

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 13-0719TTS

SCOTT GINCHEREAU,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held on August 27 and 28, 2013, in Orlando, Florida, before Thomas P. Crapps, an designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: John C. Palmerini, Esquire
Orange County School Board
445 West Amelia Street
Orlando, Florida 32802

For Respondent: Joseph Egan, Jr., Esquire
Maria D. Beckman, Esquire
Egan, Lev and Siwica, P.A.
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STATEMENT OF THE ISSUE

Whether Petitioner, Orange County School Board (School Board), established "just cause" to terminate Respondent's employment as a teacher.

PRELIMINARY STATEMENT

On February 11, 2013, the School Board issued an Administrative Complaint seeking to terminate its employment of Respondent, Scott Ginchereau (Ginchereau). The School Board alleged that on December 13, 2012, Ginchereau inappropriately accessed his Facebook account during work hours to carry on a conversation with a former female student, who is a minor. Furthermore, the School Board alleged that Ginchereau displayed the Facebook page on the class smartboard, exposing his students to inappropriate pictures and discussion. Finally, the School Board also alleged that Ginchereau made disparaging comments to his class about the minor that he was having the Facebook conversation within the class. As a result, the School Board charged Ginchereau with violating the School Board's policy on use of school technology, failing to adequately supervise his students, and neglecting to perform his assigned duties. Specifically, the School Board charged Ginchereau with violating the following:

1. Orange County School District Management Directive A-9 titled "Employee Use of Technology;"
2. Sections 1 through 3 of the Code of Ethics of the Education Profession in Florida, Florida Administrative Code Rule 6A-10.080, because he "failed [to] value the worth and dignity of students displayed on the whiteboard, because Respondent failed to exercise appropriate professional judgment,

and because Respondent did not sustain the highest degree of professional conduct.

3. The Principles of Professional Conduct for the Education Profession in Florida, including but not limited to Florida Administrative Code Rules 6A-10.081(3)(a) and 6A-10.081(5)(d).^{1/} By displaying the former student on the whiteboard, it exposed the student to unnecessary embarrassment and disparagement and he failed in his duty to protect students from conditions harmful to the mental health of the students.

4. Committed misconduct in office and willful neglect of duty as those terms are defined in section 1012.33(1)(a), Florida Statutes, and Florida Administrative Code Rules 6A-5.056(2) and 6A-5.056(5). Respondent also committed conduct unbecoming a public employee, and a breach of Respondent's employment agreement with the School Board.

On February 22, 2013, Ginchereau elected to proceed with an administrative hearing. The School Board transmitted the request to DOAH, and the hearing was initially scheduled for April 15, 2013. Following continuances requested by the parties, the final hearing was rescheduled for August 27 through 29, 2013.

At the final hearing, the School Board presented the testimony of students Natalie B., and Nichole B., and presented the deposition testimony of the following students: Hannah R., James K., Alexis K., Brian H., Harrison D., and McKinley C. The School Board also presented the deposition of Ronald Maxwell, former principal for Maitland Middle School, and presented the

testimony of Yolanda Notyce, the School Board's senior manager of employee relations. The School Board introduced into evidence Petitioner's Exhibits 1, 2, 6 through 8, 12, and 15 through 25, and Proffered Exhibits 1 and 2. Ginchereau testified on his own behalf and presented the testimony of students Raven J. and Spencer B. Further, Ginchereau introduced into evidence Respondent's Exhibits 1, 3, 8 and 9. The parties filed a Joint Pre-hearing Stipulation that the undersigned partly incorporated into this Recommended Order. A two-volume Trial Transcript was electronically filed with DOAH, and the parties filed their proposed recommended orders.

FINDINGS OF FACT

1. The School Board is responsible for the operation, control and supervision of free public schools in Orange County, Florida. The School Board's responsibilities include the hiring and termination of school personnel.

2. In December 2012, Ginchereau was teaching mathematics at Maitland Middle School. He has been a teacher in the Orange County Public School District for approximately 14 years, and holds a professional services contract with the School Board.

3. Ginchereau's employment is governed by the Collective Bargaining Agreement between the School Board and the local teacher's union, the Orange County Education Association, Inc.

Pursuant to Article XII section (A) (2), the Collective Bargaining Agreement, a teacher may only be discharged for "just cause."

4. The School Board has a specific policy concerning the private use of internet and social networking, Management Directive A-9, Employee Use of Technology.^{2/} Management Directive A-9 informs School Board employees that they should not engage in social media with Orange County Public School students, unless the student is their child or the social media contact is related to "class, athletic or extracurricular activity," and that employees are to access the School District's technology resources and databases "for assigned responsibilities." Orange Cnty. Pub. Sch. Dist. Mgmt. Directive A-9, §§ 2(e) (i), (ii) and 3.

5. On the morning of December 13, 2012, Ginchereau opened his Facebook page, and read a general post from Elaina J., a former student that Ginchereau had taught at Avalon Middle School during the 2010-2011 school year.^{3/} Based on the general age of middle school students in eighth grade as 13 or 14 years old, it is reasonable to conclude that at the time of this incident, Elaina J. was either 15 or 16 years old in December 2012.

6. Ginchereau's un rebutted testimony is that he accepted a friend request from Eliana J., at a time when he knew she was no

longer a student in the Orange County Public School system. The School Board failed to introduce competent evidence showing that on December 13, 2012, that Eliana J. was an Orange County Public School District student.^{4/}

7. The Facebook exchange between by Elaina J. and Ginchereau is the following:

E.J.: Good morning, woke up in a good mood.
Who's going to be the first to ruin it?

G.: Not me!

E.J.: Never you!!! You always made my mornings

G: Awww! Thank you! Mrs. Melodie Robelo still talk about you often. Hope you are doing well.

E.J.: Awh I miss you two so much, ill come visit soon ♥ hope you both are doing well also

G: Coolbut you should know we aren't at Avalon anymore. We both moved to Maitland Middle.

E.J.: Is that far from Avalon?

G.: Not too bad . . . you can google it .
. . 1901 Choctaw Trail Maitland 32751

E.J.: Okay I promise ill come see you soon!

8. The only evidence showing when these postings occurred is from Ginchereau. Ginchereau testified that he initially responded to Eliana J.'s post in the morning before school started, and later between his first and second period classes.

9. Beside the text exchange between Ginchereau and Eliana J. are the "thumbnail" photographs from Elaina J.'s and Ginchereau's Facebook pages. These small photographs are present to the left of the message in order to show who is writing the message. Ginchereau's thumbnail photograph shows a photograph of him with an eighth grade football team that he coaches. Eliana J's thumbnail photograph shows a picture of her and a friend in bikinis.

10. Ginchereau's first two classes on December 13, 2012, were Algebra I Honor classes. At the conclusion of the first class, the bell rang and the students had approximately four minutes to go to their next class. Between the first and second class periods, Ginchereau opened his Facebook page in order to post a message to Elaina J., for the purpose of providing her the address of Maitland Middle School.

11. Ginchereau's explanation that he went on his Facebook page in order to provide Elaina J. with information so that she could "volunteer" in his classroom is not credible. The text exchange between Ginchereau and Eliana J. does not mention any student "volunteer" activity. Rather, Ginchereau was providing Eliana J. his and another teacher's work location in order to facilitate a visit.

12. Unknown to Ginchereau, when he opened his Facebook page, the screen from the computer was projected onto the

classroom's smartboard, and visible to the students inside the classroom, including the thumbnail photographs.

13. Some of the students entering the classroom remarked that they did not know that Ginchereau had a Facebook page. In response, Ginchereau quickly closed the Facebook page and placed school work on the smartboard. Ginchereau, thinking the incident was behind him, moved to the classroom door to monitor the hallway.

14. While standing in the hallway, Ginchereau heard one of the students state that Ginchereau had a Facebook page with the picture of a "nude girl." Realizing that such a claim would be toxic, Ginchereau quickly disputed the statement. Further, he decided to show exactly what was displayed on the smartboard in order to dispel any ill-founded rumor before it left the classroom.

15. Ginchereau signed onto his Facebook account and went to Eliana J.'s Facebook page. However, instead of showing the Facebook messaging with the thumbnail photographs, Ginchereau went to Eliana J.'s Facebook page and scrolled on the photographs to find the correct photograph. Some of the photographs showed Eliana J. wearing short "shorts," clothing exposing her midriff, and lying on a bed. As he scrolled through approximately four to six photographs, one of the 13-year-old boys, in a manner consistent with an immature

adolescent boy, hooted and went to the smartboard pretending to touch the girl in the photograph. As he attempted to find the correct photograph, Ginchereau told the boy to sit down, and then remarked, while at his desk, "if [the boy] liked this photograph, then he will love the next one." Finally, Ginchereau identified the correct photograph with two young girls in bikinis projected onto the smartboard, but unlike a thumbnail, the photograph now filled the smartboard.

16. While the photograph dispelled the notion that the girl was nude, Ginchereau heard one of the students state that "if she dressed like the girl, her mother would call her a slut." As these events escalated, Ginchereau made the decision to have a "teachable moment."

17. According to Ginchereau, he stated:

Look, you don't know this girl and I just heard, you know, comments like "slut" and "whore" coming out of your mouths. You guys don't know the history of this girl, you don't know about her taking care of her brother when her mom had surgery.

18. Ginchereau then informed the students that it was important to be careful about the photographs that one posts on social media sites. He cautioned the students that employers or college admission people could make incorrect judgments about them based on the photographs.

19. Further, Ginchereau talked about dress code and why it was important, even though students sometimes disagreed with it. In order to demonstrate his upholding of the dress code, Ginchereau referenced that the girl in the photograph had once attempted to volunteer as an assistant in his class, but had shown up in the class wearing a white shirt that was clinging to her body, after being caught in a rain storm. Ginchereau sent the former student home because her clothing did not meet the middle school dress code.

20. Finally, during his "teachable moment," Ginchereau stated that the student pictured on the board had been a poor student in his class, but still considered him a favorite teacher.

21. This regrettable turn of events occurred approximately for the first three to five minutes of the algebra class. Because Ginchereau's discussion occurred while students were transitioning into the class, some of the students did not hear the full discussion. After closing the Facebook page, Ginchereau taught the class without further incident.

22. After the class, Ginchereau decided to inform the principal of the school, Mr. Ronald Maxwell (Principal Maxwell), about the Facebook incident. Ginchereau called Principal Maxwell's office, but was told that he was not available. Later

in the day, Ginchereau attempted to call or see Principal Maxwell again, but was again told that he was not available.

23. The next day, on December 14, 2012, Ginchereau sent Principal Maxwell an e-mail that outlined what had occurred in the class the day before. Ginchereau sent the e-mail before he learned about any parent complaint concerning the Facebook incident.

24. That same day, Principal Maxwell received a parent complaint concerning the Facebook incident, and he directed Dr. Paul Wilhite (Dr. Wilhite), the assistant principal, to take students' statements about what had occurred on December 13, 2012, in Ginchereau's class.

25. Dr. Wilhite collected 19 student statements concerning what occurred in the classroom. The statements ranged from students who did not see anything to students describing how Ginchereau stated that if his daughter dressed like the one in the photograph "he would kill her." Some of the students indicated that they found the photographs displayed in the classroom "inappropriate" and they felt "uncomfortable" about the pictures and discussion while others did not care.

26. Ginchereau met with Principal Maxwell and Dr. Wilhite and provided an explanation that was consistent with his earlier e-mail. Further, Ginchereau provided Principal Maxwell with a copy of the Facebook exchange and showed him the photographs

shown in the classroom. At all times, Ginchereau was cooperative and accepting responsibility for his error.

27. Ginchereau's social media messaging with Eliana J. violated Management Directive A-9 by using the school's internet for personal use, rather than his assigned responsibilities.

28. Ginchereau's showing of the photographs from Eliana J.'s Facebook page was inappropriate within the context of a middle school classroom and showed poor judgment.

29. Ginchereau's "teachable moment" showed poor judgment and exacerbated his mistake of accessing Facebook between the class changes.

30. Ginchereau has been a teacher with the Orange County Public School District since 1999. He holds certificates in teaching mathematics, language arts, and special education students. Further, it is undisputed that Ginchereau has no prior disciplinary history in his teaching career.

CONCLUSIONS OF LAW

31. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.57(1) and 120.569, Fla. Stat. (2012).^{5/}

32. The School Board has the burden of proving by a preponderance of the evidence that "just cause" exists to

terminate Ginchereau's employment. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996).^{6/}

33. The School Board is responsible for the operation, control and supervision of the free public schools in Orange County, Florida. Art. IX, § 4(b), Fla. Const.; and § 1001.32(2), Fla. Stat. The School Board's authority extends to personnel matters including the power to suspend or dismiss an employee. §§ 1001.42(5) and 1012.22(1)(f), Fla. Stat. Further, the law permits the School Board to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators. § 1001.42(6), Fla. Stat. This authority extends to the enactment of "policies and procedures necessary for the management of all personnel of the school system."

34. The law requires that an instructional employee, such as a teacher, be provided with a written contract that contains "provisions for dismissal during the term of the contract only for just cause." § 1012.33(1)(a), Fla. Stat. "Just cause" includes instances of "misconduct in office," as defined by the State Board of Education's rules.^{7/}

35. The School Board seeks to terminate its professional services contract with Ginchereau based on the allegation of misconduct in office and willful neglect of duty.^{8/, 9/}

36. Educators are charged with the highest ethical duties to value "the worth and dignity of every person," and that the educator's primary professional concern is "for the student and for the development of the student's potential," which requires the educator to "exercise the best professional judgment and integrity."^{10/}

37. The State Board of Education's Principles of Professional Conduct for Educators require that teachers "make reasonable effort to protect the student from conditions harmful to learning," and shall not engage in conduct which creates an abusive, offensive or oppressive environment, and shall make reasonable effort to protect students from harassment or discrimination.^{11/}

38. Applying the rules of law to the facts here, the undersigned finds the School Board has established "just cause" to discipline Ginchereau's employment.

39. The School Board proved by a preponderance of the evidence that Ginchereau violated Management Directive A-9. As shown in the factual findings, Ginchereau accessed his Facebook page during the school hours for a personal purpose, rather than his assigned responsibilities in violation of subsection 3(f) of the Management Directive A-9.

40. The finding that Ginchereau violated Management Directive A-9 necessarily shows that he violated a school board

rule and is guilty of "misconduct in office." See Fla. Admin. Code R. 6A-5.056(2)(c). Moreover, the accessing of the Facebook page during school hours for personal use shows an intentional act of violating the School Board's directive, thus showing a "willful neglect of duty."

41. Next, the School Board showed by preponderance of evidence that Ginchereau violated the Code of Ethics of the Education Profession in Florida rule 6A-10.080, and the Principles of Professional Conduct for the Education Profession in Florida rule 6A-10.081. Ginchereau's poor handling of the Facebook incident demonstrates that: 1) he did not value the worth and dignity of every person; 2) did not exercise the best professional judgment and integrity; 3) did not "make reasonable effort to protect students from conditions harmful to learning and/or the student's mental . . . health"; and 4) did not meet the obligation of making a reasonable effort to protect students in his classroom from an offensive environment.

42. At the heart of these conclusions is the fact that Ginchereau used a former student and her posted Facebook pictures as an object lesson for his current students. In sum, Ginchereau told his current students that the young female dressed and acted inappropriately, and that she was a poor student. Anyone listening to this presentation could not escape the uncomfortable and embarrassing thought that Ginchereau did

not value the worth and dignity of his former student by holding her up as an object lesson. These actions do not show professional judgment, and created an environment of unnecessary embarrassment in the classroom where several of his current, young female students found his presentation and the photographs "uncomfortable" and "inappropriate," and, at least, one young male student acted in an immature manner.

43. Although Ginchereau's conduct was wrong, the undersigned finds that his actions, under the totality of the circumstances, do not warrant termination. Ginchereau made a mistake, but he showed integrity in owning the mistake and accepting responsibility. Furthermore, he has been a good teacher for the past 14 years earning certifications in the subjects that he teaches. Finally, other than this Facebook incident, Ginchereau has no disciplinary history.

44. Two prior cases from the Orange County Public School System concerning teachers violating Management Directive A-9 lead the undersigned to the conclusion that Ginchereau should be disciplined rather than terminated from his job.

45. In Orange County School Board v. Yazbeck, Case No. 05-1329 (Fla. DOAH Aug. 22, 2005), the Administrative Law Judge found "just cause" to terminate a guidance counselor's employment where the facts showed that the counselor had used the internet to transmit racist e-mail criticizing her co-

workers. In Yazbeck, "just cause" existed because, in part, the counselor had engaged in harassment or discriminatory conduct that interfered with her ability to perform her duties.

46. In the second case, Orange County School Board v. DeShay, Case No. 08-1596 (Fla. DOAH Dec. 19, 2008), the Administrative Law Judge found that "just cause" existed to discipline the teacher where the facts showed that the teacher's work computer contained an inappropriate material. The facts in DeShay show that a teacher's computer contained a non-educational story about a voyeuristic encounter between neighbors, and that the teacher had saved digital pictures of scantily clad women, had visited to retail shopping websites, had viewed online business opportunities, and had viewed websites containing funny videos and social media sites. The Administrative Law Judge noted the fact that no students saw the inappropriate material in the teacher's computer did not minimize the seriousness of the misconduct. However, the Administrative Law Judge found that the School Board had failed to show the full extent of how the teacher's misconduct impacted the teacher's effectiveness; thus, dismissal was not warranted. Although the teacher avoided dismissal, the Administrative Law Judge determined that the misconduct warranted sanctions and remedial education. Consequently, the Administrative Law Judge recommended that the teacher's suspension be upheld, and require

the teacher to complete remedial training concerning professionalism and the use of school property.

47. Turning to the instant case, the undersigned recognizes that the definition of "misconduct in office" has been revised since the recommendations in Yazbeck and DeShay. In the instant case, unlike Yazbeck and DeShay, the School District in did not have to prove that Ginchereau's violation of Management Directive A-9 impaired his effectiveness as a teacher in order to establish "misconduct in office." The School Board met its burden of proof when it showed that Ginchereau violated the school board policy. Setting aside that legal distinction between the cases, the undersigned finds that the facts in the instant case fall between the outcomes in DeShay and Yazbeck. Ginchereau's conduct is not as egregious as the conduct in Yazbeck that resulted in a hostile and discriminatory environment. Rather than acting in malice, the facts here show that Ginchereau made a wrong decision by exchanging messaging with Eliana J., and then tried to correct the problem. His poor judgment and handling of the situation in this lone instance does not support a termination.

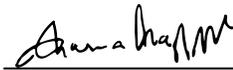
48. Ginchereau's actions, however, are more egregious than the conduct in DeShay. Unlike the facts in DeShay, the facts here show that Ginchereau exposed the students to the inappropriate pictures and discussion as a result of his

violating Management Directive A-9. However, in mitigation, the facts here show only this lone instance of Ginchereau violating Management Directive A-9, as opposed to the facts in DeShay which show multiple violations. In consideration of Ginchereau's otherwise good teaching career, and the fact that he readily accepted responsibility for his error, the undersigned finds a suspension is warranted as discipline and a remedial education.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Orange County School Board established "just cause" to discipline Mr. Ginchereau's employment as a teacher. The undersigned recommends that Ginchereau's suspension without pay be upheld to date; and that he be returned to his professional services contract, and given remedial education on the proper use of the School District's technology.

DONE AND ENTERED this 31st day of October, 2013, in
Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
Administrative Law Judge
Division of Administrative
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Filed with the Clerk of the
Division of Administrative
Hearings
this 31st day of October, 2013.

ENDNOTES

^{1/} The day before the final hearing the School Board filed a Motion to Amend Administrative Complaint to Correct Scrivener's Error. The School Board sought to change one of the charges against Ginchereau from Rule 6A-10.081(3)(d) to Rule 6A-10.081(5)(d). Florida Administrative Code Rule 6A-10.081(3)(d), provides that a teacher "[s]hall not intentionally suppress or distort subject matter relevant to a student's academic performance." Rule 6A-10.081(5)(d) provides that a teacher:

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.

At the beginning of the hearing, the undersigned considered the motion. The School Board argued that it was merely correcting a scrivener's error, and that it was always the School Board's intention to show that Ginchereau had caused unnecessary

embarrassment and disparagement to the students. Respondent objected to the amendment because he claimed that it prejudice his defense by expanding the charges against him to include unnecessary embarrassment and disparagement of the person shown on the whiteboard, as opposed to embarrassment and disparagement of the students viewing the photograph. Respondent argued that the depositions that the parties were agreeing to introduce into evidence, and the defense had not addressed any embarrassment or disparagement that might be incurred by the person shown on the whiteboard.

Reading the facts alleged in the Administrative Complaint and considering the arguments, the undersigned allowed the late amendment, but that the charge of Florida Administrative Code Rule 6A-10.081(5)(d), would be restricted to a finding of whether or not Ginchereau made reasonable efforts to assure that students in the classroom were protected from harassment or discrimination, and would not include a finding concerning the student's whose Facebook page was open.

^{2/} In pertinent part, the School Board Management Directive A-9 provides that:

* * *

2. Employee Responsibilities

* * *

b. All [Orange County Public School] employees are reminded that private use of the internet and social networking is not private. Employees should remain professional in using those forms of communication at all times so as not to interfere with their ability to perform their OCPS duties. Any receipt of social networking content from a student unrelated to a school assignment or school extracurricular activities shall be immediately reported to the employee's supervisor.

* * *

d. Employees shall not provide their personal e-mail or other social networking account to a student.

e. No employee of the Orange County Public Schools should engage in any texting or other social media with any [Orange County Public School Student] with the following two (2) exceptions:

i. The student is their child.

ii. An employee may group text or post information that is related to a class, athletic or extracurricular activity.

3. Employee Access to Network

* * *

f. The District authorizes employees to use District computer technology resources and databases for assigned responsibilities. These resources shall be used by employees to enhance job productivity as it relates to District business. These resources shall be used for District-related purposes and not for personal use or gain or for the benefit of private, "for profit" or "not for profit" organizations.

^{3/} Avalon Middle School is part of the Orange County Public School System.

^{4/} The School Board failed to introduce competent evidence showing that Eliana J. was an Orange County Public School District student on December 13, 2012. The School Board offered the testimony of Ms. Valentin, a paralegal for the School Board, to introduce into evidence a document purporting to show that Eliana J. was a student in the Orange County Public School District at the time that Ginchereau sent the Facebook message to her on December 13, 2012.

The School Board argued that the document offered through Ms. Valentin was an admissible business record. "To be admissible under the business record exception, the proponent of the record must demonstrate that the record was made at or near

the time of the event recorded, was made by or from information transmitted by a person with knowledge, was kept in the ordinary course of a regularly conducted business activity, and that it was the regular practice of the business keeping the record to make such a record." Erhardt, Florida Evidence § 803.6. Further, section 90.803(6), Florida Statutes, provides that computer print-out is an admissible business record, if the record custodian or other qualified witness is available to testify to the manner of the preparation as well as the reliability and trustworthiness of the offered record. Professor Charles Erhardt states:

As with other business records, the witness laying the foundation need not have personal knowledge of the facts in the record but must have knowledge of the record-keeping system. Erhardt, Evidence § 803.6b.

In the instant case, Ms. Valentin was able to testify that she routinely accessed student enrollment records and used the information. Further, she testified that registrar's entered the information. However, she did not lay a proper foundation of how the information was compiled or kept, or any knowledge of how the registrar's gathered the information for the record. As such, Ms. Valentin did not establish a sufficient foundation to support a factual finding that Eliana J. was a student in the Orange County Public School District on December 13, 2012, the date she and Ginchereau exchanged FaceBook messages.

^{5/} All references to Florida Statutes shall be the 2012 version, unless otherwise stated.

^{6/} The preponderance of the evidence requires proof by the greater weight of the evidence" or evidence that more likely than not tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280, n.1 (Fla. 2000).

^{7/} Section 1012.33(1)(a) provides that:

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 s. 1012.34, two annual performance evaluation ratings of

unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 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.

8/ "Misconduct in office" means:

- (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.

Fla. Admin. Code R. 6A-5.056(2).

9/ "Willful neglect of duty" is defined as an "intentional or reckless failure to carry out required duties." Fla. Admin. Code R. 6A-5.056(5).

10/ The Code of Ethics of the Education Profession in Florida rule 6A-10.080 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.

^{11/} The Principles of Professional Conduct for the Education Profession in Florida Rule 6A-10.081 provides, in part, that:

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.

* * *

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.

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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.