STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OSCEOLA COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 12-0544TTS
	)	
LILLIAN GOMEZ,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 2 and June 7 and 8, 2012, via video teleconference with sites in Orlando and Tallahassee, Florida. The parties appeared before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Susan P. Norton, Esquire
Marc Aaron Sugerman, Esquire
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For Respondent: Thomas F. Egan, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to suspend and terminate Respondent from her contract.

PRELIMINARY STATEMENT

By letter dated January 11, 2012, Terry Andrews, the superintendent of the School District of Osceola County, Florida, (School District), notified Respondent, Lillian Gomez (Ms. Gomez or Respondent), that he was suspending her employment and recommending her dismissal from employment with Petitioner, Osceola County School Board (School Board or Petitioner). This January 2012 letter asserted that the School Board had just cause to discipline Ms. Gomez based on the alleged violations:

> 1. In October 2011, at Sunrise Elementary School, you placed hot sauce on crayons and Play-doh in an effort to discipline an autistic, nonverbal student, [or] in an effort to modify the student's behavior and keep that student from eating Play-doh and crayons.
>
> 2. The use of hot sauce is an aversive therapy and is likely to be uncomfortable or hurtful to the student (who was five years old).
>
> 3. The use of an aversive therapy must be preapproved according to School District policies and you obtained no approval to use hot sauce as any type of therapy or discipline. Moreover, under no circumstances would any official in the School District of Osceola County ever authorize in an IEP [individual education plan] or a Behavior Plan the use of hot sauce in the manner in which you used it whereby you soaked the crayons and Play-doh in the hot sauce and then insisted on the child actually licking or eating the same (initially, the student did not eat these materials, so you made sure that the student put these materials in his mouth).

Ms. Gomez timely requested an administrative hearing to contest the allegations. On February 10, 2012, the case was forwarded to the Division for assignment of an Administrative Law Judge to conduct the hearing.

Pursuant to section 1012.33(6)(a)2., Florida Statutes (2011),[1/] the parties were entitled to proceed to final hearing within 60 days after Ms. Gomez's request for an administrative hearing was received. The parties jointly waived the 60-day hearing provision. The final hearing was scheduled for April 9, 2012. On March 15, the School Board filed a "Motion for Protective Order and Request for Emergency Hearing," and, later that same day, Respondent's Response and Motion to Compel Discovery was filed. On March 16, a telephonic hearing was held at which time both parties moved ore tenus for a continuance. Both written motions were denied, but the joint ore tenus motion for continuance was granted. The hearing was rescheduled to May 2. After the first day of testimony, it was determined that two additional hearing days were necessary. The case was continued to June 7 and completed on June 8, 2012.

Prior to the start of the hearing on June 7, the undersigned addressed the then-outstanding motions. Ms. Gomez's Motion to Allow Testimony by Deposition (Motion) was held until the hearing concluded. When Ms. Gomez rested her case, the need for additional deposition testimony became moot; thus, her Motion is

denied. Ms. Gomez's April 26 motion to strike and for sanctions and the School Board's May 3 response to motion to strike and cross motion for sanctions are both denied.

At the final hearing, the School Board presented the testimony of Janine Jarvis, Arima Santana, Linda Schroder-King, Claudia Duran, Tammy Cope-Otterson, Austria Medina de Luna,[2/] and Shaun Hawkins. Additionally, the School Board called a rebuttal witness, Cara Colovos. Petitioner's Exhibits 4, 5, 7a,[3/] 9, 10, 13, 17, 18, 24 through 26, 33, and 42[4/] were admitted into evidence. Ms. Gomez testified on her own behalf and presented the testimony of Yokasta Cleto, Alfredo Vallejo, and Tammy Cope-Otterson. Respondent's Exhibits 2, 10,[5/] 21, and 24 were admitted into evidence.

At the conclusion of the hearing, both parties agreed to file their proposed recommended orders (PROs) within ten days of the filing of the transcript. The School Board filed its PRO on July 2, 2012. Ms. Gomez filed her PRO on July 3. Volumes I, II, and V of the Transcript were filed on July 5, and Volumes III and IV of the Transcript were filed on July 6. The parties timely filed their PROs, and each has been duly considered in the preparation of this Recommended Order. Petitioner's Exhibit 42 was filed on July 23, 2012.

On July 9, 2012, Ms. Gomez filed a Motion to Strike Petitioner's Proposed Recommended Order and for Sanctions (Strike

Motion). Four days later, the School Board filed a Response to Respondent's Motion to Strike Petitioner's Proposed Recommended Order and for Sanctions (Strike Response). The undersigned finds merit with the Strike Motion; however, the prayer for relief is too severe. Therefore, the School Board's references to online articles and court cases found on pages 23 and 24 of its PRO (including the attachments) are stricken.

FINDINGS OF FACT

1. The School Board is duly constituted and charged with the duty to operate, control, and supervise all free public schools within Osceola County, Florida. Art. IX, Fla. Const.; ch. 1012, Fla. Stat. The School Board has the authority to discipline employees. § 1012.22(1)(f), Fla. Stat.

2. Ms. Gomez has been employed by the School Board for about ten years.[6/] Ms. Gomez is a Florida-certified teacher. She is certified to teach exceptional student education (ESE), regular education (kindergarten through sixth grade), and English as a second language (ESL). As a member of the School Board's instructional staff, Ms. Gomez's employment contract was subject to section 1012.33, which provides that her employment will not be suspended or terminated except for just cause. A copy of the teacher's employment contract was not offered into evidence, nor was the applicable collective bargaining agreement.

3. As a teacher, Ms. Gomez was required to abide by all Florida Statutes which pertain to teachers, the Code of Ethics and the Principles of Conduct of the Education Profession in Florida, and the Policies and Procedures Manual of the School Board. Ms. Gomez has not been previously disciplined by the School Board. Of the School District personnel performance plan for teacher development assessment forms introduced at hearing, Ms. Gomez received "High Performance" ratings in all categories for three consecutive school years beginning in August 2006 through the end of the school year in June 2009.[7/]

4. During the 2011-2012 school year, Ms. Gomez was an ESE kindergarten teacher at Sunrise Elementary School (Sunrise). Arima Santana and Austria Medina de Luna were the two para-professionals assisting in Ms. Gomez's classroom of six or seven ESE students.

5. Ms. Gomez demands a lot of work from her para-professionals because her ESE students demand a lot of direction and attention. She uses teaching centers throughout her classroom for writing, reading, computer activities, and math. Each student has an individual education plan (IEP) with goals, and everything is geared to help the students reach those goals. Ms. Gomez taught the reading and math components and was ultimately responsible for the running of the classroom.

6. Ms. Santana was first employed at Sunrise as an ESE assistant starting with the 2011-2012 school year. Prior to her Sunrise employment, she worked in an office at Flora Ridge Elementary School (Flora Ridge) as an IEP assistant. In this IEP position, she was responsible for making sure all the Flora Ridge students' IEPs were in order and in compliance. Although Ms. Santana has a ten-year-old autistic child[8/] and appeared to have some knowledge of autism, her formal education or training as a teacher or teacher's aide in ESE, specifically autism or otherwise, was not documented, discussed, or provided at the hearing.

7. Ms. Santana was in charge of the writing center. She had crayons at her work center. Additionally, she brought in jumbo-size crayons to assist the students with their writing skills. Ms. Santana usually had one or two students at a time, and, when she had a higher functioning student on one side, she would generally have a lower functioning student on the other side. She employed the "hand-over-hand" writing technique to help guide the students in forming their letters, which means that she would place her hand over the student's hand to guide their writing. Her attention would be focused on that student while the other student attempted other work. There were other crayons at other locations in the classroom.

8. Ms. Santana was an assistant to Ms. Gomez; however, at some point in October, she requested a transfer to Flora Ridge. Ms. Santana felt uncomfortable in Ms. Gomez's classroom; yet, she did not explain to the Sunrise administration her reason for requesting the transfer. Ms. Santana and Ms. Gomez differed on their approaches to teaching the ESE students.

9. Ms. de Luna was first employed at Sunrise as an extended-day program worker for the 2010-2011 school year. The following year, Ms. de Luna was hired as an ESE assistant in Ms. Gomez's classroom. Ms. de Luna has a degree in civil engineering and maintained a Florida teaching certificate for several years.[9/] Ms. de Luna was in charge of the computer center. She was also responsible for transitioning the students from one center to another and assisting the students with their bathroom needs. She usually had two or three students at the computer center at a time. Ms. de Luna had taught lower-performing students in math subjects before, but her training in ESE or autistic students was limited to a course or two offered by the School Board. Ms. de Luna and Ms. Gomez did not share the same teaching techniques or experiences, and Ms. de Luna called Ms. Gomez a witch because of her teaching techniques.

10. J.A. (or the student) was a non-verbal, five-year-old, autistic student in Ms. Gomez's classroom. J.A. functioned at a lower level than the other students. J.A. was known to eat

inedible objects such as rocks, mulch, and crayons prior to entering Ms. Gomez's classroom.

11. An IEP is developed by a specific committee (comprised of the student's parent(s), an ESE and regular education teacher, and related school district service personnel) for students with special educational needs to ensure that the child receives a free and appropriate public education in the least restrictive environment. An IEP is created to address the specific instruction, related services, accommodations, supplemental aides, and services that an exceptional student needs to be successful. The School Board directs that the ESE teacher is responsible for "drafting the IEP."

12. J.A.'s father[10/] was present when the IEP was written on June 3, 2011, following J.A.'s evaluation on March 31. There was no mention in the IEP that J.A. had a propensity to place inedible objects in his mouth, and, therefore, there was no goal established for him to stop the behavior. However, both J.A.'s occupational therapy assessment (date of test: April 25, 2011) and J.A.'s psycho-educational reevaluation report (evaluation date: March 31, 2011) reflected that J.A. "seems to need to have something in his mouth" and "puts inedible things in his mouth." The report also contained some "stereotyped behaviors" that J.A.'s father reported to the psychologist. It was recorded that J.A. would frequently "lick, taste or attempt to eat inedible

objects."[11/] The School Board personnel were aware of J.A.'s propensity to eat inedible objects; yet, there was no plan to modify that behavior. Several School Board personnel placed the responsibility for addressing this issue with others involved with J.A. Unfortunately, no person in authority timely took that necessary action. Ms. Gomez was not J.A.'s ESE teacher when the IEP was drafted in June 2011,[12/] nor was she present when it was discussed or written.

13. Linda Schroeder-King is the co-coordinator for ESE for the School Board. Her position involves administrative duties as well as the supervision of the special educational services for students throughout the district. She is familiar with the Individuals with Disabilities Education Act (IDEA) and the School Board's policies and procedures regarding ESE students and their needs.

14. The School Board utilizes positive behavior support for all students. The School Board does not have a document that contains an approved aversive therapy policy and procedure, nor does the School Board have someone who is responsible for approving aversive therapies. Ms. Schroeder-King testified that a behavior analyst would do an evaluation and would have to make a recommendation, but that the recommendation would have to be approved. Yet, no person was identified who could approve (or disapprove) such a recommendation.

15. J.A. was assigned to Ms. Gomez's classroom and began the 2011-2012 school year in August 2011. Shortly after the school year began, Ms. Gomez, Ms. Santana, and Ms. de Luna each noticed that J.A. put inedible objects in his mouth while in the classroom and on the playground. J.A. participated in the various centers around the room.[13/] It was while at the writing center that Ms. Santana noticed that, when she turned to assist another student, J.A. would grab crayons and put them in his mouth. Although not done daily, J.A. would frequently grab a crayon and chew it. Ms. Gomez or one of the para-professionals would attempt to remove the crayons from J.A.'s mouth; however, when an autistic child clinches his mouth shut, there is little that can be done to open it.

16. Sometime in early October 2011, in an attempt to modify J.A.'s eating of inedible objects, Ms. Gomez peeled the paper wrapper off several jumbo-size crayons and placed them in a disposable cup. She then poured Louisiana hot sauce over the crayons. Ms. Gomez allowed the cup of hot sauce crayons to sit. Then Ms. Gomez removed the hot sauce crayons, placed them on a towel, and allowed them to dry. There was a strong odor to those hot sauce crayons. Ms. Gomez instructed Ms. Santana to put the hot sauce crayons in a plastic zip-lock baggie labeled with J.A.'s name and directions that other students were not to use those crayons. Ms. Santana complied with this request. There

was no evidence presented that the hot sauce crayons retained any of the hot characteristics of hot sauce other than a strong odor.

17. Although the baggie with the hot sauce crayons was placed on the table at the writing center for several days, neither Ms. Santana nor Ms. de Luna ever saw Ms. Gomez put a hot sauce crayon in J.A.'s mouth. Ms. Santana saw J.A. pick up other non-hot sauce crayons and chew or mouth them while at the writing center during that time.

18. Play-doh was also in the classroom; however, it was seldom if ever used. None of the classroom adults observed J.A. grabbing, mouthing, chewing or eating any Play-doh at any time. At approximately the same time as the hot sauce crayons were made, Ms. Gomez also massaged hot sauce into some black Play-doh. As directed, Ms. Santana placed the hot sauce Play-doh in a separate plastic zip lock baggie labeled with J.A.'s name and directions that other students were not to use that Play-doh.

19. At the time of the alleged Play-doh event, Ms. Santana was at the writing center while Ms. Gomez was at her desk with J.A. Ms. Gomez made some statement and Ms. Santana turned to see what was happening. Ms. Santana testified that Ms. Gomez placed "a little piece of play-doh" or "physically put a piece" in his mouth and that J.A. spit it out. Ms. Santana's testimony is undermined by her inability to describe other details surrounding the alleged incident.[14/] Ms. de Luna repeatedly testified that,

when Ms. Gomez allegedly said "look, look," Ms. de Luna turned away because she did not want to watch what was happening with J.A. Yet, she testified that she did not see J.A. spit anything out, that he just chewed something. Her testimony contradicts what Ms. Santana said she saw and does not support any visual confirmation of what was or was not placed in J.A.'s mouth. Ms. Gomez denies she ever put Play-doh or anything in J.A.'s mouth. Based on the totality of the Play-doh evidence, there is no basis in this case to credit Ms. Santana's testimony over that of Ms. Gomez. Ms. Santana, while a sincere witness, was unable to provide specific details, and her testimony is insufficient to support a finding of guilt as to the alleged Play-doh incident.

20. Ms. Santana did not balk at bagging the hot sauce crayons or Play-doh and did not confront Ms. Gomez after she witnessed the alleged Play-doh incident. Ms. Santana did not attempt to determine whether or not J.A. was harmed in any fashion. While it is understood that J.A. was non-verbal, he did have other means of communication. J.A. could point to things and did engage in classroom activities, albeit in an unconventional manner. J.A. did not show any reaction to the alleged Play-doh incident. Further, as no one ever saw Ms. Gomez place a hot sauce crayon in J.A.'s mouth, and no one saw a hot sauce crayon in his mouth, there was no reaction to see.

21. On October 14, 2011, several days to a week (or longer) after the alleged Play-doh incident, Ms. de Luna and Ms. Gomez had a conference with Cara Colovos, Sunrise's assistant principal. The conference was allegedly about on-going issues between the two.[15/] There was an airing of grievances from both parties. Ms. de Luna gave the hot sauce bottle, the bag of hot sauce crayons, and the bag of hot sauce Play-doh to Ms. Colovos.

22. There is no credible evidence that Ms. Gomez "insisted on the child [J.A.] actually licking or eating"[16/] the hot sauce crayons or Play-doh or that she "made sure that the student put these materials [hot sauce crayons and hot sauce Play-doh] in his mouth." (emphasis added). J.A. was at Ms. Santana's writing center when the hot sauce crayons were present. And, although Ms. Santana allegedly saw Ms. Gomez put Play-doh in J.A.'s mouth, the specific allegation was either he licked or ate the Play-doh (which he spit out), or he put the Play-doh in his own mouth, which he did not.

23. In this case, it is clear that placing hot sauce on crayons and Play-doh warrants some form of discipline. Although no noticeable harm came to the student or any student, the mere creation of the material is contrary to School Board policy. There was no credible evidence introduced that Ms. Gomez's effectiveness as a teacher in the school system was impaired.

CONCLUSIONS OF LAW

24. The Division has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 1012.34(3)(d), Fla. Stat.

25. Terry Andrews' letter is the only charging document in this case. The charging document is the instrument by which the School Board provides Ms. Gomez with notice of the charges against her.[17/] The specific allegations set forth in that letter (found on page two of this Order) will not be set forth again. It is well-settled that a professional cannot be disciplined for an offense that is not charged in the complaint. Trevisani v. Fla. Dept't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005).

26. In this proceeding, the School Board seeks to suspend and terminate Ms. Gomez's employment for "just cause." The School Board bears the burden of proving the allegations in the letter. The standard of proof is by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990); see also § 120.57(1)(j), Fla. Stat.

27. A "preponderance of the evidence" is 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. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000) (relying on American Tobacco Co. v. State, 697 So. 2d

1249, 1254 (Fla. 4th DCA 1997), quoting Bourjaily v. U.S., 483 U.S. 171, 175 (1987)).

28. Pursuant to section 1012.33(6)(a), the School Board is authorized to suspend or dismiss an employee:

> [A]t any time during the term of the contract for just cause as provided in paragraph (1)(a). The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid. . . .

29. Section 1012.33(1)(a) defines "just cause" to include:

> [B]ut is not limited to, the following instances, as defined by rule of the State Board of Education: . . . misconduct in office, ...

30. Further, Florida Administrative Code Rule 6A-5.056[18/] provides in pertinent part:

> "Just cause" means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:
>
> * * *
>
> (2) "Misconduct in Office" means one or more of the following:
>
> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6B-1.001, F.A.C.;

> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C.;
>
> (c) A violation of the adopted school board rules;
>
> (d) Behavior that disrupts the student's learning environment; or
>
> (e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

31. The letter also included an allegation that Ms. Gomez had engaged in "misconduct in office." Although there were no School Board policies submitted that control this, the definition of "misconduct in office" is defined in rule 6A-5.056(2), and that rule definition is instructive. "Misconduct in office" is defined as a violation of the Code of Ethics of the Education Profession or the Principles of Professional Conduct for the Education Profession in Florida (Code of Ethics), which is so serious as to impair the individual's effectiveness in the school system.

32. Florida Administrative Code Rule 6B-1.001 provides:

> (1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

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

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

33. Rule 6B-1.006(3) provides in pertinent part:

(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.

34. The statutes and rules which provide the grounds for the discipline of Ms. Gomez's employment are penal in nature; therefore, they must be construed in favor of the employee. Rosario v. Burke, 605 So. 2d 523, 524 (Fla. 2d DCA 1992).

35. The School Board has discretion in defining what constitutes "just cause" for taking disciplinary action against employees, including suspension or termination. See Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217, 218 (Fla. 2d DCA (1994) (Blue, J.

concurring). See also § 1012.23(1) (authorizing district school boards to adopt rules governing personnel matters, except as otherwise provided by law or the State Constitution).

36. The School Board did not introduce at hearing any School Board policies, procedures or rules pertaining to the types of discipline for teachers.

37. The School Board proved by a preponderance of the evidence that Ms. Gomez placed hot sauce on crayons and Play-doh in an effort to modify the student's behavior and keep that student from eating crayons and Play-doh. Ms. Gomez did not exercise the best professional judgment or maintain her integrity when she mixed hot sauce with the crayons and or Play-doh. For that she should be disciplined in some fashion.

38. The School Board did not prove there was any intent to punish the student. The School Board did not prove that Ms. Gomez "insisted on the child [J.A.] actually licking or eating the same (initially, the student [J.A.] did not eat these materials, so you made sure that the student put these materials in his mouth)."

39. The School Board does not have a written policy against using aversive therapy. Ms. Gomez could not obtain pre-approval to use aversive therapy because there was no written policy to seek such approval, nor was there a specific individual to whom she could make the request.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Petitioner, Osceola County School Board: (1) finding Respondent's behavior to be inappropriate; (2) upholding the suspension without pay to-date; (3) reinstating Respondent as a classroom teacher; and (4) placing her on probation for a period of not less than two years.

DONE AND ENTERED this 17th day of August, 2012, in Tallahassee, Leon County, Florida.

LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of August, 2012.

ENDNOTES

[1/] Unless otherwise noted, all statutory references are to the Florida Statutes (2011).

[2/] Juan Corredeo, a Spanish-English interpreter, was sworn in and served as Ms. de Luna's interpreter.

[3/] The School Board's Exhibit 7a only contains three news articles. Exhibit 7 was a compilation of several unrelated documents, which were excluded from the exhibit received.

[4/] Petitioner's Exhibit 42, the deposition of Ms. de Luna, was not provided prior to the hearing. During the hearing, the School Board's counsel offered the deposition into evidence and agreed to provide a copy of it after the hearing. Following the issuance of an Order seeking the deposition, Exhibit 42 was filed. Although there were five exhibits marked for identification, none were attached to the deposition.

[5/] Exhibit 6 is a "Draft" of J.A.'s IEP; however, it was the only IEP furnished and was discussed as if it were the "current" IEP.

[6/] Ms. Gomez was not "rehired" for one year by the School Board; however, she worked for the Orange County School Board and returned to the School Board the following year. Although the School Board cited to Petitioner's Exhibit 2 when providing the year Ms. Gomez's contract was not renewed, Petitioner's Exhibit 2 was not offered nor received into evidence.

[7/] The ratings were for six different areas: organization and discipline; planning and delivery of instruction including technology; knowledge of subject matter; assessment of student performance; professional responsibilities and development plan; and evaluation of instructional needs. The 2008-2009 assessment form was the most recent assessment admitted into evidence. Prior assessments used the same six areas, but the ratings were either "E" for effective or "ER" for effective with recommendations. Of the 18 areas, Ms. Gomez had 15 effective ratings and three effective with recommendations.

[8/] The child was placed in a regular classroom several grades higher than kindergarten.

[9/] Ms. de Luna's teaching certificate expired as she was unable to pass the English component of the teaching certificate examination.

[10/] J.A.'s father and step-mother are J.A.'s guardians, and they participated in the IEP process.

[11/] Although J.A.'s psycho-educational report is hearsay, the hearsay was corroborated by testimony.

[12/] IEPs are to be reviewed no less than annually to determine whether the goals are being achieved.

[13/] The classroom was arranged so that the centers (writing and computer) were each facing the same direction, but separated by several feet and not specifically aligned behind one another. Ms. Gomez's desk was also behind these two centers and off to one side. The computer desk was in front of the writing table, such that Ms. de Luna would have to look over her left shoulder to see Ms. Santana working at the writing center, and beyond Ms. Santana and any students seated with her to see Ms. Gomez's desk. Ms. Santana would have to look over her left shoulder to see Ms. Gomez at her desk.

[14/] Ms. Santana testified: "She [Ms. Gomez] said, like, look. Look at what I'm going to do, so I turned around and looked and saw when she put it in his mouth, but other than that, no, I don't recall. I can't remember." (emphasis added). (See volume II, page 170, lines 3 through 6). Ms. Santana's failure to immediately report this untoward event to the school administration is incomprehensible.

[15/] Respondent's Exhibit 2 is a contemporaneously written statement by Ms. Colovos regarding the conference with Ms. Gomez and Ms. de Luna.

[16/] "Eating" is "the act of one that eats," and "eat" is "to take into the mouth, chew, and swallow (food)," The American Heritage Dictionary of the English Language 411 (1973).

[17/] The hearing was conducted based on the January 11, 2012, School Board letter wherein Ms. Gomez was suspended with pay, and there was a recommendation for her dismissal. There was an inference that Ms. Gomez had been fired by the School Board; however, the Division was never provided any documentation to that effect. Counsel for Ms. Gomez filed the appropriate letter on January 17, 2012, requesting an administrative hearing.

[18/] Florida Administrative Code Rule 6B-4.009 was transferred to rule 6A-5.056 in July 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 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.