

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 11-1040
)
MICHAEL BROWN,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 28, 2011, in Jacksonville, Florida, before Lawrence P. Stevenson, the designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Derrel Q. Chatmon, Esquire
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For Respondent: David A. Hertz, Esquire
Duval Teachers United
1601 Atlantic Boulevard
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STATEMENT OF THE ISSUE

The issue is whether Petitioner, the Duval County School Board, may terminate Respondent's employment as an instructional employee based upon the conduct alleged in the letter titled

"Notice of Termination of Employment Contract and Immediate Suspension Without Pay" (the "Notice") from Superintendent of Schools Ed Pratt-Dannals to Respondent dated February 15, 2011.

PRELIMINARY STATEMENT

On or about February 15, 2011, Respondent Michael Brown received a copy of the Notice, which set forth the following charge and factual allegations in support thereof:

CHARGE I: Violation of regulations relating to the public school system, those violations being:

Code of Ethics:

6B-1.006 (3) (a)-- Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

6B-1.006 (3) (e)-- Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

6B-1.001 (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.

6B-1.001 (3)-- Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

SUMMARY OF NATURE AND SPECIFICATION OF CHARGE:

February 9, 2011-- You pushed a male student up against the lockers, yelled at him, and hit him in the head causing his head to hit the lockers. You were arrested and charged with Child Abuse-- Intentional Infliction of Physical or Mental Injury-- Personal Weapons with No or Minor Injuries-- Felony.

PREVIOUS DISCIPLINE:

July 9, 2009-- Step III Progressive Discipline-- Suspension without pay for five (5) days^{1/} due to a physical altercation that took place between you and a student.

The Notice informed Mr. Brown of his right to a formal hearing to contest the factual allegations recited in the Notice, and, should he invoke his right to a formal hearing, that the Duval County School Board (the "School Board") would act to suspend him from employment without pay as of April 6, 2011, pursuant to section 1012.33, Florida Statutes. On February 21, 2011, Mr. Brown timely invoked his right to a formal hearing via a letter from his counsel to Mr. Pratt-Dannals.

On February 28, 2011, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") for the assignment of an Administrative Law Judge and the conduct of a formal hearing. The matter was scheduled for final hearing on

April 28 and 29, 2011, though only the first day was required to complete the hearing.

At the hearing, the School Board presented the testimony of Melissa Horne and Sean Kiernan, teachers at Fort Caroline Middle School ("Fort Caroline"); Jennifer Bridwell, principal of Fort Caroline; Adam Carr, the school resource officer ("SRO") at Fort Caroline; and Vicki Reynolds, chief human resources officer for the School Board. The School Board's Exhibits 1 through 27 were admitted into evidence without objection. Respondent testified on his own behalf. Respondent's Exhibit 1 was admitted into evidence without objection.

The one-volume Transcript of the hearing was filed at DOAH on May 23, 2011. Respondent's Proposed Recommended Order was timely filed on May 31, 2011. Respondent's Proposed Recommended Order was timely filed on June 2, 2011.

FINDINGS OF FACT

1. Respondent Michael Brown has been employed by the School Board as a teacher since February 1997. He is a certified instructional employee covered by the Duval County Teacher Tenure Act, Chapter 21197, Laws of Florida (1941), as amended ("Tenure Act") and the Collective Bargaining Agreement ("CBA") between Duval Teachers United and the School Board for 2009-2011. At the time of the events at issue in this proceeding, Mr. Brown was assigned to Fort Caroline.

2. Fort Caroline employs a classroom management program called "CHAMPS" to establish the disciplinary climate in the school. All teachers at the school receive CHAMPS training, which emphasizes the creation of a "safe and civil" approach to discipline.

3. Sean Kiernan, who teaches sixth through eighth grade social studies at Fort Caroline, testified about the CHAMPS training he received when he was hired by the School Board. The CHAMPS training instructs the teacher on how to deal with situations that arise during the school day. The teacher learns methods for maintaining a calm environment and a series of steps for reacting to classroom disruptions, up to sending for the SRO, who is a sworn law enforcement officer.

4. Fort Caroline Principal Jennifer Bridwell testified that in the summer of 2010, the school also provided "ICARE" training to show teachers how to positively interact with students and more specifically how to deal with difficult students.

5. Melissa Horne, a sixth grade science teacher at Fort Caroline, described ICARE as training in how to treat students with respect and how to de-escalate problematic situations in the classroom.

6. Mr. Brown claimed that he had received no training on how to deal with a violent situation. No witness at the hearing

testified as to actually seeing Mr. Brown attend CHAMPS or ICARE training, though Ms. Bridwell testified that she knew Mr. Brown was present during the summer 2010 planning sessions that included the ICARE training.

7. Regardless of whether Mr. Brown received specific training, Ms. Bridwell convincingly testified that no one in Fort Caroline's administration has ever indicated that physical violence is an acceptable alternative for a teacher who is dealing with a physically difficult situation. If a teacher is faced with an intractable student, the proper course of action is to refer the student to the school's administrators and, if necessary, to call for assistance from the SRO.

8. Under exigent circumstances, a teacher is permitted to restrain a student, meaning to hold the student so that he is not a danger to himself or those around him. Striking a student is never considered an acceptable means of discipline at Fort Caroline or any other Duval County school.

9. On February 9, 2011, at about 1:30 p.m., classes were changing at Fort Caroline. Ms. Horne was leading her class up the "A" hallway toward the Science Lab in Room A-8. (A schematic drawing of Fort Caroline was introduced as School Board Exhibit 24 and is included at Appendix A of this Recommended Order.)

10. Mr. Kiernan was leading his class down the A hallway from his classroom at A-3 to the restrooms in front of A-10 and B-7, as it was his practice to allow his students a bathroom break before the start of class. His students lined the hallway in front of rooms A-8 and B-5, directly across from the restrooms.

11. Mr. Kiernan testified that as he came around the corner from the A hallway to the bathrooms, he saw Mr. Brown walking quickly past him in the opposite direction. Mr. Kiernan then saw Ms. Horne and her class walking toward his class, and he greeted Ms. Horne in the middle of the intersection of the main hallway and the A hallway.

12. Mr. Brown was calling out to a student, T.B., who was walking up the A hallway. Ms. Horne testified that at first T.B. kept walking, until Mr. Brown yelled at him again to come to him. T.B. then turned around and started walking toward Mr. Brown. Ms. Horne stated that Mr. Brown was clearly angry.

13. Ms. Horne testified that Mr. Brown walked directly up to T.B. and backed him into the lockers between rooms A-5 and A-7. Mr. Brown did not actually touch T.B., but used his bulk and forward movement to "bully" the child into the lockers. Ms. Horne heard Mr. Brown say, "You don't ever hit me. Don't try me like that. I'm a grown man." There were only inches between Mr. Brown's face and T.B.'s.

14. Ms. Horne testified that she was facing Mr. Kiernan in such a way that she could only see Mr. Brown and T.B. with her peripheral vision. She saw Mr. Brown's hand move toward T.B.'s face, then she heard a "pop" that sounded like a slap or blow.

15. Mr. Kiernan was directly facing Mr. Brown and T.B. Mr. Kiernan heard Mr. Brown say, "You don't put your hands on me" and "I'm a grown man" and "You don't do that." Mr. Kiernan stated that Mr. Brown had placed his right hand on T.B.'s shoulder to guide him into the lockers 15 to 20 feet away. When they stopped at the lockers, Mr. Brown's face was less than a foot from T.B.'s. T.B. stood motionless with his hands at his sides as Mr. Brown spoke. Then, Mr. Brown reached up with his right hand and slapped the left side of T.B.'s face, near his ear.

16. Mr. Brown said a couple more things and then walked away. T.B. stood there looking stunned, his hands still at his sides. In disbelief, Mr. Kiernan turned to Ms. Horne and asked, "Did he just slap him?"

17. T.B. was a student in Mr. Kiernan's class. Mr. Kiernan described him as an honor student, classified as "gifted," who was not a discipline problem but was at times given to "horseplay" with other boys in the class. Mr. Kiernan called T.B. over and asked him how he was doing. Mr. Kiernan

testified that T.B. looked "a little shook up" but did not appear to have suffered any real physical harm.

18. Ms. Horne proceeded with her class to the science lab. Before she reached the room, Mr. Brown had returned. He apologized to her for what she had witnessed. He told her that he was very sorry that she had to see that, without specifying what "that" was.

19. Mr. Kiernan took his class to room A-3. Mr. Brown approached Mr. Kiernan as the latter was holding the classroom door open to allow the students to enter the classroom. Mr. Brown apologized, saying he was sorry that Mr. Kiernan had to see that, again without specifically referencing what Mr. Kiernan had seen.

20. Mr. Kiernan recalled that Mr. Brown said, "Maybe I should tell somebody" about the incident. Mr. Kiernan told Mr. Brown that he intended to report the incident to the school's administration, whether or not Mr. Brown did.

21. Mr. Brown recalled telling Mr. Kiernan that he was definitely going to report the incident. Mr. Brown did not recall Mr. Kiernan stating his own intention to make a report.

22. In any event, Mr. Brown did immediately proceed to the office of assistant principal Susan Price, who took Mr. Brown into the office of the principal, Ms. Bridwell.

23. This was not the first incident involving a physical confrontation between Mr. Brown and a student. On May 29, 2009, while teaching at Forrest High School, Mr. Brown grabbed a ninth grade student who had hit him with a ruler. The results of the investigation of this incident were less than clear as to the exact sequence of events, but the School Board concluded that Mr. Brown exercised poor judgment in making physical contact with the student. The School Board's chief human resources officer, Vicki Reynolds, recommended that Mr. Brown's employment be terminated. However, on July 9, 2009, Mr. Brown received a formal reprimand and a 15-day unpaid suspension. He was also ordered to enroll in and attend the School Board's Employee Assistance Program ("EAP").^{2/}

24. Ms. Bridwell was aware of Mr. Brown's history when he transferred to Fort Caroline prior to the 2009-2010 school year. She made a point of telling Mr. Brown that he had a "clean slate" at Fort Caroline, and that she would not tell anyone about his past discipline.

25. Ms. Bridwell testified that on the afternoon of February 9, 2011, she was called out of her office by Ms. Price, who told her that Mr. Brown had hit a student. Ms. Bridwell walked into her conference room, where Ms. Price had left Mr. Brown. Ms. Bridwell testified that Mr. Brown was sitting in a chair. He was bent over, shaking his head, and appeared

distraught. When Ms. Bridwell asked him what had happened, he replied, "I can't believe it happened again."

26. Ms. Bridwell contacted the School Board's office of professional standards for guidance and was advised to contact Adam Carr, the SRO for Fort Caroline. Ms. Bridwell spoke with Mr. Kiernan and then with Ms. Horne. Each teacher separately told the same story, that Mr. Brown had yelled at a student and then hit him.

27. Ms. Bridwell also spoke with T.B., who still seemed shocked and frightened by the incident. T.B. admitted having playfully touched Mr. Brown on top of his head before the incident. He told Ms. Bridwell that he had done the same thing before to Mr. Brown without provoking a violent reaction.

28. SRO Carr called in Detective Ricky Dowling of the Duval County School District Police to assist in the investigation. SRO Carr interviewed T.B. and also found him to be shocked and stunned by the sequence of events. T.B.'s statement to SRO Carr was consistent with his report to Ms. Bridwell. He was walking down the hall with Mr. Kiernan's class toward the restrooms when he saw Mr. Brown, "swiped him softly" on his head, then ran ahead. Mr. Brown caught up with him, told him this was "a grown man's game," and then slapped T.B. on the side of his head.

29. SRO Carr and Det. Dowling interviewed and took written statements from Mr. Kiernan, Ms. Horne, and five students who witnessed the event. The students all agreed that T.B. had rubbed Mr. Brown's head, which angered Mr. Brown and caused him to chase T.B. down the hall and hit him. Two of the students specifically stated they heard Mr. Brown refer to himself as a "grown man" who doesn't "play like that" or "play that game."

30. Detective Dowling interviewed Mr. Brown, with SRO Carr also in attendance. Mr. Brown told the detective that he struck T.B. in self-defense. T.B. had already hit him once and, as Mr. Brown spoke to him in the hallway, T.B. raised his hand as if to strike Mr. Brown again.

31. While he waited in Ms. Bridwell's office for the interview with the police, Mr. Brown had prepared a written statement, which read as follows in its entirety:

At approximately 1:40 p.m. on February 9, 2009, while walking through the hallway I heard someone call my name. Upon turning around there were four boys running towards me. I stopped to find out what was going on when one of the boys, [T.B.] smacked me on the top front of my head. He then, when I told him that it is not a game to hit anyone, lifted his hand quickly. Not knowing what he was going to do next I reacted to his movement and without thought my hand came in contact with him. I apologized for my reactionary moments afterwards, but reiterated that he did not need to strike an adult playing or otherwise. While walking away one of the other three boys, which had a very dark

complexion, was talking with the other two as though the assault on me was a game. His words were said while laughing, "Did you see how [T.B.] smacked Mr. Brown on top of his shiny bald head?"

32. Because of the consistency of the witness statements, SRO Carr concluded that there was probable cause to arrest Mr. Brown on a charge of child abuse under section 827.03(1)(a), Florida Statutes. The state attorney ultimately declined to prosecute the criminal case against Mr. Brown.

33. Mr. Brown testified at the hearing. He stated that he usually stands just outside his classroom, B-9, during change of class. On the afternoon of February 9, 2011, he walked down the hallway during change of class because he had heard two students discussing their plans to beat up a third student in the girls' locker room. Mr. Brown saw the principal near the area where the two boys' restrooms meet on the B hallway and told her about the potential situation in the girls' locker room.

34. After speaking to Ms. Bridwell, Mr. Brown stood reading a memo in the crossing of the B and the main hallways. He turned to go back to room B-9 when he heard someone call his name. He turned around and saw four or five students rushing at him. T.B. was in midair and before Mr. Brown could react, T.B. hit him very hard on the forehead with the heel of his hand. T.B. then ran down the hallway.

35. Mr. Brown went after T.B. in order to take him to the office and write a referral for his misbehavior. Mr. Brown stated that he was concerned for the safety of the other students. If T.B. was bold enough to hit a teacher in the middle of the hallway, there was no telling what he might do next.

36. Mr. Brown testified that T.B. ran away from him down the main hallway then made a right turn up the A hallway. Mr. Brown stated that he followed and upon making his own turn up the A hallway was startled to see T.B. now running toward him. T.B. almost ran into Mr. Brown before stopping.

37. Mr. Brown stated, "I'm a grown man. You don't have any business hitting a grown man, much less anyone else." At that point, T.B. raised his right hand toward Mr. Brown's head again. Mr. Brown reflexively moved his own right hand in a defensive motion and accidentally made contact with T.B. Mr. Brown testified that he was not sure where he struck T.B.

38. Mr. Brown's version of the incident directly contradicts that of Mr. Kiernan, who testified that T.B. was standing motionless with his hands at his sides as Mr. Brown spoke to him virtually nose to nose before slapping him with his right hand. Mr. Kiernan's testimony is inherently more credible than Mr. Brown's, and is supported by the statements of several other witnesses to the altercation. No one else saw T.B. raise

his hand to Mr. Brown after the initial head rub witnessed by all of the students who made statements to the police.

39. Ms. Horne testified that T.B. stopped and walked toward Mr. Brown, who then proceeded to move the student toward the lockers. Mr. Kiernan also saw Mr. Brown move T.B. toward the lockers. Ms. Horne's and Mr. Kiernan's testimony is credible on this point. Mr. Brown's testimony that T.B. ran back toward him and almost collided with him is not credited.

40. Mr. Brown testified that his apologies to Ms. Horne and Mr. Kiernan were not intended to acknowledge that he had done anything wrong. He was sorry they had seen the incident and offered an apology "for peace sake."

41. During cross-examination, Mr. Brown was asked why he never wrote a referral on T.B., if his intention from the start had been to take the student to the office to write a referral. Mr. Brown responded that no one in the office provided him with a referral form, and he believed that his direct communication with Ms. Price and Ms. Bridwell would serve the purpose of a referral.

42. Mr. Brown testified that his statement to Ms. Bridwell, "I can't believe it happened again," did not refer to his own actions in striking a student but to the fact that he had once again been attacked by a student.

43. Mr. Brown testified that at the time he believed the truth about T.B.'s attack would emerge because of the many students who witnessed the events in the hallway. He alleged that some of the witness statements were from students who had been involved in the attack.

44. Mr. Brown stated that he was not angry or upset during the incident. He was merely trying to bring T.B. to the office, after lecturing him about showing proper respect to adults.

45. Mr. Brown's testimony as to these points of evidence was not credible. The greater weight of the credible evidence established that T.B. either rubbed or smacked Mr. Brown's head as he ran past. Even if T.B. was merely being playful, he clearly merited a referral for the public disrespect he displayed toward a teacher. Mr. Brown would have been fully justified in escorting T.B. to the office for discipline.

46. However, Mr. Brown was angered and embarrassed by T.B.'s actions. His written statement includes the telling detail that other students were laughing at him after T.B. hit him.

47. There was no element of self-defense in Mr. Brown's actions. There were no exigent circumstances. Mr. Brown knew there were two other teachers a short distance down the hallway on whom he could call for help if he believed himself to be in danger. The evidence is clear that Mr. Brown lost control of

himself and, in full view of two teachers and their students, cornered T.B. against the lockers, berated him, and slapped him in the face.

48. Realizing that he had lost control of himself, Mr. Brown attempted to make apologies to the adult witnesses. His distraught demeanor and his statement to Ms. Bridwell were further indications that Mr. Brown realized he had overreacted and feared the coming consequences.

49. Ms. Reynolds testified that, given the facts of this case, she would have recommended that Mr. Brown's employment be terminated even if he had not been suspended in 2009 for virtually the same conduct.

50. This incident could not help but effect the way Mr. Brown is viewed by his peers in the teaching profession and by the students who are entrusted to his care. His effectiveness in the classrooms of Fort Caroline has been irreparably impaired. Further, the repeat nature of this violation would understandably make the School Board's administrators reluctant once again to transfer Mr. Brown in the mere hope that two such incidents might prompt him to address his lack of self control with provocative students.

51. The evidence fully supports the School Board's preliminary decision to terminate Mr. Brown's employment. As Ms. Reynolds stated, this incident was serious enough to

establish that Mr. Brown should not be in a classroom with students anymore.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to section 120.569 and subsections 120.57(1) and 1012.33(6) (a), Florida Statutes.^{3/}

53. The School Board has the burden to establish by a preponderance of the evidence the grounds for disciplining Mr. Brown. See, e.g., McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); 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, 884 (Fla. 3d DCA 1990).

54. Under the Tenure Act, Mr. Brown is a tenured teacher whose employment can be terminated only for "cause." Section 4 of the Tenure Act provides that causes for the discharge of a teacher include "persistent violation of or willful refusal to obey the laws of the State of Florida or regulations adopted by authority of law, relating to the public schools or the public school system."

55. Article V. D. 1 of the CBA, the Progressive Discipline Policy, provides as follows, in relevant part:

. . . The following progressive steps must be followed in administering discipline, it being understood, however, that some more severe acts of misconduct may warrant circumventing the established procedure:

- a. Verbal Reprimand
 - 1. No written conference summary is placed in personnel file
 - 2. Employees must be told that a verbal reprimand initiates the discipline process
- b. Written Reprimand
- c. Suspension without Pay
- d. Termination

56. Mr. Brown is an instructional employee as defined by subsection 1012.01(2), Florida Statutes. The School Board has the authority to suspend or terminate instructional employees pursuant to subsections 1012.22(1)(f) and 1012.33(6)(a), Florida Statutes.

57. The standard for termination of instructional personnel is "just cause," pursuant to subsection 1012.33(1)(a), Florida Statutes.^{4/}

58. Subsection 1012.33(1)(a), Florida Statutes, provides, in pertinent part:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education:
immorality, misconduct in office,
incompetency, two consecutive annual

performance evaluation ratings of unsatisfactory under section 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under section 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under section 1012.34, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

59. The School Board in this case has not cited a specific aspect of the statutory "just cause" definition as the basis for Mr. Brown's termination. However, the facts alleged in the Notice would, if proven, amount to "misconduct in office" constituting just cause to terminate his employment.

60. Florida Administrative Code Rule 6B-4.009(3) provides:

(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.

61. Florida Administrative Code Rule 6B-1.001 provides, in relevant part:

(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.

62. Florida Administrative Code Rule 6B-1.006 provides, in relevant part:

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

* * *

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

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

63. By the definition quoted above, "misconduct in office" consists of a violation "so serious as to impair the individual's effectiveness in the school system." Impairment may be established by direct evidence or may be inferred from the nature of the violation itself. Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492, 498 (Fla. 5th DCA 2000).

64. The evidence established that Mr. Brown struck a student in the middle of a crowded hallway for no reason other than retaliation. The student had embarrassed Mr. Brown in front of other students in the hallway, and Mr. Brown reacted in a manner that ensured those students would never again view him

as a responsible adult authority figure. Mr. Brown's actions undermined the respect of his fellow teachers at Fort Caroline, who were shocked and appalled at his behavior. Finally, his actions destroyed the confidence of his superiors, who had given him a second chance by not terminating his employment after the 2009 incident despite Ms. Reynolds' recommendation.

65. Mr. Brown contended that the student had "attacked" him, and contended that the School Board was at fault for failing to train him on how to respond when attacked. The evidence indicated that the student struck Mr. Brown. However, Mr. Brown was not under "attack" when he slapped T.B. Every witness but Mr. Brown agreed that T.B. was standing still while Mr. Brown administered a scolding, and all were shocked when Mr. Brown hit T.B. No teacher should require CHAMPS or ICARE training to know that it is inappropriate to strike a student under the circumstances presented in this case.

66. There is no question in this case that Mr. Brown failed to exercise the best professional judgment. Mr. Brown did not make a reasonable effort to protect the student from conditions harmful to the student's mental health and safety. Mr. Brown intentionally exposed a student to unnecessary embarrassment.

67. Mr. Brown committed misconduct in office by violating Florida Administrative Code Rules 6B-1.001(2) and 6B-

1.006(3)(a)&(e) in a manner so serious as to impair his effectiveness in the school system.

68. In the alternative, Mr. Brown's actions constitute grounds for termination of his employment under the Progressive Discipline Policy of the CBA. In 2009, Mr. Brown received a fifteen-day suspension without pay. The next step in the Progressive Discipline Policy is termination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Duval County School Board enter a final order terminating the employment of Michael A. Brown as an instructional employee of the School Board.

DONE AND ENTERED this 12th day of September, 2011, in Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of September, 2011.

ENDNOTES

^{1/} The parties stipulated that this was actually a 15-day suspension without pay.

^{2/} Ms. Reynolds testified that she later initiated a telephone meeting with Mr. Brown because he had failed to complete the EAP program. Mr. Brown offered Ms. Reynolds no explanation for his failure to follow through on the program.

^{3/} Unless otherwise indicated, references to the Florida Statutes are to the 2011 edition.

^{4/} The CBA, which was entered as the School Board's Exhibit 27, provides at Article V. C. that employees may be "suspended without pay only for just cause and only by action of the School Board." Article V.D.7 provides that an employee "may be suspended without pay only for just cause and only by action of the School Board." Though the agreement appears to be silent as to the standard for termination, it stands to reason that "just cause" would be required for the ultimate sanction as well as for the quoted lesser penalties.

COPIES FURNISHED:

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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 should be filed with the agency that will issue the Final Order in this case.