

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-0943TTS
	)	
LISA PARKER,	)	
	)	
Respondent.	)	
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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by in Miami, Florida, on May 14-16 and June 12-14, 2012, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Christopher J. La Piano, Esquire  
Miami-Dade County School Board  
Suite 430  
1450 Northeast Second Avenue  
Miami, Florida 33132

For Respondent: Maria del Carmen Calzon, Esquire  
Suite 249  
1825 Ponce de Leon Boulevard  
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

Whether Lisa Parker (Respondent) committed the acts alleged in the Miami-Dade County School Board's (School Board) Notice of

Specific Charges and, if so, the discipline that should be imposed against Respondent's employment.

#### PRELIMINARY STATEMENT

Respondent is a lead staffing specialist with the Miami-Dade County School Board's Exceptional Student Education (ESE) program. At the times relevant to this proceeding, Respondent's supervisor was a woman who will be referred to as Ms. S.-N. in an effort to protect the privacy of Ms. S.-N.'s daughter, S.N. The School Board seeks to terminate Respondent's employment.

At its regularly scheduled meeting on February 9, 2011, the School Board took action to suspend Respondent's employment without pay and institute this proceeding to terminate her employment. Respondent timely challenged the School Board's action, the matter was referred to DOAH, and this proceeding followed. On March 25, 2011, the School Board filed with DOAH its Notice of Specific Charges.

The Notice of Specific Charges alleged certain facts, and, based on those facts, alleged in five separate counts that Respondent was guilty of (I) misconduct in office, (II) immorality, (III) violation of School Board Rule 6Gx13-4A-1.21 relating to Responsibilities and Duties of School Board employees, (IV) violation of School Board Rule 6Gx13-4A-1.213

relating to the Code of Ethics, and (V) School Board Rule 6Gx13-4A-1.212 relating to Conflict of Interests. The Notice of Specific Charges relied on the provisions of sections 1001.32(2), 1022.22(1)(f), 1022.33(1)(a) and (6)(a), and 447.209, Florida Statutes (2010), and Florida Administrative Code Rules 6B-1.001, 6B-1.006, and 6B-4.009.

The gravamen of the Notice of Specific Charges is that Respondent improperly assisted Ms. S.-N. in creating and expediting a purposely flawed Individual Education Plan (IEP) and a Matrix of Services form for Ms. S.-N.'s benefit in securing a McKay Scholarship for her daughter, S.N.<sup>1/</sup>

Paragraphs 8-13 of the Notice of Specific Charges contain the following factual allegations:

8. The McKay Scholarship Program is administered by the Florida Department of Education's (hereafter "FDOE"), Office of Independent Education and Parental Choice. The Scholarship allows parents of students with disabilities multiple options to choose the best academic environment for their child, including, inter alia, an opportunity to receive tuition monies to attend a participating private school.

9. As a staffing specialist Respondent is charged with the duty of ensuring compliance with Federal statutes, State statutes, and School Board rules concerning exceptional student education (hereinafter "ESE" or "SPED").

10. Respondent also oversees and participates in the creation of Individual Education Plans (herein after "IEP's") for

students with disabilities. These IEP's are used to determine eligibility for McKay Scholarships.

11. On or about October 2008, Respondent's supervisor and long time friend, [Ms. S.-N.], enlisted Respondent to aid in the expedited preparation of an IEP for her daughter, S.N., for purposes of obtaining a McKay Scholarship to pay for S.N.'s private school tuition.

12. Respondent served as the Local Educational Agency's (hereinafter "LEA") representative for purposes of creating the IEP.

13. The Respondent knew or should have known that the IEP development process was flawed and did not comply with the law or established School Board policies and procedures.

At the final hearing, the School Board presented the testimony of Jesse Bernstein, Respondent Lisa Parker, Lawrence Davidson, Dr. Yolando Sklar, Mark Finkelstein, Dr. Garnett Reynolds, Will Gordillo, Dr. Richard Rosen, Dr. Sue Buslinger-Clifford, Laura Harrison, Jesus Aviles, and Edna Waxman. Ms. Waxman testified during the School Board's case in chief and as a rebuttal witness. The parties stipulated to and the undersigned took official recognition of the relevant statutes and rules. Petitioner's pre-marked Exhibits 1, 6-8, 16-18, and 20-22 were admitted into evidence by stipulation. Petitioner's pre-marked Exhibits 2, 9-14, 19, and 24 were also admitted into evidence.

Respondent testified on her own behalf and presented the additional testimony of Dr. Laurie Karpf, Udyss Romano, S.N., and Tanya Jackson. Respondent's pre-marked Exhibits 29, 73, 82, 86, 102, 103, 108, 130-132, and 154 were admitted into evidence.

A Transcript of the proceedings, consisting of eight volumes, was filed on November 6, 2012. The deadline for the filing of Proposed Recommended Orders was extended twice on unopposed motions. Thereafter, each party timely filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to Florida Statutes (2012), and all references to rules are to the version thereof in effect as of the entry of this Recommended Order.

#### FINDINGS OF FACT

1. At all times material hereto, Petitioner was the constitutional entity authorized to operate, control, and supervise the public schools in Miami-Dade County, Florida.

2. Respondent has been employed by the School Board since 1986. During the time relevant to this proceeding, Respondent was the lead staffing specialist for the School Board's ESE program in Region I.

3. During the 2008-2009 school year, Michael J. Krop Sr. High School (Krop) was a school for which Respondent had responsibility.

4. The School Board's ESE program provides services to students who are determined eligible for such services. The eligibility determination is made by a staffing committee consisting of a minimum of three School Board professional employees.

5. The School Board has adopted the following procedure pertaining to the eligibility staffing committee<sup>2/</sup>:

A staffing committee, utilizing the process of reviewing student data including but not limited to diagnostic, evaluation, educational, or social data, determines a student's eligibility. A minimum of three (3) professional personnel, one (1) of whom is the district administrator of exceptional students or designee, meet as a staffing committee. For students being considered for eligibility as a student with a disability, the parent is invited to participate in this meeting . . . .

6. If a student is determined to be eligible for services through the ESE program, an IEP team is assembled to conduct an IEP meeting and to prepare an IEP for the student. The parents of the student are entitled to attend the IEP meeting as part of the IEP team. A local education agency (LEA) representative is a required member of an IEP team. The other required members of

the IEP are a general education teacher, a special education teacher, and an evaluation specialist.<sup>3/</sup> Relevant to this proceeding, a general education teacher and an evaluation specialist can be excused from the IEP meeting before the close of the meeting.

7. The members of a staffing committee that determines eligibility can also constitute the members of an IEP team. An eligibility determination is frequently made with an IEP team meeting ensuing immediately thereafter. There is nothing unusual about an eligibility determination and an initial IEP being accomplished on the same day.

8. "Specific learning disability" and "other health impaired" are two categories that qualify a student for ESE services.<sup>4/</sup>

9. School-based staffing specialists are assigned to schools to hold staffing meetings to determine eligible for services from the ESE program, and to write an IEP for a student found to be eligible. Generally, a lead staffing specialist is a position of support for school-based staffing specialists in the areas of organization, scheduling, and compliance with relevant substantive and procedural requirements of the Individuals with Disabilities Education Act, Florida Statutes, and rules. A lead staffing specialist also provides professional development to school-based personnel through in-

service training and individual support to schools. A lead staffing specialist is responsible for ensuring that eligibility determinations were based on adequate documentation in a timely fashion.

10. On June 27, 2008, the School Board published a "Memorandum" that solicited applicants for the position of "lead staffing specialist." That Memorandum contained the following under the heading "Job Responsibilities Include":

Serve as the Local Education Agency (LEA) Representative of the Multi-Disciplinary Team for eligibility, placement and dismissal decisions for students in the least restrictive environment.

Collect and review staffing data and allocation of personnel to facilitate adherence to required procedures and timelines for staffings.

Assist the SPED Instructional Supervisor in monitoring unit allocations, program enrollment and suspension and inclusion percentages.

Demonstrate knowledge in procedural safeguards, due process and mediation procedures.

Consult with the Regional Center SPED Instructional Supervisors to resolve issues related to the provision of programs and services to individual students.

Provide on-site technical assistance to teachers, administrators and support personnel in areas involving program planning, curriculum and instructional techniques for students.



Provide program assistance to parents and community agencies. Identify school needs regarding enrollment, unit allocation, equipment, materials and transportation.

Plan and conduct regularly scheduled staff meetings to maintain communication and provide for the dissemination of information.

Serve as the Region Center SPED Instructional Supervisor's designee in the identification and resolution of problems, issues and concerns related to special education services.

11. When necessary, a lead staffing specialist is also expected to serve as the LEA representative at a school-based staffing to determine a student's eligibility for services from the ESE program and to participate in the preparation of an IEP as a member of the IEP team.

12. A lead staffing specialist who serves as the LEA at an initial eligibility meeting or an IEP meeting is charged with ensuring that the School Board's policies are followed and that all necessary documentation is obtained. It is the School Board's responsibility to ensure that its policies comply with all applicable Federal and Florida statutes and rules.

13. The LEA at an IEP meeting has the responsibility of preparing a Matrix of Services form based on the services provided by the IEP. The completion of the form results in the generation of a number that is used to determine the level of funding the School Board receives for the student. For ease of

reference, that number will be referred to as the matrix number. A higher matrix number generates more funding than a lower number. A matrix number is also used to determine the level of funding for a McKay Scholarship. Again, a higher matrix number will result in greater funding.

14. Respondent has been adequately trained in the procedures for determining eligibility for ESE program services, for the completion of IEPs, and for the completion of Matrix of Service forms.

15. At the times relevant to this proceeding, Ms. S.-N. served as the School Board's Instructional Supervisor of ESE and was Respondent's direct supervisor. In addition to their professional relationship, Ms. S.-N. and Respondent had been close personal friends for over 25 years at the time of the formal hearing. S.N. is the daughter of Ms. S.-N..

16. At the request of Ms. S.-N., Respondent served as the LEA for the eligibility staffing and subsequent creation of an IEP for S.N. at Krop on October 15, 2008. Also at Ms. S.-N.'s request, Respondent served as the LEA on an IEP team that prepared a second IEP for S.N. on February 9, 2009.

17. Prior to the eligibility determination on October 15, 2008, S.N. was a student at American Heritage Academy, a private school in Plantation, Broward County, Florida.

18. Prior to the eligibility determination, Dr. Laurie

Karpf, a psychiatrist, had diagnosed S.N. with attention deficit hyperactivity disorder (ADHD) and mood disorder, NOS (not otherwise specified). Dr. Karpf prescribed for S.N. medication to treat ADHD.<sup>5/</sup>

19. Prior to the eligibility determination, Dr. Garnett Reynolds, a speech and language pathologist employed by the School Board, screened S.N. to determine whether S.N. had speech or hearing deficits. Dr. Reynolds determined that S.N. had no such deficits. Dr. Reynolds did not participate further in the eligibility determination or in drafting either IEP at issue.

20. On August 22, 2008, Dr. Yolanda Sklar, a school psychologist employed by the School Board, evaluated S.N. at the request of Ms. S.-N. Because S.N. was enrolled in a private school in Broward County, Dr. Sklar conducted the evaluation in her capacity as a "clinical psychologist," using the DSM-IV model, as opposed to the capacity as a school psychologist using School Board protocols.

21. Dr. Sklar's report stated the following as the "Reason for Referral":

[S.N.] is a 15 year, nine month old female who was referred for a psychological evaluation for reasons of academic difficulties in school. [S.] is enrolled in tenth grade at American Heritage School. Information was requested regarding [S.'s] level of intellectual functioning, academic achievement, and her learning aptitude in order to address the possibility of learning

disabilities. [S.] presents with a history of attentional difficulties and academic problems in school. She has struggled throughout her schooling years, but her difficulties in school have become more evident at the higher grades, with higher academic demands and expectations. [S.] also has Attention Deficit Disorder. She is currently on medication (Focalin) for treatment of attentional difficulties and she appears to be responding well to the medication. The purpose of this evaluation is to provide diagnostic clarification and assist with determination of [S.'s] educational needs. Recommendations are provided based on [S.'s] learning abilities and her instructional needs in order to insure her academic potential and her success in school.

22. Ms. S.-N. had, at times, been Dr. Sklar's direct supervisor. Dr. Sklar felt intimidated when Ms. S.-N. requested that she evaluate S.N. Nevertheless, Dr. Sklar's report and her testimony at the formal hearing established that she evaluated S.N. in a thorough and professional manner.

23. Dr. Sklar administered to S.N. the following tests:

- Wechsler Intelligence Scale for Children-IV
- Woodcock-Johnson-III Tests of Achievement
- Woodcock-Johnson-III Tests of Cognitive Ability
- Beery Developmental Test of Visual-Motor Integration-V
- Behavior Assessment System for Children, Parent Rating

- Behavior Assessment System for Children, Self-Report
- Sentence Completion Test-Adolescent
- Clinical Interview and Observations

24. Dr. Sklar's report contained the following "Summary and Conclusions":

[S.N.] is a 15 year, nine month old female who is functioning within the Average range of intellectual classification. Assessment of learning aptitude indicates a learning disorder or learning disability in processing speed. Academically, [S.] is not performing to the best of her ability and not reaching her potential due to learning disabilities. She is achieving significantly below her level of expectancy in reading fluency. Psychometric findings strongly support evidence of a specific learning disability in processing speed. A childhood history of Attention Deficit Disorder is also supported. The overall implications are that [S.] will require accommodations in the classroom and in testing situations to fully utilize her intellectual potential. The failure to accommodate may lead to academic performance well below her expected ability. Based on findings, it is imperative that [S.] receive individualized instructional adjustments in the classroom and test accommodations in order to meet her educational goals. Results and clinical impressions are consistent with a diagnosis of Attention Deficit Disorder/Hyperactivity Disorder, Predominately Inattentive Type, and Learning Disorder NOS (Not Otherwise Specified).

25. Dr. Sklar's report contained the following under the heading "Diagnostic Impressions":

The following diagnostic criteria is met in accordance with the Diagnostic and Statistical Manual of Mental Disorders-IV

(DSM-IV-TR), American Psychiatric  
Association:  
Axis I: 314.00 Attention  
Deficit/Hyperactivity Disorder,  
Predominately Inattentive Type

Axis II: 315.9 Learning Disorder, NOS

26. Dr. Sklar's report contained the following under the  
heading "Educational Strategies and Recommendations":

[S.] would benefit from educational software programs that are multi-modal and emphasize visual skills, as her visual memory processing skills appear to be her strongest learning modality. Software programs, such as Talking Books would be beneficial.

As [S.] has a history of Attention Deficit Disorder, it is imperative that directions be specific and given clearly. It may be necessary to repeat directions in order to assure attending skills and comprehension of instructions regarding the task at hand.

In light of deficits in processing speed, it is imperative that [S.] receive time accommodations in classroom assignments, exams, and standardized tests. Restrict the amount of work required on a single page if possible. Teaching techniques should begin with identification of individual parts, moving to integrated wholes. Keep visually presented material simple in format and uncluttered by excessive stimuli.

Classroom lectures may be taped in order of [S.] to play back lectures and take notes at her own pace. Strategies that may facilitate written tasks include providing outlines and visual cues such as color coding, numbering lines, etc.

Educational materials and tools, such as a computer/word processor, calculator, tape

recorder, spell-checker, ruler, etc., should be allowed as deemed necessary.

27. Dr. Sklar's report does not reflect an opinion as to whether S.N. met the eligibility criteria for ESE services in Miami-Dade public schools. At the formal hearing Dr. Sklar testified that S.N. did not meet criteria for eligibility under the SLD category. The School Board uses a discrepancy model, which measures the statistical difference from IQ and level of academic functioning. The difference in S.N.'s evaluation was one-half point short of the differential required by the School Board, which determined that she was not eligible, but suggested that further testing was warranted.

28. Prior to October 15, 2008, Ms. S.-N. instructed Respondent to determine S.N.'s eligibility for ESE services and to prepare an IEP for her daughter as soon as possible. Respondent could not remember the date that conversation took place, but it is clear that Respondent worked on very short notice.

29. The School Board contends that Respondent acted to the detriment of other students who were waiting to be evaluated for eligibility of ESE services or for an IEP by giving S.N. priority over those other students. The School Board's contention is rejected because there was insufficient evidence to establish that any student's staffing was delayed by

Respondent's actions.

30. Ms. S.-N. enrolled S.N. as a student at Krop on October 15, 2008. The enrollment record reflected that S.N. resided at an address in Miami-Dade County, Florida, within the Krop school zone. That was a false address. Although Respondent utilized that false address on the October 15, 2008, IEP, Respondent testified, credibly, that she pulled the address from the school computer. Respondent had no duty to verify the accuracy of that address. There was no evidence that Respondent knew or should have known that the address was false.

31. In response to Ms. S.-N.'s instruction, Respondent attempted to convene an eligibility team meeting and an IEP meeting at Krop on October 15, 2008. The meeting was held in the office of Elissa Rubinowitz, the Program Specialist (for ESE) at Krop.

32. On October 15, 2008, Respondent generated an IEP for S.N. that reflected that S.N. had been determined eligible for the following ESE programs: "Specific Learning Disabilities" and "Other Health Impaired." Under the heading "Signatures and Positions of Persons Attending Conference [sic]", the following signatures appear with the positions of each signer in parenthesis: Ms. S.-N. (parent), S.N. (student), Respondent (LEA representative), Ms. Rubinowitz (ESE teacher), Dr. Richard Rosen (evaluation specialist), and Lawrence Davidson (general



education teacher).

33. Mr. Davidson was not at the staffing committee team meeting that determined S.N.'s eligibility for services, nor did he attend the IEP meeting at Krop on October 15, 2008. Mr. Davidson's office at Krop was next door to Ms. Rubinowitz's office. After Respondent completed the IEP without Mr. Davidson's presence or input, Ms. Rubinowitz went to Mr. Davidson's office, gave him the IEP, and asked him to sign the IEP as the general education teacher. Mr. Davidson signed the IEP as the general education teacher.<sup>6/</sup>

34. The IEP reflects that S.N. was to be placed in all general education classes at Krop. Consequently, a general education teacher should have been a participating member of the IEP team. Because there was no general education teacher, the IEP team was inappropriately composed.

35. Similarly, Dr. Rosen was not at Krop on October 15, 2008. On the afternoon of October 15, 2008, Dr. Rosen happened to be at the Region I office when Ms. S.-N. asked him to come into her office to review Dr. Sklar's psychological report. The only persons present were Ms. S.-N., Respondent, and Dr. Rosen.

36. Dr. Rosen has known Dr. Sklar for many years and quickly reviewed her report. Ms. S.-N. had no questions about the report. After his review, Dr. Rosen signed the IEP as the evaluation specialist.

37. Although Dr. Sklar is a school psychologist employed by the School Board, her report pertaining to S.N. is properly considered as being a private psychological evaluation because Dr. Sklar's evaluation of S.N. was not prepared pursuant to School Board protocol.

38. Either Dr. Rosen or Respondent should have signed a form styled "Receipt of Private Psychological Evaluation," which would have acknowledged receipt of the private evaluation from Ms. S.-N. The form contains the following caveat: "A copy of this form should be kept in the student's cumulative folder." Respondent failed to ensure that this form was signed and placed in S.N.'s cumulative folder.

39. Dr. Rosen should have completed and signed a form styled "Review of Psychological Reports Originating Outside Miami-Dade County Public Schools." That form includes a section for the school psychologist to determine whether the report is sufficiently recent and whether the evaluator meets professional background criteria. At the bottom of the form is a note that "This form is required for all psychological evaluations originating outside M-DCPS." Respondent failed to ensure that Dr. Rosen completed and signed that form.

40. The determination that S.N. met ESE eligibility was not made by a properly convened staffing committee. There were three persons employed by the School Board at the Krop meeting

(Respondent, Ms. Rubinowitz, and Ms. S.-N.). Likewise, there were three persons employed by the School Board at the Region I office meeting (Respondent, Dr. Rosen, and Ms. S.-N.). Ms. S.-N. attended both meetings as a parent; not as a School Board professional. Ms. Rubinowitz and Dr. Rosen did not participate in the same meeting. Consequently, no staffing meeting as contemplated by the School Board's policies occurred because a minimum of three School Board professionals did not meet as a staffing committee to determine eligibility.

41. There was a dispute as to whether the staffing committee had adequate information to determine that S.N. met the criteria for ESE services under the SLD category or under the OHI category. That dispute is resolved by finding that a properly convened staffing committee had the right to rely on Dr. Sklar's report, on Dr. Karpf's records, and on input from Ms. S.-N. in concluding that S.N. was eligible under both categories. Further, the available information would have been sufficient for a properly convened staffing committee to determine that S.N. was eligible for ESE services under both categories.

42. There was insufficient evidence to establish that the substantive contents of the IEP developed October 15, 2008, were inappropriate.<sup>7/</sup>

43. The Matrix of Services form contains five "domains."

Domain A relates to "Curriculum and Learning Environment." Domain B relates to "Social/Emotional Behavior." Domain C relates to "Independent Functioning." Domain D relates to "Health Care." Domain E relates to "Communication." Under each domain is a "Level of Service" that begins with Level 1 and ends with Level 5. There is a descriptor on the form and in a handbook as to what constitutes a level of service. The person completing the Matrix of Service form assigns a number to each domain based on the level of service provided in the IEP. The numbers for the five domains are added together to produce what is referred to as the "Cost Factor Scale," which is used to determine state funding to the School Board. The higher the Cost Factor Scale, the more state funding the School Board would receive for the student. The Cost Factor Scale is also utilized in determining the funding for McKay Scholarships.

44. As part of the IEP process, Respondent completed a Matrix of Services form in conjunction with the October 15, 2008, IEP. Petitioner established that Respondent should have scored Domain A as a 3 as opposed to a 4. As scored by Respondent, the total domain rating was 12. If Respondent had correctly scored Domain A, the total domain rating would have been 11. Domain totals ranging from 10-13 produce a cost factor scale of 252. Because the Cost Factor Scale was not changed, this error did not become significant until Respondent completed

the Matrix of Services form in conjunction with the February 2009 IEP.

45. S.N. withdrew from Krop on October 23, 2008, and returned to her private school placement shortly thereafter.

46. Between October 2008 and February 2009, S.N.'s negative behaviors escalated.

47. On February 5, 2009, Ms. S.-N. re-enrolled S.N. at Krop. On the instructions of Ms. S.-N., Respondent convened an interim IEP meeting on February 9, 2009. The purpose of the meeting was to "review accommodations." An interim IEP coversheet was prepared by Respondent. Those purporting to sign the coversheet as having participated in the IEP team meeting and their positions were: Ms. S.-N. (parent), S.N. (student), Respondent (LEA), Ms. Rubinowitz (ESE teacher and evaluation specialist), and Mr. Davidson (general education teacher). As he did with the earlier IEP, Mr. Davidson signed the interim IEP coversheet on February 9, 2009, without having attended the IEP meeting or providing any input. No general education teacher participated in the IEP meeting. Consequently, this IEP team was not appropriately formed. Respondent failed to adhere to School Board procedures in assembling the IEP team.

48. At that meeting, the level of counseling for S.N. was changed from weekly to daily, and a provision was added for the counselor to consult with the family on a monthly basis to

monitor the status of S.N.'s focus on schoolwork. This change was based on input from Ms. S.-N. as to S.N.'s escalating behavior.

49. The body of the IEP was not changed to reflect the change in counseling for S.N. from a weekly basis to a daily basis. That omission was an error by Respondent. A note was added to the IEP to reflect the added provision for family counseling.

50. Respondent completed a Matrix of Service form on February 9, 2009, based on the interim IEP. Domain B was increased from a 3 to a 4 because of the change from weekly counseling to daily counseling. Domain D was increased from a 1 to a 2 because of the addition of monthly counseling with the student's family. The total domain rating increased from 12 to 14 based on the increases in Domains B and D. The Cost Factor Scale increased from a score of 252 to a score of 253.

51. Petitioner established that Domain B should not have been increased because the IEP does not reflect that the student would begin receiving daily counseling.

52. Because of Respondent's scoring errors, the final Cost Scale Factor was 253. Had Respondent correctly scored the Matrix of Services form, the final Cost Scale Factor would have been 252. Determining a level of service under a particular

domain requires some subjectively. While Respondent made the scoring errors reflected above, Petitioner failed to prove that Respondent deliberately "fudged" her scoring to benefit Ms. S.-N.<sup>8/</sup>

53. On February 20, 2009, S.N. was withdrawn from Krop by her father. Subsequent to that withdrawal, Ms. S.-N. applied for a McKay Scholarship for S.N. for the 2009-10 school year. The application included the two IEPs discussed herein and the two Matrix of Services forms completed by Respondent. Had Ms. S.-N. been successful in obtaining a McKay Scholarship, the amount of the scholarship would have been greater if it had been awarded on a Cost Factor Scale of 253 as compared to a Cost Factor Scale of 252.

54. Respondent had no knowledge that Ms. S.-N. intended to apply for a McKay Scholarship on behalf of S.N. at any time relevant to this proceeding.

55. S.N. has now graduated from a high school in Broward County, Florida. Until her graduation, S.N. received services and accommodations similar to those reflected on the IEPs at issue in this proceeding.

#### CONCLUSIONS OF LAW

56. DOAH has jurisdiction over the subject matter of and the parties to this case pursuant to sections 120.569 and 120.57(1).

57. Because Petitioner seeks to terminate Respondent's employment, which does not involve the loss of a license or certification, Petitioner has the burden of proving the allegations in its Notice of Specific Charges by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence. See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

58. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000)(relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

59. The School Board's Notice of Specific Charges alleges that Respondent is guilty of (I) misconduct in office, (II) immorality, (III) violation of School Board Rule 6Gx13-4A-1.21 relating to Responsibilities and Duties of School Board employees, (IV) violation of School Board Rule 6Gx13-4A-1.213 relating to the Code of Ethics, and (V) School Board Rule 6Gx13-4A-1.212 relating to Conflict of Interests.

60. Section 1012.33(6)(b) applies to Respondent's



employment and provides grounds for the dismissal or suspension of that employment. Included among those grounds are "immorality" and "misconduct in office" as those terms are defined by the State Board of Education.

61. Count I of the Notice of Specific Charges alleges that Respondent is guilty of misconduct in office. Florida Administrative Code Rule 6B-4.009(3) defines that term as follows:

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

62. Florida Administrative Code Rules 6B-1.001 and 6B-1.006 have been transferred to Florida Administrative Code Rules 6A-10.080 and 6A-10.081, respectively. Florida Administrative Code Rule 6A-10.080(2) and (3) provide as follows:

2. The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

3. Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

63. Florida Administrative Code Rule 6A-10.081(5)

provides, in relevant part, as follows:

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

\* \* \*

(h) Shall not submit fraudulent information on any document in connection with professional activities.

64. The two IEPs at issue in this proceeding reflect Mr. Davidson's participation on the IEP team as a general education teacher. That representation is false. The IEP dated October 15, 2008, reflects Dr. Rosen's participation on the IEP team as an evaluation specialist. That representation is false. Respondent failed to follow established School Board policies regarding assembling a staffing committee and an IEP team, and Respondent failed to collect required documentation. Respondent did not exercise the best professional judgment and integrity, did not maintain honesty in all professional dealings, and submitted documents (IEPs) that contained false information.

65. The definition of "misconduct" requires that the conduct is so serious "as to impair the [Respondent's] effectiveness in the school system." Impaired effectiveness in the school system can be found based on the conduct alone if the

conduct is sufficiently serious. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000). Respondent's conduct as found in this Recommended Order is sufficient without other proof to establish that Respondent's effectiveness in the school system has been impaired.

66. Count II of the Notice of Specific Charges alleges that Respondent is guilty of immorality. Florida Administrative Code Rule 6B-4.009(2) defines that term as follows:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

67. Petitioner's allegations of immorality are based on alleged facts that Petitioner did not prove. Respondent is not guilty of immorality as alleged in Count II of the Notice of Specific Charges.

68. Count III of the Notice of Specific Charges alleges that Respondent violated School Board Rule 6Gx13-4A-1.21, which relates to Responsibilities and Duties of School Board employees and provides, in relevant part, as follows under the heading Employee Conduct:

All persons employed by [the School Board] are representatives of the Miami-Dade County Public Schools. As such, they are expected to conduct themselves, both in their

employment and in the community, in a manner that will reflect credit upon themselves and the school system.

69. For the reasons discussed under Count I (misconduct in office), it is concluded that Respondent committed the violation alleged in Count III.

70. Count IV of the Notice of Specific Charges alleges that Respondent violated School Board Rule 6Gx13-4A-1.213, which relates to the Code of Ethics and provides, in relevant part, as follows:

I. INTRODUCTION

All members of [the School Board], administrators, teachers, and all other employees of Miami-Dade County Public Schools, regardless of their position, because of their dual roles as public servants and educators are to be bound by the following Code of Ethics. Adherence to the Code of Ethics will create an environment of honesty and integrity and will aid in achieving the common mission of providing a safe and high quality education to all Miami-Dade County Public Schools students.

\* \* \*

2. The educator's primary professional concern will always be for the student and the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

3. Aware of the importance of maintaining the respect and confidence of one's colleagues, students, parents, and other members of the community, the educator

strives to achieve and sustain the highest degree of ethical conduct.

\* \* \*

### III. FUNDAMENTAL PRINCIPLES

The fundamental principles upon which this Code of Ethics is predicated are as follows:

\* \* \*

Honesty - Dealing truthfully with people, being sincere, not deceiving them nor stealing from them, not cheating or lying.

\* \* \*

Each employee agrees and pledges:

1. To abide by this Code of Ethics, making the well-being of the students and the honest performance of professional duties core guiding principles.

2. To obey local, state and national laws, codes and regulations.

\* \* \*

5. To take responsibility and be accountable for his or her actions.

6. To avoid conflict of interest or any appearance of impropriety.

\* \* \*

8. To be efficient and effective in the delivery of job duties.

71. For the reasons discussed under Count I (misconduct in office), it is concluded that Respondent committed the violation alleged in Count IV.

72. Count V of the Notice of Specific Charges alleges that Respondent violated School Board Rule 6Gx13-4A-1.212, which relates to Conflicts of Interest and provides, in relevant part, as follows:

No School Board employee shall corruptly use or attempt to use his or her official position or perform his or her official duties to secure a special privilege, benefit, or exemption for himself, herself, or others.

73. Petitioner failed to establish that Respondent acted "corruptly" in using her position to expedite the IEP process for her supervisor's daughter or by the errors she made scoring the Matrix of Services form. Respondent was acting on her supervisor's instructions when she expedited the IEP process. The scoring errors were mistakes that do not constitute a violation of the Conflict of Interest Rule. Respondent is not guilty of the violations alleged in Count V of the Notice of Specific Charges.

74. Because of the findings of misconduct in office, the School Board has the authority to dismiss, suspend, or otherwise discipline Respondent's employment. In its Proposed Recommended Order Petitioner asserts that Respondent's employment should be terminated. That assertion is based, largely, on factual allegations it did not prove. Termination is, in the opinion of

the undersigned, not warranted. In forming this opinion, the undersigned has considered Respondent's long history of employment with the School Board, the absence of any harm to any person or entity, and that she was dealing with her supervisor as the parent of the student. She failed to comply with procedures and she made mistakes, but she did not act corruptly.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the School Board of Miami-Dade County, Florida, enter a final order adopting the Findings of Fact and Conclusions of Law contained in this Recommended Order. It is further RECOMMENDED that the final order find Lisa Parker guilty of the violations alleged in Count I (misconduct in office), Count (III) (Violation of School Board Rule 6Gx13-4A-1.21 relating to Responsibilities and Duties of School Board employees), and Count (IV) (Violation of School Board Rule 6Gx13-4A-1.213 relating to the Code of Ethics) of the Notice of Specific Charges and as found in this Recommended Order. It is further recommended that the final order find Lisa Parker not guilty of the violations alleged in Count II (immorality) and (V) (Violation of School Board Rule 6Gx13-4A-1.212 relating to Conflict of Interests). For the violations found, it is recommended that the final order suspend Lisa Parker's employment without pay for a period of 30 school days. Because

Lisa Parker has been suspended for more than 30 school days, it is RECOMMENDED that her employment be reinstated with back pay.

The calculation of back pay should not include pay for the 30-day suspension period.

DONE AND ENTERED this 15th day of February, 2013, in Tallahassee, Leon County, Florida.



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CLAUDE B. ARRINGTON  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of February 2013.

#### ENDNOTES

<sup>1/</sup> Ms. S.-N. was the respondent in DOAH Case No. 10-4143 (Fla. DOAH May 16, 2012.) Beginning at paragraph 5 of the Findings of Fact section of that Recommended Order, ALJ Edward T. Bauer described the John M. McKay Scholarships for Students with Disabilities Program, which is codified at section 1002.39. It is unnecessary to describe that program in this Recommended Order because there was, as found below, insufficient evidence to establish that Ms. Parker knew that Ms. S.-N. intended to apply for a McKay Scholarship on behalf of her daughter.

<sup>2/</sup> See Petitioner's exhibit 19, Bates stamped page 653).



<sup>3/</sup> See Petitioner's exhibit 19, Bates stamped page 660.

<sup>4/</sup> Florida Administrative Code Rules 6A-6.03018 and 6A-6.030152, define those terms.

<sup>5/</sup> Dr. Karpf established that S.N.'s issues were serious and substantial.

<sup>6/</sup> Mr. Davidson testified that it was not an unusual practice at Krop for a general education teacher to review and sign an IEP after it had been prepared without having participated as a member of the IEP team.

<sup>7/</sup> The IEP contained a scrivener's error. On page 2 of the IEP (Petitioner's exhibit 22, Bates stamped page 1155) the word "not" was left out of the following statement: "[S.] has a learning disability in processing speed that is [not] allowing her to reach her full potential . . . ." In finding no substantive deficits, the undersigned has not ignored the criticism Ms. Waxman had of the October 15, 2008, IEP.

<sup>8/</sup> Errors in scoring Matrix of Services numbers are apparently not unusual. In 2008, the School Board initiated what was called the "Matrix Project," during which Matrix Service forms were reviewed and Matrix of Services scores were changed upward, which resulted in an increase in Cost Factor Scales. That project generated some \$20 million for the School Board in additional state funding.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.