

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 12-2859TTS

RHEA COHEN,

Respondent.

_____/

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 13-0704PL

RHEA PLAUT COHEN,

*AMENDED AS TO FILE
DATE AND ENDNOTES ONLY

Respondent.

_____/

*AMENDED RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in Fort Lauderdale, Florida, on May 9, 2013, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Charles T. Whitelock, Esquire
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For Respondent: Robert F. McKee, Esquire
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STATEMENT OF THE ISSUES

As to DOAH Case No. 12-2859TTS, whether Rhea Cohen (Respondent), a classroom teacher, committed the acts alleged in the Amended Administrative Complaint filed by Robert Runcie, as Superintendent of the Broward County Schools (Superintendent) and, if so, the discipline that should be imposed against Respondent's employment.

As to DOAH Case No. 13-0704PL, whether Respondent committed the acts alleged in the Administrative Complaint filed by Pam Stewart, as Commissioner of Education (Commissioner) and, if so, the discipline that should be imposed against Respondent's teacher's certificate.

PRELIMINARY STATEMENT

This is a consolidated proceeding pertaining to factual allegations relating to Respondent's treatment of students. The Superintendent seeks to terminate Respondent's employment in Case No. 12-2859TTS, and the Commissioner seeks to discipline Respondent's teacher's certificate in Case No. 13-0704PL.

As will be discussed in the Conclusions of Law section, there are two different standards of proof. The Superintendent must prove his case by a preponderance of the evidence. The

Commissioner must prove her case by clear and convincing evidence.

All findings of fact set forth herein have been established by clear and convincing evidence. No factual dispute has turned on differences between the two standards.

Separate discussions as to the School Board's case and the Commissioner's case are set forth in the Conclusions of Law section. Separate recommendations have also been made.

At the times relevant to this proceeding, Respondent was employed by the Broward County School Board (School Board) as an Exceptional Student Education (ESE) teacher at Crystal Lake Middle School (Crystal Lake). At its regularly scheduled meeting on August 7, 2012, the School Board took action to suspend Respondent's employment without pay and institute proceedings to terminate her employment. Respondent timely challenged the School Board's action. The matter was referred to DOAH, where it was assigned DOAH Case No. 12-2859TTS.

On December 10, 2012, the Superintendent filed "Petitioner's Motion to Amend Administrative Complaint," which the undersigned granted on December 11. The Amended Administrative Complaint, dated December 7, alleged certain facts pertaining to Respondent's treatment of students and, based on those facts, alleged in three separate counts that Respondent was guilty of (I) immorality, (II) misconduct in office, and (III) moral

turpitude. The Superintendent relied on the following in bringing these charges: sections 1001.51, 1012.27(5), and 1012.33, Florida Statutes, and Florida Administrative Code Rule 6B-4.009(2), (3) and (6).^{1/}

By Administrative Complaint dated November 30, 2012, the Commissioner alleged certain facts pertaining to Respondent's treatment of students and, based on those facts, alleged that Respondent was guilty of: (Count 1) gross immorality or an act involving moral turpitude in violation of section 1012.795(1)(d); (Count 2) personal conduct which seriously reduced her effectiveness as an employee of the school board in violation of section 1012.795(1)(g); (Count 3) violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules in violation of section 1022.795(1)(j); (Count 4) failing to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/physical health and/or safety in violation of rule 6A-10.081(3)(a)^{2/}; (Count 5) intentionally exposing a student to unnecessary embarrassment or disparagement in violation of rule 6A-10.081(3)(e); and (Count 6) harassing or discriminating against a student on the basis of race, color, religion, sexual orientation, or social and family background in violation of rule 6A-10.081(3)(g).

Respondent timely challenged the allegations of the Commissioner's Administrative Complaint. The matter was referred to DOAH, where it was assigned DOAH Case No. 13-0704PL.

On March 13, 2013, the parties filed their Joint Motion to Consolidate, which the undersigned granted by order entered on March 13.

At the final hearing, Petitioners presented the testimony of Kimberly Sorren (a former ESE teaching intern^{3/} at Crystal Lake), Donna Taylor Rollins (ESE paraprofessional), Lisa Phillips (ESE paraprofessional), Ray Montalbano (ESE teacher), Darlene Hudson (guidance director), and Sabine Phillips (principal). With the exception of Ms. Sorren, all of Petitioners' witnesses were employed at Crystal Lake at the times relevant to these proceedings and at the time of the formal hearing. Petitioners entered into evidence 12 pre-marked exhibits pursuant to stipulation.

Respondent testified on her own behalf, but offered no other testimony and no exhibits.

A Transcript of the proceedings, consisting of one volume, was filed on May 23, 2013. The deadline for the filing of Proposed Recommended Orders was extended on an unopposed motion filed by Respondent. Thereafter, the parties timely filed Proposed Recommended Orders, which have 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, the School Board has been the constitutional entity authorized to operate, control, and supervise the public schools in Broward County, Florida; and Robert Runcie was Superintendent of Schools.

2. At all times material hereto, the Commissioner has been the head of the state agency responsible for certifying and regulating public school teachers in the State of Florida; and Pam Stewart was the Commissioner.

3. Respondent has been employed by the School Board since 2002 and holds a Professional Services Contract, issued in accordance with section 1012.33(3)(a). During the time relevant to this proceeding, Respondent was an ESE classroom teacher at Crystal Lake.

4. During the 2007-2008 school year, Respondent was employed as an ESE classroom teacher at Atlantic West Elementary School teaching students on the autism spectrum. During that school year, the Education Practices Commission (EPC) reprimanded Respondent for sleeping in class while students were present and for using restraints inappropriately to control or manage

autistic and exceptional student education students. The EPC imposed an administrative fine against her in the amount of \$500.00. Thereafter, Respondent transferred to Crystal Lake.

5. Respondent taught ESE students at Crystal Lake for the 2010-2011 and 2011-2012 school years. The events at issue in this proceeding occurred during either the 2010-2011 school year or the 2011-2012 school year. Exact dates were available for some of the events, but unavailable for other events.

6. Respondent's classroom at Crystal Lake for those two school years was divided into two halves, separated by tables and rolling chalkboards that did not form a solid wall.

7. For the 2010-2011 school year, Respondent taught her class of ESE students on one side of the divided classroom and a Ms. Knighton taught on the other side.

8. For the 2011-2012 school year Respondent shared the classroom with Mr. Montalbano. On one side of the classroom was Respondent's class, consisting of 11 ESE students. On the other side of the room was Mr. Montalbano's class, consisting of seven ESE students. Mr. Montalbano's class was smaller because his class functioned at a lower level than Respondent's class.

9. On October 4, 2011, student J., a non-verbal, wheel chair-bound boy, and student D., a boy with Down's syndrome, were sitting next to each other in Respondent's classroom. Student D. did something to irritate student J.

Student J. balled up his fist as if to strike student D.

Respondent, in front of the entire class, Lisa Phillips (an ESE paraprofessional), and Ms. Sorren, made the following statement:

"So is the cripple [student J.] going to beat up the retard [student D.]".^{/4} Other students in the classroom laughed at student J. and student D.

10. Student J.'s wheelchair is motorized. After making the statement quoted above, Respondent attempted to move student J. into a corner. When student J. moved the wheelchair away from the corner, Respondent unplugged the wheelchair's battery and made the statement: "Now who has the power. I am in control, not you." The other students laughed at student J. Respondent then moved student J. to the corner.^{/5}

11. On October 11, 2011, Respondent sent student J. to Mr. Montalbano's classroom and commented that "he's too much of a bother."

12. One day at dismissal, student J. asked Respondent three or four times to be taken to the bathroom. Respondent did not respond to student J. The bus arrived, but the driver refused to accept student J. because of his request to go to the toilet. Mr. Montalbano, who overheard student J.'s requests to Respondent, took over the responsibility for student J.

13. Respondent became frustrated while helping student J. with the computer after student J. got the wires to the

headphones tangled. Respondent ripped the headphones out of the back of the computer leaving the male connection in the female end of the computer.

14. In a private discussion with Mr. Montalbano, Respondent referred to student D. as being a "moron."

15. Respondent sent her 11 students to Mr. Montalbano's side of the classroom, which housed ten computers. There was a disturbance because one student did not have a computer.

Respondent came to Mr. Montalbano's side of the classroom and told student D. to give up his computer. Student D.'s first language is Bulgarian. When student D. muttered in protest, Respondent yelled at him to express himself in English. When student D. left the computer, his place was quickly taken by another student. Student D. began to cry. Respondent walked back to her side of the classroom, leaving student D. crying in Mr. Montalbano's side of the classroom.

16. On October 11, 2011, student Mi., an 11 year-old female on the autism spectrum, was playing with a puzzle during free time when she spotted an open computer. Student Mi. left the puzzle pieces out to go to the computer. Respondent noted the puzzle on the table and yelled out, "Who left this puzzle out?" Student Mi. hid under a table in reaction to Respondent's statement. Respondent came to the table, roughly grabbed student Mi., and pulled her out from under the table. Respondent led

student Mi. to the table with the puzzle and yelled in front of the class: "I don't know what your mother teaches you at home, but you're a little, spoiled brat and I am not going to clean up after you." Respondent then took student Mi.'s doll away from her and put her in time out for the remainder of the day, approximately 30 minutes.

17. On another occasion, Respondent had the other members of the class imitate student Mi., after student Mi. had engaged in self-stimulatory behavior. The other students laughed at student Mi.

18. In October 2011, Ms. Hudson discovered Respondent and student Mi. in Mr. Montalbano's half of the classroom with the lights dimmed. Ms. Hudson thought student Mi. had been crying. Ms. Hudson reported the incident to her principal, but she did not question Respondent, nor did Respondent volunteer to Ms. Hudson an explanation of the circumstances that resulted in Respondent being in the darkened classroom with student Mi. At the formal hearing, Respondent explained that student Mi. had run into traffic while waiting to be transported from school. Respondent testified, credibly, that she was trying to calm down student Mi.^{/6}

19. Ms. Sorren testified, credibly, that during the short time she was in Respondent's classroom (approximately three school days), she heard Respondent address the students as

morons, monkeys, jungle monkeys, and animals. That testimony was consistent with the other testimony as to the language used by Respondent in her classroom.

20. Petitioners established that Respondent repeatedly yelled at her students to "shut up," described a student's behavior as being "stupid," and called at least one student a "brat."

21. Student Mo., a female on the autism spectrum, was new to Respondent's class. On an unidentified date, Respondent directed student Mo. to go to timeout. After student Mo. refused to go to timeout, Respondent shoved student Mo. into the timeout area.

22. During the 2010-2011 school year, Respondent became upset with student C., a female, and ordered her out of her classroom. When student C. talked back to Respondent, Respondent threw student C.'s backpack and her shoes over the chalkboard that divided the classroom. Ms. Knighton and her class were in the part of the classroom into which Respondent threw the objects. Student C. became very upset.

23. Respondent became upset with Ma., a male student. Ma. had a snack on his desk. Respondent knocked the snack to the floor and smashed it with her foot.

24. Petitioners established that Respondent engaged in a pattern of misconduct.

25. Respondent's effectiveness in the school system has been impaired.

CONCLUSIONS OF LAW

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

THE SUPERINTENDENT'S BURDEN OF PROOF

27. Because the School Board, acting through the Superintendent, seeks to terminate Respondent's employment, which does not involve the loss of a license or certification, the School Board has the burden of proving the allegations in its Amended Administrative Complaint 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).

28. 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)).

THE COMMISSIONER'S BURDEN OF PROOF

29. In this proceeding the Commissioner seeks to discipline Respondent's Florida Educator Certificate. Consequently, the Commissioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987) and McKinney v. Castor, 667 So. 2d 387 (Fla. 1st DCA 1987)

THE SUPERINTENDENT'S ALLEGED VIOLATIONS

30. Section 1012.33(1)(a) includes the following as just cause to terminate a teacher's professional services contract:

. . . 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 or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

31. The Superintendent's Amended Administrative Complaint alleged that Respondent was guilty of:

(Count 1) immorality,
(Count 2) misconduct in office, and
(Count 3) moral turpitude.

THE COMMISSIONER'S ALLEGED VIOLATIONS

32. Section 1012.795(1) provides, in relevant part, as follows:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person

the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

* * *

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

* * *

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

* * *

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

33. The Superintendent's Administrative Complaint alleged that Respondent was guilty of:

(Count 1) gross immorality or an act involving moral turpitude,

(Count 2) personal conduct which seriously reduced her effectiveness as an employee of the school board,

(Count 3) violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education,

(Count 4) failing to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/physical health and/or safety,

(Count 5) intentionally exposing a student to unnecessary embarrassment or disparagement, and

(Count 6) harassing or discriminating against a student on the basis of race, color, religion, sexual orientation, or social and family background.

IMMORALITY AND MORAL TURPITUDE

34. Count 1 of the Superintendent's Amended Administrative Complaint charges, in relevant part, that:

. . . Respondent's acts constitute acts of immorality, that is, conduct inconsistent with the standards of public conscience and good morals. Respondent's conduct is sufficiently notorious to bring Respondent and/or the educational profession into public disgrace or disrespect, and impair Respondent's service in the community.

35. Count 3 of the Superintendent's Amended Administrative Complaint charges, in relevant part, that:

. . . Respondent's acts constitute acts of moral turpitude, that is, acts of baseness,

vileness or depravity in the private and social duties, which, according to the accepted standards of the time, a person owes to his fellow human or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

36. Count 1 of the Commissioner's Administrative Complaint charges, in relevant part that:

. . . Respondent has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

37. Rule 6A-5.056(1) contains the following definition of the term immorality:

(2) "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

38. "Gross immorality" has been defined to mean an act of misconduct that is serious, rather than minor in nature; it is a flagrant disregard of proper moral standards. See Educ. Practices Comm'n v. Knox, 3 FALR 1373-A (Fla. Dept. of Educ. 1981) and Frank T. Brogan v. Eston Mansfield, Case No. 96-0286 (Fla. DOAH Aug. 1, 1996; Fla. Educ. Practices Comm'n Oct. 18, 1996).

39. Florida Administrative Code Rule 6A-5.056(a)-(j) lists the serious crimes that constitute crimes involving moral

turpitude. Both Petitioners and Respondent cite rule 6B-4.009(6) for the following definition of the term "moral turpitude":

Moral turpitude is a crime that is evidenced by an act of baseness; vileness or depravity in the private and social duties, which, according to the accepted standards or the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes moral turpitude.

40. Rule 6B-4.009 has been amended and transferred to rule 6A-5.056. The quoted definition of "moral turpitude" is no longer a part of the Rule.

41. As will be discussed below, Petitioners proved that Respondent engaged in misconduct. Neither Petitioner proved that Respondent's misconduct rose to the level of "immorality" or "acts involving moral turpitude." Consequently, Respondent is not guilty of the violations alleged in Count 1 and 3 of the Superintendent's Amended Administrative Complaint. Respondent is also not guilty of the violation alleged in Count 1 of the Commissioner's Administrative Complaint.

MISCONDUCT IN OFFICE

42. Rule 6A-5.056(2) defines the term "Misconduct in Office" as follows:

- (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 6A-10.080];

(b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in [Rule 6A-10.081];

(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 ability to effectively perform duties.

43. Rule 6A-10.081, set forth the "Principles of Professional Conduct for the Education Profession in Florida," and provide, in relevant part, as follows:

(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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

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

(f) Shall not intentionally violate or deny a student's legal rights.

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

* * *

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

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

44. Count 2 of the Superintendent's Amended Administrative Complaint alleges that Respondent is guilty of Misconduct in Office within the meaning of section 1012.33 because she violated the above-quoted portions of rule 6A-10.081. The Superintendent failed to establish that Respondent was guilty of violating rule 6A-10.081(3)(b), (c), (d), and (f). Consequently, the finding of misconduct below is not premised on those alleged violations.

45. Counts 2 and 3 of the Commissioner's Administrative Complaint are as follows:

Count 2. The Respondent is in violation of [section 1012.795(1)(g)] in that Respondent has been found guilty of personal conduct which seriously reduces her effectiveness as an employee of the school board.

Count 3. The Respondent is in violation of [section 1012.795(1)(d)] in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

46. Counts 4, 5, and 6 of the Commissioner's Administrative Complaint allege that Respondent violated the rules that are now found in the above-quoted rule 6A-10.081(3)(a), (e), and (g).

47. Petitioners failed to prove that Respondent harassed or discriminated against any of her students as alleged in Count 6 of the Commissioner's Administrative Complaint and as alleged in Count 2 of the Superintendent's Amended Administrative Complaint. The finding of misconduct which follows is not premised on the allegations of discrimination and/or harassment of students.

48. Petitioners proved that Respondent was guilty of misconduct in office by repeatedly violating the following Principles of Professional Conduct for the Education Profession in Florida set forth in rule 6A-10.081(3)(a) and (e), as alleged in Counts 2 and 3 of the Commissioner's Administrative Complaint and in Count 2 of the Superintendent's Amended Administrative Complaint.

49. Respondent's reduced effectiveness may be inferred from the nature and seriousness of the conduct. See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2 DCA 2000) and Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000). Respondent's pattern of mistreating her students established that her effectiveness as a school board employee has been impaired.

50. In making the recommendation that follows as to Case No. 13-0704PL, the undersigned has considered the Disciplinary Guidelines set forth in rule 6B-11.007 and 6B-11.008.

51. The undersigned has accepted the recommended dispositions of these matters as set forth in the respective proposed recommended orders submitted by the Commissioner and the Superintendent.

RECOMMENDATION

The following recommendations are based on the foregoing findings of fact and conclusions of law:

As to Case No. 12-2859TTS, it is RECOMMENDED that the School Board of Broward County, Florida, enter a final order adopting the findings of fact and conclusions of law set forth in this Recommended Order. It is FURTHER RECOMMENDED that the final order uphold the suspension without pay of Rhea Cohen's employment and terminate that employment.

As to Case No. 13-0704PL, it is RECOMMENDED that the Education Practices Commission enter a final order adopting the findings of fact and conclusions of law set forth in this Recommended Order. It is FURTHER RECOMMENDED that the final order suspend Rhea Cohen's educator's certificate for a period of five years, to be followed by probation for three years with conditions to be set by the Education Practices Commission.

DONE AND ENTERED this 16th day of July, 2013, in
Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of July, 2013.

ENDNOTES

^{1/} The Superintendent's Amended Administrative Complaint cited Rule 6B-4.009, which has been transferred to Rule 6A-5.056.

^{2/} The Commissioner's Administrative Complaint cited Rule 6B-1.006, which was renumbered as 6A-10.081 after the Administrative Complaint was filed.

^{3/} Ms. Sorren is an experienced classroom teacher who had returned to college to become qualified to teach ESE students. Her internship was part of her college curriculum. At the time of the formal hearing, Ms. Sorren was employed as an ESE teacher at a private school.

^{4/} This matter was thoroughly investigated by the School Board. Petitioner gave a statement to a school detective, attended an informal conference with a Department of Education representative, and was deposed by Petitioners in preparation for the formal hearing. At the formal hearing, for the first time, Respondent testified that it was Lisa Phillips who made the quoted comment. Respondent's contention that Lisa Phillips made the comment is rejected as lacking credibility. The evidence established clearly, and convincingly, that Respondent made the statement.

^{5/} In making these findings, the undersigned has considered Respondent's version of the events. Respondent contends that she unplugged the wheelchair from its battery because the wheelchair did not have an on/off power switch and because student J was moving the wheelchair in an unsafe manner. Even if those factors motivated the act of unplugging the battery, there is no excuse for Respondent exposing student J to ridicule, as she clearly did by her comment.

^{6/} The undersigned accepts this explanation. While Respondent showed poor judgment in being with any student under the circumstances observed by Ms. Hudson, there was no evidence of improper contact between Respondent and the student. Consequently, the undersigned declines to find Respondent guilty of misconduct in office based on this incident.

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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.