

SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

OSCEOLA COUNTY SCHOOL BOARD,

**Petitioner,
v.
MONA SAGAR,
Respondent.**

**School Board of Osceola County
Case No. _____
DOAH Case Nos. 14-0873TTS and
14-0874TTS (Consolidated)**

_____/

**OSCEOLA COUNTY SCHOOL BOARD,
Petitioner,
v.
KRISTIE GILMORE,
Respondent.**

_____ /

**FINAL ORDER OF SCHOOL BOARD OF OSCEOLA COUNTY ADOPTING
RECOMMENDED ORDER, RULING ON RESPONDENTS' EXCEPTIONS,
AND TERMINATING MONA SAGAR AND KRISTIE GILMORE FROM
EMPLOYMENT**

This cause came on to be heard before the School Board of Osceola County, Florida (the "Board"), at its duly convened meeting held August 18, 2015, pursuant to Sections 120.569(l) and (n) and 120.57(k) and (l), Florida Statutes, and the Board, sitting in its quasi-judicial capacity, does hereby find, rule and adjudicate, as follows:

1. The Board adopts as its Final Order in these consolidated cases the Recommended Order issued by Lynne Quimby-Pennock, Administrative Law Judge, on June 19, 2015. A copy of the Recommended Order hereby adopted is attached as Exhibit A to this Final Order and the same is incorporated herein by reference as the Final Order of the Board in these consolidated cases.
2. Pursuant to the adopted Recommended Order, the Board finds just cause to terminate the employment of Mona Sagar and Kristie Gilmore and these employees are hereby terminated.
3. Rulings On Respondents' Exceptions Served July 1, 2015:

A. First Exception Is Rejected. This Exception is rejected for the reason that competent substantial evidence was presented on which the Administrative Law Judge (“ALJ”) could make each finding of fact that she made, and that the facts found were supported by competent substantial evidence in the record, and these facts supported the conclusions reached.

The proposed facts in Respondents’ Exceptions are immaterial as they generally relate only to the difficulties presented in an EBD classroom or to this class in particular. Certainly an EBD classroom is often challenging, but the relevant issue in this case had nothing to do with the employees' competence in controlling the class. Rather, the relevant issue was principally the Respondents' failure to use reasonable and available means to call for or obtain assistance to protect the safety of students in the class after control of the room was lost. Therefore, the Exception is nothing more than an invitation to find additional facts, and the proposed additional facts would be irrelevant to the issue presented that related to the employees' failure to call for or obtain help.

B. Second Exception Is Rejected. This Exception is rejected because whether there is a finding of injury of the type Respondents may prefer (e.g., "No student was cut, scratched, bruised or otherwise injured") is irrelevant. The relevant issue was the Respondents' failure to obtain or call for help during the course of several disruptions in the class that put the safety of students at risk. Proof of physical injury was not a required element of the Petitioner's claim that Respondents were guilty of misconduct.

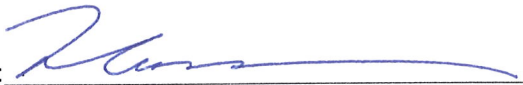
There was conflicting evidence of the extent of the harm, and the ALJ made no finding regarding injury or harm to a student. The agency may not rule on a matter where there was conflicting evidence and the ALJ failed to make a finding. And, as stated, the ALJ was not

required to make a finding on this question because proof of harm or injury in fact was not required.

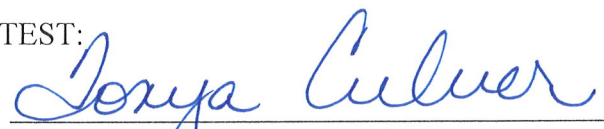
C. Third Exception Is Rejected: This Exception is rejected as irrelevant. There is no legal requirement to excuse misconduct because of a prior good record. And, the ALJ recognized the difficulties in the class but found misconduct nonetheless. The agency has no authority to change the facts found, and that is because competent substantial evidence supported the findings that were made. Additionally, the Exception is irrelevant for the reason that the employees were found liable for misconduct because during the course of several disruptions they made no effort to seek or call for help, and no matter how "worn down" they were, they could have sought help. The Exception is also irrelevant because it suggests the case turns on the employees' failure to "control their classroom". That was not the issue as stated above. The issue was their failure to obtain, seek, or call for help.

Entered this 18th day of August, 2015, in Osceola County, at the offices of the School Board of Osceola County Florida, 817 Bill Beck Blvd., Kissimmee, FL 34744.

SCHOOL BOARD OF OSCEOLA
COUNTY, FLORIDA

By: 
Timothy Weisheyer, Chair

ATTEST:

By: 
Tonya Culver, Secretary to the Board

Copies to:

Usher L. Brown, Esq., Greenspoon Marder Law, 201 E. Pine St., Suite 500, Orlando, FL 32801
Wayne Helsby, Esq., Marc Sugerman, Esq., Allen, Norton & Blue, 1477 W. Fairbanks Ave., Suite
100, Winter Park, FL 32789
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Division of Administrative Hearings
Florida Department of Education

NOTICE OF RIGHTS OF APPEAL PURSUANT TO
SECTION 120.68, FLORIDA STATUTES

Notice is hereby given that this is a final agency order and a party adversely affected may seek judicial review. Judicial review is sought pursuant to the provisions in Section 120.68 Florida Statutes. Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. Appellate proceedings are instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OSCEOLA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0873TTS

MONA SAGAR,

Respondent.

_____/

OSCEOLA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0874TTS

KRISTIE GILMORE,

Respondent.

_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in these cases on March 18 through 20, 2015, in Kissimmee, Florida. The parties appeared before Administrative Law Judge Lynne Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Wayne Helsby, Esquire
Marc Aaron Sugerman, Esquire
Allen, Norton and Blue, P.A.
Suite 100
1477 West Fairbanks Avenue
Winter Park, Florida 32789

Exhibit A

For Respondent Mona Sagar:

Roger L. Weeden, Esquire
Law Office of Roger L. Weeden
128 East Livingston Street
Orlando, Florida 32801

For Respondent Kristie Gilmore:

Tobe M. Lev, Esquire
Egan, Lev and Siwica, P.A.
231 East Colonial Drive
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The issues in these cases are whether Petitioner, Osceola County School Board (School Board or Petitioner), has just cause to terminate Respondents Mona Sagar and Kristie Gilmore from their employment contracts.

PRELIMINARY STATEMENT

By letter dated January 21, 2014, Melba Luciano, the superintendent of the School District of Osceola County Florida (School District), notified Ms. Sagar that she was recommending the termination of Ms. Sagar's employment with the School Board. This January 2014 letter asserted that the School Board had just cause to discipline Ms. Sagar based on the following:

On or about January 9, 2014, at Discovery Intermediate School, you were assigned duties as an educational support employee/paraprofessional, and willfully neglected your duty and committed acts of misconduct by observing several students commit a serious assault and battery of two students, and failing to take action to direct the students to stop attacking the

victims and by failing to call for assistance to stop the attacks. You are observed on video and identified by witnesses simply allowing the students to attack their victims, and you failed to take any action on a timely basis to call for help or direct the aggressors to stop their attacks. These students were under your supervision and the attacks were both prolonged and serious.

By letter dated January 21, 2014, Melba Luciano, the superintendent of the School District notified Ms. Gilmore that she was recommending the termination of Ms. Gilmore's employment with the School Board. This January 2014 letter asserted that the School Board had just cause to discipline Ms. Gilmore based on:

On or about January 9, 2014, at Discovery Intermediate School, you were assigned duties as an educational support employee/paraprofessional, and willfully neglected your duty and committed acts of misconduct by observing several students commit a serious assault and battery of two students, and failing to take action to direct the students to stop attacking the victims and by failing to call for assistance to stop the attacks. You are observed on video simply allowing the students to attack their victims, and you failed to take any action on a timely basis to call for help or direct the aggressors to stop their attacks. These students were under your supervision and the attacks were both prolonged and serious.

Both letters contained the following:

By your failure to perform your duty to promptly call for help and direct the aggressors to stop their attacks on the victims, you have failed to take reasonable

efforts to protect students under your direction from conditions harmful to their mental and physical health and safety, you have denied the students their legal rights, and you have exposed the students to unnecessary embarrassment and disparagement. Your effectiveness as an educator is seriously impaired as a result, and by your conduct you have caused the education profession to be held in disrepute.

Your failure to timely take appropriate action constitutes misconduct and willful neglect of duty in violation of Board Rule 6.27, and Florida Administrative Code Rules 6A-5.056(2) and (5); 6A-10.080; 6A-10.081, warranting dismissal from employment.

Ms. Sagar and Ms. Gilmore, through counsel, timely requested an administrative hearing to contest the allegations. On February 21, 2014, both cases were forwarded to the Division for the assignment of an administrative law judge to conduct the hearing. On March 6, the two cases were consolidated.

The hearing was originally scheduled to be heard in May 2014. Based on several unopposed motions for continuances, the hearing was rescheduled and heard on the dates listed above. The parties stipulated that the undersigned may take judicial notice of provisions of the Florida Statutes and Florida Administrative Code without either being admitted into evidence, and that school personnel may be suspended or dismissed for just cause as defined by Florida Administrative Code Rule 6A-5.056.

At the final hearing, the School Board presented the testimony of Kinisha Nixon-Rice, Eric Wells, Gregory Torregrossa,

Lare Allen, J.T., D.S., S.L., and M.S.^{1/} Petitioner's Exhibits 1 through 3, 6 through 11,^{2/} 17, 22 through 25, 30, 33 through 36, 46, 47, 50, and 52 through 55 were admitted into evidence. Ms. Sagar and Ms. Gilmore each testified and presented the testimony of Rani Chowdhary,^{3/} Nancy Richardson Diaz, Greg Gahris, Tracy Diaz, Manny Losada, Diani Herber-Storer, and Damien Rosado. Respondents' Exhibits 1 through 22,^{4/} 24, and 25 were admitted into evidence. Additionally, the parties provided two stipulations during the hearing: the School District complied with its child abuse reporting obligations;^{5/} and the criminal charges brought against Ms. Sagar and Ms. Gilmore were nolle prosequi.^{6/}

At the conclusion of the hearing, Petitioner requested to file its proposed recommended order (PRO) within 30 days of the filing of the transcript. No objections were voiced, and the request was granted.

The six-volume Transcript of the hearing was filed on April 9, 2015. On April 9, a Notice of Filing was issued informing the parties that the "proposed orders . . . must be filed with the Division on or before the close of business on May 11." On May 4, Ms. Sagar's counsel filed an Unopposed Motion for Extension of Time to File Proposed Recommended Order, seeking a two-week extension. The extension was granted, and each party

timely filed a PRO. Each PRO has been duly considered in the preparation of this Recommended Order.

Unless otherwise noted, all references to Florida Statutes are to 2013.

FINDINGS OF FACT

1. The School Board is duly constituted and charged with the responsibility and authority to operate, control, and supervise the 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. At all times relevant to this proceeding, Ms. Sagar and Ms. Gilmore were employed by the School District.

3. Ms. Sagar has been in the education field for years. She attended "teachers college" in Trinidad and taught school there for ten years. She was hired as a paraprofessional (para) by the School District in 2011. Ms. Sagar was assigned to an autistic classroom at Discovery Intermediate School (Discovery) and later switched to an "intellectually disabled mild" (InD mild) classroom. She has not been subject to any prior disciplinary action.

4. At the start of the 2013-2014 school year, Ms. Sagar was the para assigned to the "intellectually disabled severe" (InD severe) class. The InD severe class had a teacher and two

paras,^{7/} and was composed of children who were mainly confined to wheelchairs or who needed special assistance to walk. Ms. Sagar completed the crisis prevention intervention (CPI) class, a class that instructs personnel on how to physically and verbally restrain, redirect, and prompt a child who is misbehaving.

5. Ms. Gilmore became a para in exceptional student education (ESE) in 2005. She arrived at Discovery in August 2005. Ms. Gilmore worked with students with varying educational needs including: emotional behavior disorder (EBD); autism; InD mild; intellectually disabled moderate (InD moderate); intellectually disabled profound (InD profound); and regular educational students.^{8/} Ms. Gilmore had completed the CPI training twice before, but she was not re-certified at the start of the 2013-2014 school year. She has not been subject to any prior disciplinary action.

6. Discovery had six self-contained ESE classrooms for the 2013-2014 school year. There were two autistic classrooms, one InD mild classroom, one InD moderate classroom, one InD severe classroom, and one EBD classroom. All six classrooms are located on the first floor of one of Discovery's buildings, in close proximity to the office of the dean of students.

7. Student safety is of paramount concern for School District employees. As such, every EBD classroom has a land-line telephone and a walkie-talkie for use to request assistance, to

notify the appropriate office of a student's unscheduled exit from the classroom and to provide other information.

8. The telephone is primarily a school-based phone that has its own five-digit internal extension number.^{9/} In the event a walkie-talkie is not available, a teacher or para may use the telephone to communicate with other school personnel.

9. The walkie-talkies are limited to the self-contained classrooms, guidance counselors, deans, school resource officer, administrators, principal's secretary, academic coaches, athletic coaches, and maintenance staff. The walkie-talkies are on one channel or frequency, and when used, everyone who has a walkie-talkie can hear the conversation.

10. Discipline referrals may be written by any adult at Discovery for any infraction in the student code of conduct. The referral form reflects the student's name, identification number, the classroom, school, grade level, date of birth, race, sex, homeroom teacher, incident date and time, location of the incident, the problem or explanation of the problem, the action taken by the adult prior to the referral, the signature of the referring adult, and the date signed. The bottom of the referral form was for "administrative use only," and reflects what if any action was taken. Ms. Gilmore, as the para in the EBD self-contained classroom, authored numerous discipline referrals for student J.G.

11. During the 2013 summer, Ms. Chowdhary was notified that she would be re-assigned to Discovery's EBD self-contained classroom for the 2013-2014 school year. Ms. Chowdhary did not want this assignment; however, Ms. Chowdhary contacted Ms. Gilmore and asked if she (Ms. Gilmore) would consent to be Ms. Chowdhary's para in her EBD self-contained classroom. This request was based on their positive working relationship during the 2012-2013 school year in an autistic classroom. Ms. Gilmore agreed, the school administration concurred, and Ms. Gilmore was assigned to Ms. Chowdhary's EBD self-contained classroom.

12. At the beginning of the 2013-2014 school year there were ten male students in Ms. Chowdhary's EBD self-contained classroom. This classroom had a walkie-talkie and telephone. Each student had an individual educational plan (IEP), a different EBD, and a medical condition.

13. On the first day of school, each student was given a welcome packet that contained an emergency contact sheet and a health care report form. The parents are requested (but not required) to complete as much of the information as they wish, and return it to the classroom. Ms. Gilmore read the responses "thoroughly" regarding the medical conditions of students J.G. and J.C., as provided by their respective parents or guardians.

14. In early December 2013, Ms. Gilmore was re-assigned to an InD moderate classroom as an accommodation for her pregnancy.

Ms. Chowdhary requested a male para to replace Ms. Gilmore. Based on the support staff already engaged by Discovery, Ms. Sagar was transferred to work in Ms. Chowdhary's self-contained classroom. Ms. Sagar observed and worked with Ms. Gilmore on two separate days for several hours prior to the actual transfer in mid-December.

15. Approximately two weeks before the Christmas break, a female student, J.T., arrived in the EBD self-contained classroom. J.T. was taller and heavier than either Ms. Chowdhary or Ms. Sagar. J.T.'s language was loud and predominantly profanity-laced. J.T. did not complete her classroom assignments, and she did not follow the classroom rules regarding the use of her cellphone.^{10/}

16. On January 9, 2014, Ms. Gilmore learned that Ms. Chowdhary was absent from school. Ms. Gilmore volunteered to be the substitute teacher in Ms. Chowdhary's classroom.^{11/}

17. In the early afternoon of January 9, two male students engaged in a physical altercation (Altercation No. 1) in the EBD self-contained classroom. J.T. took out her cellphone and recorded Altercation No. 1 (Petitioner's Exhibit 6, Respondents' Exhibit 21). That recording showed one student, J.G., standing over and taunting another student, J.C. J.G. called J.C. a "taco." J.C. responded that J.G. should call J.C. "Taco Bell," and added that J.G. was the dark meat in his taco. J.G. took

J.C.'s remark to be a racist comment. J.C.^{12/} was crumpled on the floor behind a desk where J.G. grabbed J.C. by his warm-up jacket collar/shirt. J.G. pulled J.C. up by the collar/shirt and pushed J.C. into a chair at a computer cubby and small space near a wall. J.G. kept one hand on J.C. while pinning J.C. to the small space. J.G. continued to taunt J.C. and is heard to say:

Next comment I'm gonna stomp on your [J.C.'s] heart, and I know you got a condition to where I stomp on it, you dead, and I don't give a f___. So you can't keep making a racist joke.

18. Ms. Gilmore and Ms. Sagar were both present and observed Altercation No. 1. Ms. Gilmore was sitting at the teacher's desk in the front of the room when Altercation No. 1 started. When J.G. "dumped [J.C.] out of the chair," [to start the altercation], [Ms. Gilmore] told J.G. to "knock it off," and when J.G. had J.C. on the floor, she [Ms. Gilmore] "told him to quit." Ms. Gilmore testified that she didn't call for help because "It was over." Her testimony is not credible because the recording shows that J.G. then pulled J.C. up to a standing position, and continued to taunt him. Further, Respondents' Exhibit 16 is a discipline referral that Ms. Gilmore authored on January 9, the day of the altercations. Ms. Gilmore documented in this discipline referral the following "PROBLEM - EXPLAIN:"

During Science class, 5th period, [J.G.] was talking about how he fights and got into an altercation with another student. Words were

exchanged and [J.G.] didn't like what the student [J.C.] said so he [J.G.] flipped him [J.C.] out of his chair, kicked him [J.C.] a couple times and threatened to kill the other student [J.C.] by stomping on his [J.C.'s] heart.

19. Ms. Sagar was seated at a desk assisting another student, J.M., when Altercation No. 1 started. Ms. Sagar did not hear any loud shouting or threats at the beginning of Altercation No. 1, but it escalated to the point where she was "alarmed." Ms. Sagar admitted that she got up to leave the room, then decided not to do so, telling herself: "I shouldn't leave the class at this time." The reason she did not leave the classroom was because the altercation "wasn't settled like down, down, down. It still had like the talking and everybody, so I turned around and came back to my seat." Ms. Sagar did not move to intervene or call for help.

20. Neither Ms. Gilmore nor Ms. Sagar moved to intervene in Altercation No. 1, and neither used the walkie-talkie or the telephone to call for assistance or to alert the administration of the volatile situation.

21. A few minutes later another altercation (Altercation No. 2) took place in the EBD self-contained classroom. J.T. also recorded Altercation No. 2 (Petitioner's Exhibit 8) on her cellphone. J.G. was again taunting J.C. J.G. dared J.C. to "take a swing" at J.G. J.C. did not swing at J.G. J.G.

proceeded to talk to the class about J.C. and other classmates. J.C. then expressed his desire to die because his life "sucks," his father was dead, and his step-father didn't love him. J.C. violently kicked/pushed a chair several feet away from himself, began to cry, stated that he'd be "happy if you [J.G.] kill me," violently overturned a desk, and walked out of the EBD self-contained classroom.

22. Again, Ms. Gilmore and Ms. Sagar were present in the EBD self-contained classroom, and observed Altercation No. 2. During Altercation No. 2, Ms. Gilmore was at the front of the class at the teacher's desk. Ms. Gilmore confirmed that J.C. "flipped a desk and walked out of class." Ms. Gilmore testified she "opened the door, . . . and put myself at the doorway to get the rest of the kids out of the class if I had to get them out." Ms. Gilmore is briefly partially seen in the recording, and she is heard asking J.C. to pick up the desk before he left the classroom. J.C. did not pick up the desk.

23. The recording shows Ms. Sagar seated at a work table with J.M. At one point Ms. Sagar rises from her seat, walks to a counter with a microwave, stays at the counter for a short time, returns to her seat, and then eats something while Altercation No. 2 is on-going.

24. Neither Ms. Gilmore nor Ms. Sagar used the walkie-talkie or telephone to obtain assistance or alert the administration of the continuing volatile situation.

25. J.C. went to the dean of students (Ms. Rice's) office after he walked out of the EBD self-contained classroom. Once there, he screamed at Ms. Rice about the events that had just taken place in his classroom. Ms. Rice observed J.C. to be distraught and angry. Based on J.C.'s comments, Ms. Rice understood that a recording of the classroom events was made. Ms. Rice requested the principal to obtain the recording.

26. Between when J.C. left the EBD self-contained classroom and when the principal arrived at the EBD self-contained classroom to retrieve the recording, yet another altercation, Altercation No. 3, occurred. J.T. started recording Altercation No. 3 (Petitioner's Exhibit 10) on her cellphone. Student W.F. held a chair over his head and threatened to throw it at another student, D.S. The other students in the classroom can be heard urging W.F. to throw it, but W.F. did not. J.G. can be seen standing behind D.S., and heard to say he'll "make sure it hit[s] you [D.S.]." When it became apparent that W.F. was not going to throw the chair, J.T. handed her phone to W.F., who continued to record the action, and J.T. threw the chair. J.T. testified that she did not intend to hurt D.S., but she was not "play acting."

27. Ms. Gilmore testified she did not remember much of Altercation No. 3. She thought she might have been writing a referral at her desk, and did not call for help because the altercation was over so quickly.

28. Again, Ms. Gilmore and Ms. Sagar were present in the classroom, observed Altercation No. 3, and did nothing to radio or call for assistance or alert the administration of the volatile situation.

29. There is no credible evidence that any of the altercations were pretend fights, or that they were staged for the benefit of the other students. Ms. Gilmore's contention, that the altercations were staged, is not credible. This EBD self-contained classroom is a challenging class, one that should be closely monitored and adequately staffed to ensure learning can occur, and safety maintained. Respondents never attempted to gain control of the classroom or students. They never called for help or removed the other students from the area.

30. Petitioner has proven by a preponderance of evidence that Petitioner has just cause to terminate the employment of Ms. Gilmore and Ms. Sagar.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 120.65, Florida Statutes.

32. The School Board is charged with the duty to operate, control and supervise all free public schools within the School District of Osceola County. § 1012.22, Fla. Stat.

33. The superintendent of the School Board has the authority to recommend to the School Board that an employee be suspended or dismissed from employment. § 1012.27, Fla. Stat. The School Board seeks to exercise its disciplinary authority to terminate Ms. Sagar and Ms. Gilmore for "just cause." §§ 1012.22(1)(f), and 1012.33, Fla. Stat.; Fla. Admin. Code R. 6A-5.056; and Board R. 6.27.

34. The School Board has the burden of proving the allegations in its Administrative Complaint by a preponderance of the evidence. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351, 355 (Fla. 2d DCA 2009); McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883, 884 (Fla. 3d DCA 1990).

35. The preponderance of the evidence standard "is defined as '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, 289 n.1 (Fla. 2000). See also Haines v. Dep't of Child. & Fams., 983 So. 2d 602, 606 (Fla. 5th DCA 2008).

36. The allegations set forth in the January 21, 2014, superintendent letters to Ms. Sagar and Ms. Gilmore are the facts

upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005).

37. Osceola County School Board Rule 6.27^{13/} provides:

I. An effective educational program requires the services of personnel of integrity, high ideals, and human understanding. All employees shall be expected to maintain and promote these qualities. The Board shall also expect all administrative, instructional and support staff members to adhere to the Code of Ethics of the Education Profession in Florida and the Principles of Professional Conduct for the Education Profession in Florida.

II. Administrative and instructional personnel, as defined by Florida Statute, shall be required to complete training on these ethical standards. All other employees shall be encouraged to participate in training related to professional ethics.

III. The Superintendent and School Board members shall complete annual ethics training as required by law.

IV. All employees shall be responsible for reporting misconduct by School Board employees that affects the health, safety, or welfare of a student.

38. Florida Administrative Code Rule 6A-5.056 provides in pertinent part:

- (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.;^{14/}
 - (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.

* * *

- (5) "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

39. Florida Administrative Code Rule 6A-10.080 provides in pertinent part:

6A-10.080 Code of Ethics of the Education Profession in Florida.

(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.

40. Rule 6A-10.081 Florida Administrative Code provides in pertinent part:

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

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(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.

(h) Shall not exploit a relationship with a student for personal gain or advantage.

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

(4) Obligation to the public requires that the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

(c) Shall not use institutional privileges for personal gain or advantage.

(d) Shall accept no gratuity, gift, or favor that might influence professional judgment.

(e) Shall offer no gratuity, gift, or favor to obtain special advantages.

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

(a) Shall maintain honesty in all professional dealings.

(b) Shall not on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition if otherwise qualified, or social and family background deny to a colleague professional benefits or advantages or participation in any professional organization.

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(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.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

(g) Shall not misrepresent one's own professional qualifications.

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

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

(j) Shall not withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

(k) Shall provide upon the request of the certificated individual a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

(l) Shall not assist entry into or continuance in the profession of any person known to be unqualified in accordance with these Principles of Professional Conduct for the Education Profession in Florida and other applicable Florida Statutes and State Board of Education Rules.

(m) Shall self-report within forty-eight (48) hours to appropriate authorities (as determined by district) any arrests/charges involving the abuse of a child or the sale and/or possession of a controlled substance. Such notice shall not be considered an admission of guilt nor shall such notice be admissible for any purpose in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. In addition, shall self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or Nolo Contendere for any criminal offense other than a minor traffic violation within forty-eight (48) hours after the final judgment. When handling sealed and expunged records disclosed under this rule, school

districts shall comply with the confidentiality provisions of Sections 943.0585(4)(c) and 943.059(4)(c), F.S.

(n) Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

(o) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

(p) Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

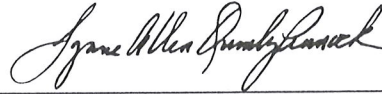
(q) Shall, as the supervising administrator, cooperate with the Education Practices Commission in monitoring the probation of a subordinate.

41. Petitioner proved by a preponderance of the evidence that Respondents Sagar and Gilmore are guilty of misconduct in office constituting just cause for dismissal.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Osceola County School Board, enter a final order finding that just cause exists for terminating the employment of Ms. Sagar and Ms. Gilmore.

DONE AND ENTERED this 19th day of June, 2015, 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 19th day of June, 2015.

ENDNOTES

^{1/} The students who testified are all minors; in order to protect their privacy, the Recommended Order refers to each minor student by his or her initials.

^{2/} Petitioner's Exhibits 6 through 11 contained either video recording of the actual students in the classroom, or transcripts with students' names.

^{3/} Ms. Chowdhary was listed as a witness by all parties. In an effort to limit her time away from her classroom responsibilities, and provide an orderly hearing flow, all parties were allowed to elicit direct testimony from her.

^{4/} Respondents' Exhibits 4 through 16, 18 through 20, and 21 contained either video recording of the actual students in the classroom, or transcripts with students' names. Additionally, Respondents' Exhibits 8 through 14 and 16 reflect that there are two pages to each exhibit; however, only one page was present with each admitted exhibit. Exhibit 15 is cut off at the bottom of the page. The undersigned believes it, too, is a two-page exhibit but only one page was admitted into evidence.

^{5/} This was not an issue for consideration at this hearing.

- 6/ This was not an issue for consideration at this hearing.
- 7/ The second para was only present for the beginning of the term.
- 8/ Other classifications for an ESE student are gifted or an exceptionally gifted; however, these cases did not involve gifted students.
- 9/ Multiple locations, including every classroom, are equipped with a telephone. One may dial "9" to get an outside line.
- 10/ The District has a "bring your own device" policy. Whether students may use the device in class is a decision left to the teacher. In this instance Ms. Chowdhary was unable to get J.T. to comply with the classroom rule against the use of a cellphone.
- 11/ Ms. Chowdhary became ill on January 8, and the school was unsuccessful in securing an ESE substitute teacher on short notice. Another para, "Cassia" was originally assigned to be Ms. Chowdhary's substitute on the rotation basis used by the school. Cassia was more familiar with the InD moderate students and had worked with them from the start of the school year. Ms. Gilmore requested to be assigned as Ms. Chowdhary's substitute teacher. Ms. Gilmore's request was vetted by Principal Ramos, who deferred to Mr. Wells, the ESE coordinator, and approved.
- 12/ J.C. has a medical condition that Ms. Gilmore was aware of based on information provided at the beginning of the school year.
- 13/ This rule was revised on March 4, 2014, approximately two months after the alleged incidents. The undersigned was not provided the version that was in effect on January 9, 2014. However, Exhibit 1, which was a copy of Rule 6.27, was admitted by stipulation by all the parties, and as such, the undersigned finds that nothing material to these particular Respondents was affected by the revision.
- 14/ The Principles of Professional Conduct for the Education Profession in Florida originally set forth in Florida Administrative Code Rule 6B-1.006 were transferred to Rule 6A-10.081 on January 11, 2013.

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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.