff trained and current in SCM methods. SCM guidelines do

[2] Mr. Ford was asked to take, and did take, the initial SCM training program in the aftermath of the 2008 locker room incident about which he received a non-disciplinary warning from his Principal, and about which he was later cleared of ethical wrongdoing by the Florida Department of Education. (T. at 325-326, 378-379, Pet. Exh. 31). Mr. Ford clearly recalls seeking annual update training the following year and being denied by Zimmerman, while Zimmerman testified only that she could not recall. (T. at 128-129, 327).

not preclude teachers from using reasonable force under the parameters of Board Policy 6GX-10-2.32 or the CBA. [T. at 290-296, 383, 389-390; Jt. Exh. 1, Article X C. at page 18; Jt. Exh. 2 at pages 84-85; See also, Section 1006.11(1), Sections 1003.32(1), (2), Florida Statues (2012)]

16. Students get placed in EBD Special Education classrooms because of emotional and/or medical problems that render them unusually disruptive and volatile in regular classroom settings. As one consequence of their frequent, disruptive behavior and emotional difficulties, EBD students are escorted around campus and directly monitored, usually by ESE behavioral aides, when they go to lunch, travel to and from bus areas, and participate in regular education classes into which they are mainstreamed. D.O. is a tall EBD student who was often difficult to deal with in Rountree's 2012-2013 fifth hour PE class, who had been suspended from that PE class just prior to the incident in question, and whose intimidating mannerisms and defiance caused a degree of fear of him among school staff. (T. at 26, 48-49, 78, 87-88, 101-102, 117, 195, 203, 220-222, 254-255, 352, 390).

17. On April 3, 2013, during the fifth hour PE class that ran from 1:55 to 2:49, Mr. Ford was performing his regular teaching duties with his class of PE students who were engaged in tennis and basketball activities in areas adjacent to the baseball field where Rountree's students were involved in frisbee throwing activities in left and left center field. (T. at 29-30, 333, 337; Demonstrative DVD).

18. The day before the incident under review (i.e., on 4/2/13) Mr. Ford and D.O. had a conversation about the seriousness of D.O.'s known use of spray paint to vandalize property in the community near the school, during which Mr. Ford conveyed to D.O. that his continued vandalism would likely have serious financial and legal consequences for him and his parents, and the urgent need for D.O. to make better life choices. This discussion on 4/2/13 took place in

Strunz's presence near the PE Laundry Room area where EBD students stored their belongings during PE class because they were not allowed to enter in the locker rooms or store belongings there. Among Mr. Ford's frank statements to D.O. on 4/2/13, he mentioned as an example that if his wife's new $38,000 truck ended up with spray paint on it, Mr. Ford and everyone else would know who had painted it, and would hold him and his family responsible for the damage. (T. at 81-82, 352-353).

19. Strunz heard Mr. Ford's 4/2/13 conference with D.O. regarding vandalism and the consequences he and his family would face if spray paint was used to damage Mrs. Ford's expensive truck. On 4/3/13, Strunz mistakenly assumed D.O. was telling the truth when she heard D.O. tell Payne that Mr. Ford threatened to put him in the hospital if he found paint on his wife's expensive truck because of what she heard the day before, even though Strunz was not close enough to hear most of Mr. Ford's comments to D.O. on 4/3/13. (T. at 38, 70, 97-98, 352-353, 357, 374, 380-381).

20. D.O.'s disruptive behavior early in fifth hour on 4/3/13 caused Rountree to send him to sit in a chair near first base by himself as a time-out measure. D.O.'s subsequent loud and profane comments to other students when he was in the time-out area got Mr. Ford's attention, causing him to engage with D.O. Mr. Ford's initial verbal contact with D.O. was to ask him to stop yelling out to other students that they and their fathers were "gay," and to ask D.O. to sit in the time-out chair as Rountree had instructed. (T. at 32-33, 337-339)

21. Shortly thereafter, D.O. angrily kicked the time-out chair, and then picked it up and slung it forcefully approximately 25 feet toward third base. D.O. continued intermittently to make profane remarks, including repeated, angry comments that included the word "fuck," about the school, its teachers, and its students. (T. at 35, 341-342).

22. D.O., who was still supposed to be sitting in the chair, then walked over to the third base dug-out area, exited a gate, grabbed Rountree's grade book that was stuck in a fence opening, and threw the grade book up in the air along the sidewalk leading to the tennis court area. Mr. Ford, who was not far away at that time, and who saw D.O. throw the grade book, reminded D.O. he was supposed to be in the chair. D.O. got defensive, insisting to Mr. Ford that he had not broken the chair. (T. at 33-34, 342-344).

23. D.O. continued walking along the third base area sidewalk toward Mr. Ford at an aggressive pace, and then abruptly turned right and stomped into some nearby bleachers and sat. Mr. Ford, after having tried and failed twice to reach school administrators by radio to get help with D.O., and after hearing no response when he radioed Rountree, yelled out loudly to Rountree, got his attention, and pointed to D.O. to enlist his help with him. Rountree arrived, Mr. Ford explained what D.O. had been doing, and upon Rountree saying he would handle D.O., Mr. Ford returned to the task of lining up his students to go into the PE Building. (T. at 34-35, 347-349).

24. As Mr. Ford's students were walking toward the PE Building entrance, D.O. called Mr. Ford over and asked him if he liked "the MS," gesturing to a permanent marker tattoo of those two letters on his arm. MS stands for "Mystery Machine," the name of Shaggy's van in Scooby Doo cartoons, and the name D.O. used to describe his group of friends. When Mr. Ford told D.O. he did not support his gang (the MS), an angry D.O. began heading along the covered walkway alone toward the PE Building, instead of joining with the rest of Rountree's class of 42 students that was still having trouble lining up properly along the sidewalk close to the basketball court area. Mr. Ford, who wanted to catch up to his class anyway, walked with D.O. and

engaged him again in a discussion about making good choices along the way. (T. at 35, 82, 350-352, 354-355).

25. During their movement along the covered walkway leading to the PE Building doors, D.O. kept walking faster and faster as Mr. Ford tried to keep up with him to talk to him about his behavior, and the two got farther and farther away from Strunz who continued her more leisurely pace along that covered walkway. Strunz did not hear all of the discussion between Mr. Ford and D.O. as they moved together more rapidly toward the PE Building doors specifically because she fell farther and farther behind them as their pace accelerated. As D.O.'s pace quickened, he cursed more frequently, essentially repeating comments about how much he "hated the fucking school and the fucking teachers." During this rapid walk toward the PE Building, Mr. Ford continued to ask D.O. to calm down and make better choices. (T. at 36, 354-357, 374, 391-393).

26. During a period when Strunz had dropped back and was unable to hear the discussion on the covered walkway, Mr. Ford calmly asked D.O. to stop using profanity a few times, and D.O. responded each time with words to the effect that Mr. Ford could not do anything, and could not touch him because that would be against the law. Mr. Ford did not threaten to put D.O. in the hospital, but he did respond by saying that D.O. did not know what he could do. Strunz heard Mr. Ford's comment about D.O. not knowing what he was able to do, but she did not hear the dialog that led up to those remarks, including D.O.'s comments to Mr. Ford about the law that formed the context of Mr. Ford's response. A second or two before D.O. got to the end of the covered walkway just ahead of Mr. Ford, he told Mr. Ford to "shut the fuck up." (T. at 38, 74-75, 356-357, 380-381, 394).

27. In the last several minutes of the fifth hour PE class on April 3, 2013, a large number of boys (at least 50) were crowded in a small area near the double door entrance to the PE Building area hallway at the time D.O. attempted to enter the hallway and walk through them in a rage while loudly uttering a string of profanities about them and the school. The build-up of a larger than usual number of students in that hallway that afternoon happened, in part, because Rountree was still trying to line his large group up on the sidewalk near the tennis court area, and was late getting to the boys' locker room he was supposed to open. (T. at 215-217, 243, 351, 354-355, 360-361).

28. When D.O. reached the end of the covered walkway, he angrily slammed the left side of the double doors with great force, slung the right side door open, and took one step into the hall. At that precise moment, Mr. Ford saw dozens of boys sitting and standing in D.O.'s path immediately inside the hall entrance, and made a split second, safety-based choice not to allow D.O. to continue to trample his way through that sea of students' bodies. In the split-second he had to act, Mr. Ford concluded, based on his considerable junior high teaching experience that he had to act decisively to protect D.O. and the students he would have probably cursed and angrily bumped into/tripped over in the PE Building doorway area from the imminent physical harm he believed would befall at least some of them if he did not take immediate action.[3] (T. at 40, 215-217, 218, 225-226, 231, 259, 317-318, 325, 358-362, 369, 383;Resp. Exh. 4)

29. Prior to that moment, Mr. Ford had tried for 15-20 minutes to get D.O. to comply with Rountree's time-out decision, and to calm D.O. down by encouraging him to stop using

[3] Mr. Ford could not recall if he simultaneously yelled for D.O. to stop (T. at 395), but, whether he did or did not do so, such a command would not have successfully prevented imminent body contact between D.O. and other students right in the doorway under these circumstances.

profane language, make better choices, and be more aware of the negative consequences of his disruptive behavior, essentially the same themes Mr. Ford raised with D.O. the day before. Strunz, who had observed D.O.'s destructive and disruptive actions, and had heard D.O.'s profanity during the course of fifth hour on 4/3/13, did nothing to take charge as Mr. Ford tried to address D.O.'s serious misconduct, despite Mr. Ford's expressions of concern to her about D.O.'s problematic behaviors. (T. at 31-34, 72, 343, 347-349, 352-356, 391).

30. From his position a step or two behind D.O., Mr. Ford then quickly got his right arm around D.O.'s upper chest and used his (Ford's) left arm to grab D.O.'s left hand/forearm to keep D.O. from flailing or swinging at him. Mr. Ford then used the leverage he had over D.O.'s torso to take a few steps backward away from the doorway with him. Almost immediately, D.O. struggled and tried to dart away from Mr. Ford's grasp to the left, and Mr. Ford then quickly moved D.O. over to the metal railing of the nearby portable ramp, turned D.O. around so he faced that railing, and then achieved greater leverage and control by placing his (Ford's) right arm on D.O.'s upper back across his shoulder blades. (T. at 299-300, 304-305, 366-373; Demonstrative DVD).

31. Over the course of the next 20-25 seconds, Mr. Ford told D.O. repeatedly that he would release him as soon as he (D.O.) calmed down completely. When that happened, Mr. Ford released D.O. and told him to stand by the end of the rough brick PE Building wall much farther away from the covered walkway area where Rountree's students would soon be entering the PE Building. (T. at 42, 366-373, 381-383; Demonstrative DVD).

32. The restraint Mr. Ford used on 4/3/13 was not an SCM restraint, and Mr. Ford never claimed it was a hold he learned in SMC training in 2008. The limited force Mr. Ford used on 4/3/13 to keep D.O. out of the PE Building hallway that successfully prevented serious

harm to D.O. and others did not cause significant or lasting injury to D.O. Further, the elbow scrape and neck redness the school administrators attributed to the hold could have been caused by D.O.'s wriggling and arm movements as he stood against the rough brick wall of the PE Building[4], by slamming his arm against the double door and angrily grabbing the door handle, by the rubbing of D.O.'s shirt against his neck during the restraint and his struggle to escape it, or by D.O.'s earlier PE activities and antics with the broken chair. The neck redness described by Payne was, in any case, not caused by Mr. Ford's arm around D.O.'s upper chest during the restraint. (T. at 42, 77, 290-291, 336-337, 375, 379-380, 387-388, 396-397, 404; Demonstrative DVD).

33. When Rountree arrived at the PE Building wall just after the restraint, D.O. began protesting about what Mr. Ford had done to his elbow. The two teachers observed nothing more than a minor scrape, and undertook no first aid activities. D.O. soon left the area and walked to Payne's office, where he again protested about his elbow scrape, threatened to sue Mr. Ford and the school, and began to tell Payne his version of the story. Rountree and Strunz arrived seconds later, and Strunz first heard D.O. tell Payne all the details of what had happened before she (Strunz) was asked by Payne to confirm D.O.'s version. (T. at 83-84, 94, 97-98, 375; Pet. Exh. 9).

34. SCM is a training program with student restraint guidelines not made available to regular classroom teachers, and not generally known to regular classroom teachers. SCM restraints can only be used by staff who have taken the initial training program and who remain currently certified by going to annual update training. SCM guidelines do not modify or override

[4] At the hearing, Mr. Ford demonstrated, but did not clearly verbalize the way D.O. squirmed as he stood against the PE Building's brick wall on 4/3/13. (T. at 336-337)

the Board's reasonable force policy that applies universally to school staff as provided by Florida law, Board policy, and the CBA. (T. at 100, 102-103, 127, 129-131, 141, 144, 184, 188, 204, 249-250, 254; Article X C; Jt. Exh. 1; Jt. Exh. 2 at pages 84-85).

35. Mr. Ford's restraint of D.O. resulted in, at most, only a minor elbow scrape and a temporary red mark around some part of D.O.'s neck, it spared all other students in the hallway from injury resulting from likely physical contact with the enraged D.O., it lasted approximately 30 seconds from beginning to end, and it was concluded after the situation was made calm by Mr. Ford's efforts to move D.O. well away from the covered walkway area before Rountree's students got to the PE Building doorway area. D.O.'s conduct throughout the period no doubt subjected him to embarrassment among his fellow students, but Mr. Ford tried to limit further embarrassment by removing D.O. from the covered walkway area once he had restored a safe and orderly environment. (T. at 42, 67-68, 77, 336, 351, 354-355, 368, 375-376, 381-383; Jt. Exh. 2 at pages 84-85).

36. The related criminal child abuse charge against Mr. Ford was dismissed by the Circuit Court of the Fourth Judicial Circuit upon Mr. Ford's completion in early October, 2013 of all terms of the Pretrial Intervention Agreement he signed on 6/4/13. Neither Mr. Ford nor his criminal case attorney ever received a copy of the PTI plea document because it was never intended to become official or be filed with the Court unless Mr. Ford failed to comply with his PTI terms. The PTI Plea Agreement document Mr. Ford signed to secure a dismissal of the charge was never filed with the Circuit Court, is now moot, and has no bearing on the outcome of this case. (T. at 105-108, 113-114, 402, Pet. Exh. 20; Resp. Judicial Notice Exhibits 5 and 6).

PROPOSED CONCLUSIONS OF LAW

1. The District's reasonable force policy (6GX-10-2.32) applies to all teachers and staff who use any type of force upon students to promote a safe and orderly learning environment and/or to prevent physical harm, and its parameters and guidelines must be applied to the facts regarding Mr. Ford's interactions with D.O. at the end of fifth hour on April 3, 2013.

2. The charges the District has brought against Mr. Ford in support of the termination action are dependent upon the central question of whether or not Mr. Ford exercised reasonable force in acting upon his professional judgment that the restraint in question would prevent harm and injury to D.O. and the many students in the hallway right behind the double doors.

3. By a preponderance of the evidence, Mr. Ford's restraint of D.O. on April 3, 2013 was an act of reasonable force under the provisions of District's Policy 6GX-10-2.32.

4. In the alternative, if it is determined that the level or type of force Mr. Ford used to restrain D.O. in this instance was inappropriate in some way, the ultimate penalty of employment termination is substantially excessive in the context of Mr. Ford's solid teaching and unremarkable disciplinary action records, and his obvious intent to prevent serious injury to students in acting as he did. Therefore, a formal reprimand and requirement that Mr. Ford complete updated SCM training is appropriate, sufficient, and consistent with applicable progressive discipline principles of just cause under the circumstances of this case.

5. The dismissal of criminal charges against Mr. Ford upon his completion of all PTI terms on October 10, 2013, renders the contingent plea agreement he signed on 6/14/13 (i.e., Pet. Exh. 20) moot as to any purpose for which Petitioner seeks to rely upon it in this matter.

SUPPORTING MEMORANDUM

I.

INTRODUCTION

Petitioner's Exhibit 26 includes a May 7, 2013, Memorandum to school board members that states the purported legal basis for Superintendent Van Zant's determination that just cause exists to terminate Mr. Ford's Professional Services Contract. That Memorandum includes the following six allegations of District Policy violations:

- Failure to protect students from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety;
- Intentionally exposing a student to unnecessary embarrassment or disparagement;
- Bringing the school system into disrepute by his actions;
- Misconduct in office;
- Failure to comply with regulations and policies of the school board, State Board of Education, or the laws of Florida;
- Failure to comply with the Code of Ethics and the Principles of Professional Conduct of the education profession in Florida.

Mr. Ford testified credibly, and in a manner wholly consistent with the testimony of his OLJHS PE colleagues, that he acted as he did in stopping an enraged D.O. from entering the PE Building hallway on 4/3/13 for the express purpose of protecting D.O. and other students from what Mr.Ford perceived to be an imminent threat of physical harm to them as they sat and stood

in the PE Building hall doorway, and that the appropriateness of his conduct should be assessed under the District's statutorily-based reasonable force policy (6GX-10-2.32).[5] In that context, this set of closely intertwined and overlapping charges ultimately rises and falls upon an analysis of whether Mr. Ford acted in good faith based upon his professional judgment to protect D.O. and his classmates from the serious physical harm Mr. Ford anticipated would occur if he allowed an enraged D.O. to walk through the crowd of students in the PE Building hallway.

It is apparent that Mr. Ford cannot be terminated for intentionally subjecting students to harmful conditions, or intentionally subjecting anyone to unnecessary embarrassment or disparagement, if, as the evidence here indicates, he acted properly to protect a large number of students from what he anticipated would be serious injury. Similarly, the related allegations of misconduct in office and bringing the school district into disrepute based on two local news articles published in early April, 2013 create no independent basis for just cause to terminate Mr. Ford's employment under circumstances in which he actually followed the Board's reasonable force policy to protect D.O. and many other students. Put another way, since Mr. Ford acted within the scope of the Board's reasonable force policy, the mere publication of allegations of misconduct cannot stand alone as a basis for his termination.

The preponderance of evidence presented at the hearing demonstrates that Mr. Ford restrained D.O. specifically to protect him and dozens of students who were waiting just inside the door to the PE Building hallway to be released from PE to their next classes, that he used an amount of force that quickly and safely restored order, that his actions caused very minimal (if any) injury to D.O. while protecting D.O. and many other students from more serious injury, and

[5] The Board policy on reasonable force is a part of Joint Exhibit 2, and it was adopted consistent with the requirements of Sections 1006.11(1) and 1003.32(1),(2), Florida Statutes.

that he restrained D.O. only long enough to calm him down and bring about the return of an orderly environment. Therefore, Mr. Ford did not engage in any act of misconduct, and he must be reinstated to an appropriate, similar teaching position in the District and awarded such back pay and benefits as are necessary to make him whole.

II.

MR. FORD EXERCISED REASONABLE FORCE UNDER THE DISTRICT'S OWN POLICY GUIDELINES

School Board Policy 6GX-10-2.32 includes definitions, guidelines, and criteria related to the statutory rights of teachers to use reasonable force to maintain a safe and orderly learning environment that, when applied to the facts here, consistently support the conclusion that Mr. Ford acted appropriately under the difficult circumstances he faced. Section 6GX-10-2.32A defines "orderly" as devoid of destruction or violence; peaceful, and clearly includes the PE class setting in question as a "Learning Environment" to be kept safe and orderly. The Policy defines "disruption" as an interruption of, or impediment to, the usual course of harmony; defines "reasonable force" to include the use of "physical force as necessary to maintain a safe and orderly learning environment," and, in pertinent part, defines a "safe" environment as one in which persons are protected from "threat of injury." Board Policy 6GX-10.2.32 was adopted in accordance with Florida statutory provisions that specifically allow teachers to use reasonable force, and it includes no exemption or caveat related to SCM or other crisis management program guidelines or restrictions on its use.

Section 6GX-10-2.32 B. sets forth sets of conditions that may require the use of reasonable force, and begins by noting that staff should attempt to use alternatives to reasonable

force when possible, and when time permits. (emphasis added) It is important to note here that Mr. Ford had tried many times to obtain D.O.'s compliance before the restraint, and that he had no more than a second, after seeing dozens of students on the other side of the door, to decide whether or not to take action to keep the enraged, profanity spewing D.O. from entering the crowded PE Building hallway. As situations from which students should be protected by the use of reasonable force, Subsection B. goes on to list conditions harmful to learning, conditions harmful to students' mental health, conditions harmful to students' physical health, conditions harmful to safety, and "other conditions which, in the judgment of the on-site employee(s), threaten the safety and welfare of students or adults." (emphasis added). Obviously, Mr. Ford's judgment on 4/3/13 was that D.O.'s entry into and progress through the PE Building hallway, under the conditions he observed to exist inside the doorway, presented a significant threat to the safety, welfare, and physical health of D.O. and the students with whom he was likely to make unwanted physical contact as D.O. angrily charged through them and cursed at them.

Section 6GX-10-2.32C. of the Reasonable Force policy sets forth a set of seven specific parameters that must be considered and weighed to determine the reasonableness of force used by a school employee in any particular set of circumstances. As to the severity of offenses, it is undisputed that D.O. had engaged in a series of significant acts of misconduct that had disrupted Mr. Ford and Mr. Rountree's PE classes for a significant portion of the fifth hour class on 4/3/13, and that D.O. was angry and uttering profanities as he began to move into the crowded PE Building hallway area immediately before Mr. Ford acted.

As to the relative sizes of the participants, it is clear in this record that D.O. was substantially taller than Mr. Ford, and that D.O., at about 5'10" (T. at 78), is very tall for a junior high school student. In that context, the physical contact between an angry D.O. and the

predominantly smaller students seated or standing in the immediate vicinity of the PE Building doorway presented an even greater likelihood of serious injury because of this size differential.

As to patterns of behavior, Mr. Ford knew by the end of the fifth hour on 4/3/13 that D.O. was an EBD student who always had an aide as an escort, that he had recently been kicked out of PE for prior transgressions (T. at 101-102), that he had been disrespectful to Rountree that period, that he angrily heaved a chair across the baseball field and threw Rountree's gradebook to the ground, that he called his classmates and their fathers "gay," that he repeatedly used the word "fuck" to express his hatred for the school and its teachers, and that he had been non-compliant with his (Ford's) and Strunz's own directions that he correct his bad behavior during that particular class period. Mr. Ford also knew then that D.O. and his friends were responsible for a rash of spray-paint property damage incidents in the neighborhood. (T. at 81, 352-353). Therefore, although Mr. Ford had not observed D.O. being physically violent before 4/3/13, he had ample reason to be concerned that D.O. would become violent, and/or that D.O.'s belligerent, profane, and destructive behavior could lead to serious trouble when D.O. came into contact with dozens of junior high school boys waiting in the hallway right near the door D.O. had just entered.

Mr. Ford testified, with corroboration from his fellow OLJHS PE teachers, that the entry into that crowded hallway of an enraged, large, profanity-spewing junior high school student created a real danger that serious physical harm would befall D.O. and any number of other students who took issue with D.O.'s anger and profanity, or who might have had their legs trampled or otherwise encountered unwanted physical contact with D.O. in the hallway. In the context of a crowd of junior high school boys surrounding the PE Building doorway, the situation could have quickly escalated into a serious confrontation or hallway brawl involving

many more students in an area of the PE complex that was hard for teachers to get to quickly. (T. at 218-219, 239).

As to the availability of assistance, it was established at hearing without refutation that Mr. Rountree was not in the immediate area of the PE Building hallway door at the time of the restraint, that Mr. Ford had been unable to obtain assistance from school administrators by way of earlier radio contact attempts, and that Strunz did little or nothing to address D.O.'s disruptive behavior as it had escalated for about 20 minutes prior to the restraint in question.[6]

As to Mr. Ford's conduct toward D.O. prior to the decision to restrain him that day, it is well-established in this record that Mr. Ford had first tried repeatedly to calm D.O. down, to encourage him to make better choices, and to obtain D.O.'s compliance by calmly requesting that he stop using profanity. Mr. Ford continued to try to talk D.O. into compliance right up to the second he (Ford) decided physical harm to students was imminent if he did not intervene with reasonable force to impede D.O.'s progress through that crowded hallway.

The District's position that Mr. Ford simply lost his composure completely and acted in a hostile manner toward D.O. because of D.O.'s profane taunts is preposterous. First, Mr. Ford is an accomplished, respected PE instructor who had faced all sorts of student profanities and fight situations many times before over the course of his career. (T. at 361-362). Second, the thought that Mr. Ford would threaten to put D.O. in the hospital and then proceed to choke him in the presence of an adult colleague, because D.O. told him to "shut the fuck up," is all the more implausible. This record reflects, to the contrary, that Mr. Ford loves young people, that he puts

[6] OLJHS PE teacher Bonnie Lawrence testified further that her prior interactions with D.O. during class transitions caused her to be somewhat fearful of him, and that her observations of the ESE aides who escorted him around each day left her with the sense they too were afraid to deal directly with D.O.'s problem behaviors. (T. at 221-222, 224-225).

their safety and their needs before his own, and that he frequently tries to mentor students who appear to need more adult guidance. (T. at 264-265, 268-269, 279, 319, 321, 353).

Finally, Policy 6GX-10-2.32D. requires, in pertinent part, that force used by school staff not be excessive or cruel or unusual in nature, and that force used must cease upon the restoration of a safe and orderly environment. It is undisputed in this record that Mr. Ford told D.O. repeatedly during the restraint that he would let him go as soon as D.O. calmed down completely, and that Mr. Ford promptly did just that. While it is perhaps now easy to play Monday morning quarterback and second-guess Mr. Ford's method of restraint or level of force, any conclusion that the force he used was excessive would be inconsistent with Mr. Ford's success in preventing serious physical injuries to D.O. and other students in the PE Building hallway, how quickly the restraint was conducted (30 seconds or less), and how minor and temporary D.O.'s alleged injuries were.[7]

This is the type of analysis of reasonable force policy factors that should have been conducted by McCabe. Instead, it is obvious that she and the Superintendent arrived at an incorrect conclusion by starting from the incorrect premise that all student "restraints" employed by school staff to prevent physical injuries to students fall exclusively under SCM guidelines and standards, despite the fact the District's reasonable force policy plainly applies to all uses of force by all staff, and that regular classroom teachers do not receive SCM training or the JKM, Inc. guidelines included in this record as Pet. Exh. 4. (See Text and Citations of paragraphs 11-15 above). The District's efforts during the hearing to ignore the crucial role of the reasonable

[7] While the Respondent does not concede that the hold caused either the noted elbow scrape or neck "redness," it is in any event undisputed in the record that neither alleged injury was serious or long lasting. It is also undisputed that D.O. received no treatment beyond a band-aid, or that even the minimal medical attention he received was not provided until after D.O. met with Payne, Strunz, and Rountree to talk over what had happened between D.O. and Mr. Ford that day., (T. at 99, 375; Pet. Exh. 9).

force policy in resolving this matter flowed directly from McCabe's flawed approach and sloppy investigation from the outset.

For example, Ms. McCabe's fact-finding presented to the School Board includes the erroneous assertion that Mr. Ford told her he used an SCM-approved hold.[8] From that point, McCabe simply determined, by talking only with Strunz, that the restraint used on 4/3/13 by Mr. Ford was not something she (Strunz) was taught in the SCM program she had recently completed for the first time. McCabe never bothered to ask Zimmerman or any of the people who teach the SCM program, she did not interview D.O., and she did not meaningfully engage in the multi-faceted analysis required under the District's reasonable force policy after deciding quickly that Mr. Ford's hold was not a proper SCM restraint. (T. at 196-197).

The District also focused its case on questions related to whether D.O. specifically threatened violence against Mr. Ford or a student, and whether D.O. was actually injuring himself or someone else at the time of Mr. Ford's restraint. That purported standard for physical intervention, however, is a far cry from the one set forth in Part B.5. of Reasonable Force Policy 6GX-10-2.32 which specifically authorizes the use of reasonable force under such "conditions harmful to students' physical health, conditions harmful to safety, and other conditions which, in the judgment of on-site employee or employees, threaten the safety or welfare of students or adults."

The facts presented here leave little doubt that D.O. had been an impediment to the usual course of harmony during much of the PE class period in question on 4/3/13, that Mr. Ford reasonably foresaw a threat of injury to D.O. and the other students waiting immediately behind

[8] Ms. Butler and Mr. Ford, both present at all investigative and dispositional meetings, testified that Mr. Ford had told McCabe no such thing. (T. at 290-291, 388, 404).

the PE Building hallway door, that Mr. Ford's split-second decision to restrain D.O. prevented the injuries to students Mr. Ford reasonably foresaw, and that the restraint quickly brought about the return of a safe and orderly classroom environment, with, if any, minimal and temporary consequences to D.O. Therefore, Mr. Ford exercised reasonable force consistent with Policy 6GX-10-2.32 on 4/3/13.

III.

MR. FORD'S EXPLANATION OF WHAT HE SAID TO D.O. RIGHT BEFORE THE RESTRAINT, AND OF HOW AND WHY HE RESTRAINED D.O. SHOULD BE CREDITED

Mr. Ford's account of events in question is the most plausible one, and Mr. Ford is the more credible of the two eye witnesses who testified about the events during the hearing.[9] A comparison of their professional histories and credentials could not be more stark. Mr. Ford has been an educator for the past 20 years, holds a Masters Degree in Adapted Physical Education, and has been an instrumental player in the greater Northeast Florida community in promoting track and field events, track and field clubs, and other activities that have benefitted Clay County students of various age groups. Mr. Ford has experienced success in building a championship level junior high school track program at OLJHS, and Mr. Ford has a broad range of experience teaching large groups of middle school-aged children, including ESE students, in PE settings that require good classroom management skills and sound teaching instincts.

In contrast, Strunz spent the first three years of her career in Clay County working in a school cafeteria, then spent four years working as an assistant to a classroom teacher of language

[9] The District did not offer testimony from D.O., the alleged victim of Mr. Ford's conduct. They also did not call upon Rountree to corroborate any of Strunz's observations of class period events, and they did not call former OLJHS nurse Mary Blazek to explain her post-incident observations of D.O. at the school clinic.

impaired students. As of the time of the incident under review, Strunz had only spent about eight months working with small groups of EBD students under the supervision of an EBD classroom teacher, and escorting EBD students like D.O. around OLJHS while undertaking no academic responsibilities for them. Strunz has never been a teacher, has never taught a PE class, and has never been responsible to oversee the behavior and safety of more than a few students at a time. (T. at 59-60).

As to the account of the pertinent events given by both individuals, Mr. Ford is the only witness who saw every part of the unfolding event, and who heard the entire dialog between him and D.O., especially along the covered walkway to the PE Building hall entrance. Mr. Ford is the only witness who saw the dozens of students standing and sitting in the hallway as the angry D.O. began to enter, and he is the only witness competent to testify about D.O.'s movements and struggles to evade restraint during the incident.

Strunz admittedly was not present at the very beginning of D.O.'s period of misconduct with Rountree, did not hear a good bit of discussion between D.O. and Mr. Ford along the covered walkway, and was likely not in position to see the exact movements of both Mr. Ford and D.O. throughout the course of the physical interaction between them. Strunz also readily admitted during the hearing that she had provided statements to law enforcement officers and testimony under oath in subsequent legal proceedings about this event that differed in significant ways. (T. at 62-72).

For example, Strunz admits now that she does not know where Mr. Ford's left hand was during the course of the restraint, although she has previously testified under oath that Mr. Ford clasped his left hand onto his right forearm while that right forearm was allegedly wrapped around D.O.'s neck. Strunz alternatively has testified that Mr. Ford placed his left arm behind

D.O.'s back. (T. at 63-64). Over the course of time, Strunz has also given various accounts of how long the "choke hold" (her phrase) restraint lasted, ranging from "close to a minute" to "so fast that she could not even guess how long it was," conveniently settling at hearing on testimony that the hold lasted a period of from a few seconds to up to a minute. (T. at 67-68)

Apart from Strunz's insistence that she saw Mr. Ford's right arm wrapped around D.O.'s neck, there is no plausible reason to believe a dedicated, experienced professional educator like Mr. Ford would have intentionally relied upon a "choking" action as a restraint technique. While the District promotes the notion that Mr. Ford got so angry at D.O. because he told him to "shut the fuck up," that he (Ford) threatened to put D.O. in the hospital and then grabbed him by the neck, it is also highly unlikely that Mr. Ford, or any similarly experienced teacher, would allow a student like D.O. to goad him into such career-threatening behavior merely by cursing at him. The District presented no evidence that Mr. Ford had been disciplined in the past for overreacting to student taunts that would support an inference that he could be so easily goaded by one disruptive student.

As to the alleged threat, the Respondent contends that Strunz really only heard Mr. Ford tell D.O., as Mr. Ford admitted, that D.O. did not know what he (Mr. Ford) was able to do, and she then verified the accuracy of D.O.'s description to Payne of the "hospital threat" assuming Mr. Ford made that "hospital threat" before he said that D.O. did not know what he (Ford) was capable of doing to D.O.[10] Respondent's assertion that Strunz only assumed Mr. Ford made the "hospital threat" is further supported by Mr. Ford's recollection that Strunz overheard the blunt mentoring session he had with D.O. the day before during which Mr. Ford told D.O. that he

[10] Assistant Principal Bridget Payne, herself SCM trained and a former teacher very familiar with EBD students, told Ms. Butler that the alleged threat troubled her far more than did the restraint. (T. at 87-89, 102, 306).

(Ford) would know who to hold accountable if he found spray paint on his wife's expensive new truck.[11]

For these reasons, where the two accounts of the pertinent events differ, Mr. Ford's testimony should be credited because his version of the events is more plausible, because only he knows the entirety of what took place and what was said between him and D.O. on 4/3/13, and because Strunz has demonstrated herself to be an unreliable witness who fills in missing details and makes assumptions. Further, in contrast to Strunz's evolving story, Mr. Ford's description of the events and the restraint he used with D.O. has not changed over the course of the last six months.

IV.

THE PREPONDERANCE OF HEARING EVIDENCE INDICATES THAT MR. FORD DID NOT ENGAGE IN ACTS OF MISCONDUCT TOWARD D.O. AND THAT, EVEN IF MISCONDUCT COULD BE FOUND, MR. FORD HAS NOT LOST EFFECTIVENESS AS A CONSEQUENCE OF THAT CONDUCT

One of the charges the District has leveled against Mr. Ford is that he engaged in misconduct in office, a catch-all charge in education law that ostensibly covers all manner of inappropriate employment conduct and policy violations. Misconduct in office is defined in the Florida Administrative Code at Section 6B-4.009(3) as:

> [a] violation of the Code of Ethics of the education profession as adopted in Rule 6B-1.001,FAC,., and the Principles of Professional

[11] Even if the threatening statement Strunz says Mr. Ford made to D.O. before the restraint is deemed true for argument's sake, there never was any paint found on Mr. Ford's wife's expensive, new truck that would ostensibly have given Mr. Ford a reason to follow through on the alleged threat.

> Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

This definition of misconduct has consistently been held to require sufficient proof of both serious misconduct and a substantial impairment in the level of an employee's future effectiveness as a result of that misconduct. McKinney v. Castor, 667 So. 2d 387, 389-390 (Fla. 1st DCA 1995); Tenbroeck v. Castor, 640 So. 2d 164, 168 (Fla. 1st DCA 1994); MacMillan v. Nassau County School Board, 629 So. 2d 226, 230 (Fla 1st DCA 1993); Braddock v. School Board of Nassau County, 455 So. 2d 394, 396 (Fla 1st DCA 1984). Further, proof of lost effectiveness must include more than the mere outgrowth of public knowledge of alleged misconduct. Sherburne v. School Board of Suwannee County, 455 So. 2d 1057, 1061 (Fla 1st DCA 1984); Boyette v. State, Professional Practices Council, 346 So. 2d 598, 601 (Fla 1st DCA 1977); Baker v. School Board of Marion County, 450 So. 2d 1194 (Fla 5th DCA 1984).

For the reasons outlined earlier, Mr. Ford's restraint of D.O. falls within the parameters of the Board's reasonable force policy, and does not support the conclusion that Mr. Ford engaged in acts of misconduct. However, even if it could be concluded, arguendo, that misconduct of some kind occurred, the evidence in the record demonstrates that Mr. Ford has not lost the ability to serve as an effective District employee in the future.

The record reflects that several citizens and former parents spoke on Mr. Ford's behalf at the May 16, 2013 School Board termination meeting (T. at 183), that Mr. Ford's colleagues and former colleagues consider him an outstanding teacher, and would welcome him back without hesitation (T. at 223, 243, 253), and that the other citizens who testified at the hearing think the world of Mr. Ford, and believe that he consistently acts in the interest of students and the athletes he coaches. (T. at 264-265, 268-269, 279).

The only arguable items of evidence of lost effectiveness included in this record are the April, 2013 news articles about the matter (Jt. Exhs. 5 and 6). However, those news articles are more than seven months old, and the April 11, 2013 Clay Today article clearly lays out for public consumption Mr. Ford's reasonable explanation that he acted to protect the safety of all students involved in the matter. The criminal matter announced by the news articles has since been dismissed, and it is eminently reasonable to assume that Clay County's citizens want teachers to protect their children.

For these, reasons, the District failed to prove either element of the charge of misconduct in office, and failed to demonstrate that Mr. Ford's conduct has brought the District into disrepute, a similar District charge that is intuitively subject to the same reasoning, and also requires a proper showing of lost effectiveness. See McKinney v. Castor, 667 So. 2d 387, 389-390 (Fla. 1st DCA 1995).

V.

MR. FORD'S PTI AGREEMENT OF JUNE 4, 2013 WAS NOT EXPECTED BY THE PROSECUTOR OR MR. FORD TO BECOME EFFECTIVE, WILL NEVER BE FILED WITH THE COURT, AND DOES NOT REASONABLY CONSTITUTE AN ADMISSION OF CRIMINAL BEHAVIOR OR THE UNDERLYING, ALLEGED MISCONDUCT

During the hearing, the Petitioner, over Respondent's objections, managed to have admitted into the record Petitioner's Exhibit 20, a Circuit Court document entitled Plea of Guilty and Negotiated Sentence. The Petitioner offered this Exhibit ostensibly as an admission against interest to support a conclusion that Mr. Ford is guilty of the misconduct of which is his now

accused by the District. Although Mr. Ford signed this PTI Plea Agreement document, the unrebutted testimony of Mr. Ford's former Probation Officer, Stacy Francisco, about the meaning, purpose, and anticipated outcome of all PTI agreements constitutes compelling evidence that Mr. Ford's Agreement was simply a contingent plea that would have legal effect only if Mr. Ford failed to comply with the terms of his PTI. (T. at 105-108). At the time of Ms. Francisco's testimony, she could only assert that Mr. Ford had completed all of the required elements of his PTI over which she had supervision, and that prosecutors invariably dismiss cases of this kind subsequent to the completion of PTI terms. Based upon the post-hearing documents that Mr. Ford submitted for Judicial Notice two weeks ago (i.e., Diversionary Nolle Prosequi of 10/10/13 and the Case Summary Docket Sheet), and that he again asks the Hearing Officer to judicially notice, Ms. Francisco's testimonial prediction has come to pass. Thus, as of the present date, Mr. Ford has not been found guilty of any crime against D.O., has not been adjudicated guilty of any crime against D.O., and has no criminal record with respect to the D.O. incident. Further the Circuit Court of the Fourth Judicial Circuit has recorded the official dismissal of this case and Petitioner's Exhibit 20 does not appear as an item recorded on the Court's docket. [12]

At its core, the hearing process the District and Mr. Ford have been embroiled in since May has progressed solely to determine whether or not Mr. Ford engaged in conduct toward D.O. for which his employment should be sanctioned, and if so, what sanctions are appropriate under the circumstances demonstrated at the hearing. For his part, Mr. Ford vehemently denies, and has always denied, that he engaged in any conduct toward D.O. for any reason other than to

[12] Mr. Ford's testimony that neither he nor his criminal case attorney ever received a copy of Pet. Exh. 20 further supports the understanding of the parties to that Agreement that it was not to be an operative document or be filed with the Court unless Mr. Ford failed to meet his PTI obligations.

protect the physical safety of D.O. and the students who stood or sat on the other side of the hallway door on the afternoon of 4/3/13. Accordingly, any determination that this separate, contingent, criminal case plea agreement which was simply a condition precedent to the ultimate dismissal of the charges, and that never had actual legal effect should override Mr. Ford's testimony and Respondent's entire case would be an illogical one that does a great disservice to the interests of justice and due process.

VI.

EVEN IF MR. FORD'S RESTRAINT OF D.O. IS DEEMED IMPROPER, THE RECORD INCLUDES EVIDENCE OF SIGNIFICANT MITIGATING FACTORS THAT RENDER TERMINATION AN EXCESSIVE PUNISHMENT.

Although the evidence supports the conclusion that Mr. Ford did not engage in misconduct, the record includes substantial evidence that should be relied upon to significantly mitigate the penalty of termination should any of the misconduct allegations be sustained. The record supports a conclusion that Mr. Ford has not previously been disciplined in association with an improper physical restraint or other act of excessive force. There is no dispute in the record that Mr. Ford holds a Masters Degree in Adapted Physical Education, or that he served as a capable teacher of junior high school students in Pasco and Clay Counties for well over a decade. There is also no dispute in the record that Mr. Ford has been extremely successful as a track and field coach, and that he has contributed a great deal to both his student athletes and to the larger Northeast Florida community for many years. These facts should be relied upon to mitigate the severity of any potential employment sanctions.

This record also demonstrates both that there were typically large numbers of male students who congregated in the area of the PE Building hallway near the covered walkway doors at the end of PE class periods, and that several dozen students were congregated in that area during the last few minutes of the fifth hour class period on 4/3/13. There is simply no reason to conclude that an experienced, successful teacher like Mr. Ford did what Strunz said he did to restrain D.O., after making an open, verbal threat to put D.O. in the hospital simply because that student told him to "shut the fuck up," even though D.O. had already directed similarly inappropriate, profane language toward Mr. Ford in denigrating OLJHS, its teachers, and its students. In sum, it is far more plausible to conclude that Mr. Ford took steps to restrain D.O. only because he feared for the safety of D.O. and other students in the area under the circumstances outlined in great detail herein, and that Strunz heard only part of the comments back and for between Ford and D.O. as they neared the door, misunderstood the context of parts of the discussion she heard, and assumed the parts she did not hear when D.O. recounted them to Payne.

Upon determining that Mr. Ford decided to restrain D.O. for the legitimate purpose of keeping all PE students safe, the next question to be resolved has to do with the nature, duration, and severity of the restraint he applied in this instance under the set of circumstances he faced. Mr. Ford has plausibly and consistently contended throughout the investigation and the hearing process that he put his right arm around D.O.'s upper chest in a split-second decision to stop D.O.'s progress into the PE Building hallway by controlling his torso and moving him backward away from the doorway. Although there is a dispute about whether D.O. struggled, it is far more likely that D.O. made an attempt to escape the restraint, at least initially, given D.O.'s large size and enraged state at the time. It was D.O.'s attempt to get away from Mr. Ford by moving

to his left that propelled Mr. Ford's subsequent actions and caused the two participants to end up turning around toward the portable railing, and that caused Mr. Ford to seek further leverage over D.O.'s actions to get him calmed down and released as quickly as possible by using the portable's structure itself to secure the restraint.

There is no dispute in this record that the entire restraint incident lasted a matter of seconds, not minutes, nor is there any dispute that Mr. Ford told D.O. he would let him go, and did so, as soon as the situation in the hallway area had returned to a safe and orderly learning environment. Mr. Ford acted at all times upon his good faith professional judgment that he could best protect D.O. and other students from anticipated physical injuries by taking reasonable steps to keep D.O. out of the hallway, and everything he did was an outgrowth of that desire. Therefore, even should the Hearing Officer determine that the type of restraint Mr. Ford used was somehow inappropriate, she should also determine that the appropriate penalty for such policy violation(s) is not a termination, but is instead a written reprimand and a requirement that Mr. Ford be trained in SCM protocols each year he remains employed with the District. Under any reasonable disciplinary action scenario, however, Mr. Ford should be allowed to return to his employment as a District teacher.

CONCLUSION

For all the reasons stated herein, Mr. Ford did not engage in employment misconduct, and he must promptly be reinstated and provided appropriate compensation for his lost wages and benefits.

Respectfully submitted,

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AND BLOHM, P.A.
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By: _____
ANTHONY D. DEMMA
Florida Bar No.: 0945870

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 2nd day of December, 2013, to: Eric Holshouser, Esquire, and Michael Lufkin, Esquire, Fowler, White, and Boggs P.A., 50 North Laura Street, Suite 2800, Jacksonville, FL 32202, (eric.holshouser@fowlerwhite.com; Michael.lufkin@fowlerwhite.com) J. Bruce Bickner, Esquire, attorney for the School Board of Clay County, Florida, 900 Walnut Street, Green Cove Springs, Florida, 32043, (jbbickner@oneclay.net, and biclaw106@aol.com); and School Board Chairman, Ms. Carol Studdard, 900 Walnut Street, Green Cove Springs, Florida, 32043, (cstuddard@oneclay.net).

_____
Anthony D. Demma

STATE OF FLORIDA
DISTRICT SCHOOL BOARD OF CLAY COUNTY

CHARLES E. VAN ZANT, JR.,
Superintendent of Schools,
Clay County, Florida,

Petitioner,

vs. **Case No. 2013-001 CCSB**

MIKE FORD,

Respondent.
_____/

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE OF CERTIFIED CIRCUIT COURT RECORDS

The Respondent in the above-styled case, through undersigned counsel, respectfully requests that the Hearing Officer take judicial notice of the following certified records of the Circuit Court of the Fourth Judicial Circuit, in and for Clay County, Florida: the Diversionary Nolle Prosequi associated with the related, resolved criminal charge against Mr. Ford, and; the final Case Summary Docketing Sheet associated with that same criminal matter. The Respondent asks that the Hearing Officer take judicial notice of these documents pursuant to the provisions of Sections 90.202(6),(12), and/or Section 90.203, Florida Statutes (2012).

The Respondent requests that the Hearing Officer take judicial notice of these documents to allow her to make an assessment of the final outcome of the criminal matter related to the same conduct that was the subject of the employment termination hearing. These certified records of the Circuit Court of the Fourth Judicial Circuit demonstrate that the criminal charge against Mr. Ford that was discussed during the hearing was dismissed upon Mr. Ford's

COMPOSITE EXHIBIT B

completion of the pre-trial intervention (Diversionary) program from which he had not yet been officially released at the time of the hearing, and demonstrate that Petitioner's Exhibit 20 (the June 4, 2013 plea agreement) never became operative and was never filed with the Court.

The Respondent requests that the attached, certified copies of the Diversionary Nolle Prosequi and the final Case Summary be made a part of the hearing record through the Hearing Officer's exercise of judicial notice. To the extent necessary to identify these records upon the taking of the judicial notice requested, these documents should be referred to as either Respondent's Exhibits 5 and Exhibit 6, or as Judicial Notice Exhibits 1 and 2, respectively.

Respectfully submitted,

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AND BLOHM, P.A.
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By: _____
ANTHONY D. DEMMA
Florida Bar No.: 0945870

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 18th day of November, 2013, to: Eric Holshouser, Esquire, and Michael Lufkin, Esquire, Fowler, White, and Boggs P.A., 50 North Laura Street, Suite 2800, Jacksonville, FL 32202, (eric.holshouser@fowlerwhite.com; michael.lufkin@fowlerwhite.com); J. Bruce Bickner, Esquire, attorney for the School Board of Clay County, Florida, 3383 Olympic Drive, Green Cove Springs, FL 32043-8097, (jbbickner@mail.clay.k12lfl.us); and by U.S. Mail to School Board Chairman, Ms. Carol Studdard, 900 Walnut Street, Green Cove Springs, FL, 32043.

Anthony D. Demma

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR CLAY COUNTY, FLORIDA

STATE OF FLORIDA

vs.

MICHAEL J. FORD

FILED
2013 OCT 10 P 3:18
TARA S. GREEN, CLERK CLAY

DIVERSIONARY NOLLE PROSEQUI

S.A. CASE NO.: 13CF021595AC
CLERK NO.: 102013CF000686AXXXMX
DIVISION: CRA/SAD
CHARGE(S): CHILD ABUSE

ARREST DATE: April 8, 2013
ARREST NO.: 2013-120834
CCR NO.: 2013-0009798

After reviewing the evidence in the above-styled cause, this case was referred and handled through the Diversion Program.

Therefore, this office is taking no further action including any civil charges that was handled through the Diversion Program and closing our file by dismissing and entering a Nolle Prosequi in this case.

The proper authorities have been notified by copy of this notice to release the Defendant from custody and/or to release Defendant's bond, if any has been posted on **these charges only**.

DATED this 10th day of October, 2013.

Gary T. J. Bryant
Bar Number 68342
Assistant State Attorney

cc: SAO File
Evidence Room Clerk, Clay County Sheriff's Office, (if no pending co-defendant cases, this office has no further need for any property being held)

This red stamp and signature certifies this 1 page document is a copy of the original on file in the office of:
Tara S. Green
Clerk of the Circuit Court
Clay County, Florida
This 12 day of Nov., 2013
By: Michelle Peart, Deputy Clerk

CIRCUIT COURT CLERK CLAY COUNTY, FLORIDA

FELONY

CASE SUMMARY

CASE NO. 2013-CF-000686

State of Florida vs.Ford, Michael Joseph

§	Location:	**Felony**
§	Judicial Officer:	**Lester, Don H**
§	Filed on:	**04/10/2013**
§	Arrest Number:	**2013-10340**
§	State Attorney's Office Number:	**13-021595**
§	Uniform Case Number:	**102013CF000686000AMX**

CASE INFORMATION

Offense	Deg	Date	Case Type: **Circuit Felony**
Jurisdiction: **Unincorporated**			
1. Child Abuse without Great Harm OBTS: 1001100656 Sequence: 1 Arrest: 04/08/2013	F3	04/04/2013	

Statistical Closures
10/10/2013 Disposed Other

Bonds
Cash Bond #201301456 $753.00
4/9/2013 Posted
7/19/2013 Released
Counts: 1

CASE ASSIGNMENT

Current Case Assignment

Case Number	2013-CF-000686
Court	Felony
Date Assigned	04/10/2013
Judicial Officer	Lester, Don H

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**State of Florida**	**Bryant, Gary TJ**
Defendant	**Ford, Michael Joseph**	**Powell, Marrtin French** *Retained*

EVENTS & ORDERS OF THE COURT

DATE		INDEX
04/10/2013	Cash Bond	
04/10/2013	Notice To Appear Issued	
04/10/2013	Cash Bond	
04/10/2013	Affidavit for Arrest Warrant	
04/10/2013	Warrant Returned Served	
04/10/2013	Arrest and Booking Report	

This red stamp and signature certifies this 2 page document is a copy of the original on file in the office of:
Tara S. Green
Clerk of the Circuit Court
Clay County, Florida
This 12 day of Nov. 2013
By: Michele Hoof, Deputy Clerk

CIRCUIT COURT CLERK * CLAY COUNTY, FLORIDA *

Printed on 11/12/2013 at 3:42 PM

FELONY

CASE SUMMARY

CASE NO. 2013-CF-000686

04/16/2013	Not Of App, Waiv Of Arr, NG Plea & Demand For Trial
05/06/2013	Information Filed
05/06/2013	States Discovery Exhibit And Demand For Reciprocal Discovery
05/06/2013	Victim Information Form
05/07/2013	**Arraignment** (9:00 AM) (Judicial Officer: Lester, Don H) Events: 04/10/2013 Cash Bond
06/04/2013	**Pretrial** (9:00 AM) (Judicial Officer: Lester, Don H) Events: 04/10/2013 Cash Bond
06/10/2013	Diversionary Program Referral Notice
07/19/2013	Miscellaneous *PLACED CASH BOND RELEASE IN MICHELLES BOX.ST*
07/19/2013	Diversionary Program Referral (Accepted)
07/24/2013	Cash Bond Release *copy sent to CB*
07/24/2013	Cash Bond Release
08/22/2013	Copy of Check Mailed out
10/10/2013	Diversionary Nolle Prosequi

DATE	FINANCIAL INFORMATION	
	Defendant Ford, Michael Joseph Cash Bond Balance as of 11/12/2013	**0.00**