STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 14-3251TTS

JOHN ANSELMO,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in Leesburg, Florida, on January 5 and 6, 2015, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephanie J. McCulloch, Esquire
Stephen W. Johnson, Esquire
McLin & Burnsed, P.A.
1000 West Main Street
Leesburg, Florida 34749

For Respondent: Jamison Jessup, Qualified Representative
557 Noremac Avenue
Deltona, Florida 32738

STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent's employment with the Lake County School Board.

PRELIMINARY STATEMENT

By correspondence dated July 9, 2014, Petitioner Lake County School Board ("Petitioner" or "School Board") notified Respondent that it was initiating proceedings to terminate his employment.

Respondent timely requested a formal administrative hearing to contest the School Board's intended action and, on July 18, 2014, the matter was referred to the Division of Administrative Hearings ("DOAH") for further proceedings. The School Board's notice of specific charges alleges that, on three separate occasions during March and April of 2014, Respondent engaged in harassing or threatening conduct and, thus, committed misconduct in office, in violation of Florida Administrative Code Rule 6A-5.056(2). The School Board further contends, based on the results of a June 24, 2014, psychological evaluation, that Respondent is guilty of incompetency.

The final hearing was held on January 5 and 6, 2015, during which the School Board presented the testimony of 11 witnesses (Dominick Pedata, Laurie Marshall, Brandy Herron, Brian Herron, Kelly Richter, Jack Miller, Eddie Villafranca, Ozzie Villafranca, Diane Culpepper, Yvonne Pruett, and Stephanie Burnett) and introduced 18 exhibits, numbered 3 through 10, 14, 16, 17, 18, and 25 through 30. Respondent testified on his own behalf, called four other witnesses (Dejah Anselmo, Ian Anselmo,

Sue-Ellen Anselmo, and Dr. Hector DeLeon), and introduced four exhibits, numbered 11, 19, 20, and 23.

The final hearing transcript was filed on January 30, 2015. By order dated February 13, 2015, the undersigned granted the School Board's request to extend the deadline for the submission of proposed recommended orders to February 26, 2015. Both parties timely filed proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged misconduct.

FINDINGS OF FACT

I. The Parties

1. Petitioner is the entity charged with the duty to operate, control, and supervise the public schools within Lake County, Florida.

2. At all times relevant hereto, Respondent was employed as a teacher in the School Board's online learning program.

II. Events of March 26, April 11, and April 14, 2014

3. The first incident giving rise to this proceeding occurred on March 26, 2014, in Mount Dora, Florida. On that occasion, Brandy Herron, a former School Board employee, was shopping with an acquaintance (Kelly Richter) at an Office Depot

store. Respondent, accompanied by his 15-year-old daughter, was also present in the establishment.

4. The record reflects that Mrs. Herron and Respondent were no strangers, having worked together——acrimoniously——at the same elementary school from 2007 to 2008. As such, it is not surprising that, upon seeing Respondent in the store, Mrs. Herron noted his presence to Ms. Richter.

5. Regrettably for all involved, Respondent misinterpreted Mrs. Herron's innocent remark to Ms. Richter as a personal affront. Eschewing self-restraint, Respondent approached Mrs. Herron and demanded to know if she was talking about him. Moments later, while gazing at Mrs. Herron's breasts, Respondent uttered, "fakey, fakey, fakey."

6. Predictably, Mrs. Herron asked Respondent to back away. Respondent eventually did so, but not before he told Mrs. Herron that, because he was unwilling to fight a woman, he would instead "beat [her] husband's ass." For good measure, and to the dismay of Mrs. Herron, Respondent repeated his "fakey, fakey, fakey" refrain.

7. On the heels of his encounter with Mrs. Herron, Respondent drove (with his daughter in tow) to Mr. Herron's place of business. Upon his arrival, however, Respondent was informed by a member of Mr. Herron's staff that Mr. Herron was out of the office.[1/]

8. The second encounter at issue occurred on the evening of April 11, 2014, on the campus of Lake Tech College ("Lake Tech"), a vocational charter school located in Lake County. At approximately 9:00 p.m., Respondent accompanied two of his minor children to Lake Tech, where Respondent's father-in-law, Jack Miller, is employed as the school's assistant director. It is undisputed that the presence of Respondent and his children at Lake Tech was at the invitation of Mr. Miller, who had arranged for his secretary to notarize certain test registration documents. (Respondent's children were scheduled to take the ACT examination early the next morning.)

9. Per Mr. Miller's instructions, Respondent accompanied his children to an office adjacent to Lake Tech's welding classroom, where a school secretary proceeded to notarize the documents. At that time, a welding class was wrapping up, one of whose students, 21-year-old Ozzie Villafranca, nodded a greeting to Respondent. From this innocent nod, Respondent erroneously concluded that Mr. Villafranca had ogled his 15-year-old daughter.

10. By all accounts, Respondent overlooked this perceived slight (temporarily at least), completed the business at hand, and accompanied his two children to the parking lot. At that point, and without provocation, Respondent returned to the entrance to the welding classroom, where Mr. Villafranca was

getting some fresh air. Respondent approached Mr. Villafranca and demanded to know if he had a "problem." Taken aback by Respondent's peculiar conduct, Mr. Villafranca replied that there was no problem.

11. Moments later, Mr. Villafranca's cousin, Eddie Villafranca (also an adult vocational student), joined the encounter, at which time Respondent asked if he, too, had a problem. When Eddie did not respond, Respondent inquired of the cousins, "do you little boys want to get your asses beat?"

12. Fortunately, much of the foregoing incident was witnessed by Mr. Miller, who repeatedly implored Respondent to go home. After three explicit warnings, Respondent returned to the parking lot and drove away.

13. The next incident, which occurred on April 14, 2014, was comparatively less serious. On that occasion, Stephanie Burnett, a School Board employee, was shopping in a Target store when she was approached by Respondent's wife, Sue-Ellen Anselmo.

14. During the brief conversation that ensued, Mrs. Anselmo identified herself to Ms. Burnett, accused Ms. Burnett of trying to destroy her family (by supposedly providing, some years earlier, misinformation to the School Board during an investigation of Respondent), and called Ms. Burnett a "bitch." Mrs. Anselmo then proceeded to walk away, at which point Ms. Burnett, who was rattled by the

exchange, began to wheel her shopping cart elsewhere. Moments later, Ms. Burnett encountered Respondent, who, upon seeing her, exclaimed, "I read your statement and you're a liar."

15. Needless to say, the foregoing incidents were reported to and investigated by the School Board. Although one or more of the episodes——particularly the first two——likely would have warranted Respondent's termination, the School Board instead issued a "Level II Written Reprimand." The reprimand, whose relevant content is quoted below, was issued on June 3, 2014, by Dominick Pedata, the School Board's supervisor of employee relations:

> This Level II reprimand is to put you on notice of your three separate incidents involving your behavior outside of the office. An investigation proceeded regarding these allegations. On March 26, 2014, it was documented by a police report that you harassed one former employee and her husband regarding a prior Lake County Schools investigation that you were involved in. On April 11, 2014, it was reported that you threatened two students at Lake Tech Education Center in the parking lot with physical harm and were asked to leave on several occasions or the police would be called to escort you off the campus. On April 14, 2014, it was documented by a police report that you and your wife threatened a Lake County Schools employee regarding a prior Lake County Schools investigation.
>
> These are clear violations [of] Florida Administrative Code [Rule] 6A-10.081 Principles of Professional conduct for the Education Profession in Florida . . . .

> Moving forward you are not to approach any employee regarding a prior investigation, and/or enter a Lake county School campus and act in an aggressive or harassing manner toward a student. Any similar issues will lead to further disciplinary action up to and including termination. Please let me know if you have any questions.

(emphasis added).

16. The foregoing language makes plain that the School Board had completed its investigation regarding the incidents of March 26, April 11, and April 14, 2014, and that Respondent's "Level II Reprimand" constituted formal disciplinary action in connection with those events.[2/] Thus, as discussed later in this Order, the School Board is now precluded from terminating Respondent for the same misconduct.

III. Psychological Evaluation

17. As noted previously, the School Board advances an alternative basis for termination, namely, that Respondent is guilty of "incompetency."

18. On this issue, the record reflects that on June 3, 2014, Mr. Pedata directed Respondent to report for a "Medical Fit for Duty Examination" with Dr. Wally Austin, a licensed psychologist. At or around that time, Mr. Pedata furnished Dr. Austin with police reports and other investigative documents relating to the incidents of March 26, April 11, and April 14, 2014.

19. Consistent with Mr. Pedata's directive, Respondent thereafter reported to Dr. Austin's office and submitted to a psychological evaluation. The evaluation, which Dr. Austin conducted on June 24, 2014, comprised three elements: a one-hour interview; the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2"); and a follow-up interview of approximately 5 to 10 minutes.

20. Dr. Austin concedes that, during the interview, Respondent's speech was "clear, logical, and coherent," and that there was "no evidence of a thought disorder, perceptual disturbance, or psychosis." Nevertheless, Dr. Austin was troubled by the fact that, when pressed about the episodes of March 26, April 11, and April 14, Respondent provided descriptions of the events that varied significantly from the accounts of the other involved parties (as documented in the police reports and other materials provided to Dr. Austin by the School Board). For example, Respondent insisted that he was not present at the Target store on April 14, 2014, and, thus, did not interact with Ms. Burnett on that date.

21. Operating under the premise that Respondent had engaged in "grossly inappropriate behavior" during the episodes of March 26, April 11, and April 14,[3/] Dr. Austin thought it prudent to "get objective information." To that end, Dr. Austin

administered the MMPI-2, a widely-used, standardized test of adult personality.

22. Unfortunately, Respondent's answers to the MMPI-2 resulted in a high "lie" (or "L") scale (one of the test's three "validity" scales) that rendered the entire evaluation invalid. As Dr. Austin explained, a high L scale typically occurs when test takers attempt to depict themselves as unrealistically virtuous.

23. Notably, however, Dr. Austin equivocated whether the high "L scale" resulted from conscious behavior on Respondent's part. At one point, for example, Dr. Austin testified that Respondent "had the ability to answer [] in a more forthright manner."[4/] Later, though, Dr. Austin credibly opined that Respondent believed in the truthfulness of his test responses:

> Well, that's the part we didn't get into. He faked it – when I say "faked it good," there is [sic] other scales that indicate that John believes what he is saying. So for him, he is not faking it.
>
> * * *
>
> [B]ecause by [the L scale] being so high, it invalidates the report because it lowered all of the other scores. And the psychopathology would come up, but you don't know what it is because he denies everything. But it is not a conscious denial, he believes what he believes.

Pet'r Ex. 10, p. 68:5-9; 68:23-69:3 (emphasis added).

24. Upon the completion of the MMPI-2, Dr. Austin conducted a brief follow-up interview with Respondent, at which point the evaluation concluded. The following day, on June 25, 2014, Dr. Austin notified the School Board that, in his view, Respondent was "not fit to return to work in the school system."

25. A charging document soon followed, wherein the School Board alleged that Respondent is guilty of incompetency:

> Based on the results of the medical fit for duty you are also charged with "Incompetency." Under F.A.C. 6A-5.056(3), Incompetency is the "inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity." Inefficiency under 6A-5.056(3)(a)2 is "Failure to communicate appropriately with and relate to students[,]" and 6A-5.056(3)(a) is "Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents." Incapacity under 6A-5.056(3)(b)1 is "Lack of emotional stability." Your actions clearly reflect incompetency in this regard.

Pet'r Ex. 17.

26. In its Proposed Recommended Order, the School Board reiterates its position that Dr. Austin's findings and/or the incidents of March 26, April 11, and April 14, 2014, demonstrate Respondent's incompetency. For the reasons explicated below, the undersigned is not so persuaded.

27. First, the School Board is precluded from basing the incompetency charge upon the episodes for which Respondent was previously reprimanded.

28. The psychological evaluation likewise cannot support the incompetency charge, as it is evident that Dr. Austin's opinion was informed almost exclusively by Respondent's previously-punished misconduct. Consider the following exchanges between Dr. Austin and School Board counsel:

> Q. Okay. And what are those duties, just in your own words, that you would expect for a teacher who is, in fact, fit for duty to perform?
>
> A. I think the question is very broad. Because I would like to answer it by ruling out what I don't expect.
>
> Q. Okay.
>
> A. I don't expect there to be threats of violence to hit other students – to hit students where the teachers now are starting to get violent with the kids, or young men, students of the county.
>
> Or I don't expect teachers or adults to conduct themselves inappropriately in the school setting or in public to the point that you were going down the street to fair it out with someone's husband. You know, those kinds of things, I don't think that is becoming of a school teacher.
>
> * * *
>
> A. All right. I am not assessing his ability to teach. I am assessing: Is he fit to be in the room.

> Q. Correct.
>
> A. I am looking at an individual who has had five episodes of grossly inappropriate behavior: The Triangle School thing one, the Home [sic] Depot lady, the flirting, the technical school, the Target. He has had inappropriate behavior in multiple settings; in the school setting, in the public with the school teachers; he is going over to people's work environments.
>
> His inappropriate behavior has involved teachers, it has involved students, it has involved administrators. He has been called on the carpet and had consequences of police reports filed on him, changes in school, three-days [sic] suspension. And it keeps going on and on . . . . If a person has done something twice, three times, four times they are very likely to do that behavior again. What faith do I have that [Respondent] is not going to threaten violence to teachers or to students when he leaves my office . . . ?

Pet'r Ex. 10, p. 35:7-22; p. 36:3-8.

29. The only reasonable interpretation of the foregoing testimony is that Respondent's earlier misdeeds were a necessary component of Dr. Austin's opinion. At bottom, then, the School Board is attempting to accomplish indirectly (i.e., terminate Respondent by channeling his previously-punished misconduct through an expert, who opines that the misconduct demonstrates unfitness) what it cannot do directly (i.e., terminate Respondent for the previously-punished misconduct). As noted shortly, basic due process precludes such an outcome.

30. Moreover, and in any event, Dr. Austin's evaluation, which comprised a single office visit, was insufficiently comprehensive to evaluate properly Respondent's fitness to carry out his required duties. On this point, the undersigned credits the testimony of Respondent's expert witness, Dr. DeLeon, who opined that an appropriate evaluation would necessarily include multiple office visits over a period of time.[5/]

CONCLUSIONS OF LAW

I. Jurisdiction

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

II. The Burden and Standard of Proof

32. A district school board employee against whom a disciplinary proceeding has been initiated must be given written notice of the specific charges prior to the hearing. Although the notice "need not be set forth with the technical nicety or formal exactness required of pleadings in court," it should "specify the [statute,] rule, [regulation, policy, or collective bargaining provision] the [school board] alleges has been violated and the conduct which occasioned [said] violation." Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983)(Jorgenson, J., concurring).

33. Once the school board, in its notice of specific charges, has delineated the offenses alleged to justify termination, those are the only grounds upon which dismissal may be predicated. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Klein v. Dep't of Bus. & Prof'l Reg., 625 So. 2d 1237, 1238-39 (Fla. 2d DCA 1993).

34. In an administrative proceeding to suspend or dismiss a member of the instructional staff, the school board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996). The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

35. The instructional staff member's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995).

III. The Charges Against Respondent

A. Misconduct in Office

36. In its notice of specific charges, the School Board first alleges that Respondent is guilty of misconduct in

office——an offense that, if proven, would provide just cause to terminate Respondent's employment. See § 1012.33(1)(a), Fla. Stat.

37. Florida Administrative Code Rule 6A-5.056(2) defines the charge of misconduct in office to include, among other things:

> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in [rule 6A-10.080], F.A.C.;
>
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in [rule 6A-10.081], F.A.C.

38. In turn, the Code of Ethics of the Education Profession (adopted in Florida Administrative Code Rule 6A-10.080) and the Principles of Professional Conduct for the Education Profession in Florida (adopted in Florida Administrative Code Rule 6A-10.081) provide, in pertinent part, as follows:

> 6A-10.080 Code of Ethics for 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.

* * *

6A-10.081 Principles of Professional Conduct for the Education Profession in Florida.

(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.

* * *

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

* * *

(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.

39. Although Respondent's behavior during the incidents of March and April 2014 arguably violated one or more of the foregoing proscriptions, the School Board is nevertheless precluded from terminating his employment due to its earlier issuance of a written reprimand in connection with the same misconduct. See Dep't of Envtl. Prot. v. Barker, 654 So. 2d 594 (Fla. 1st DCA 1995).

40. In Barker, an employee of the Florida Department of Environmental Protection (DEP) was issued a written reprimand for misconduct related to his professional duties. Id. at 595. Two months later, DEP notified the employee that he was being demoted "based upon the same conduct for which he had received the written reprimand." Id. The employee thereafter appealed to the Public Employee Relations Commission (PERC), arguing that the demotion was improper because it constituted successive punishment for the same misconduct. In affirming PERC's order rescinding the demotion, the First District Court of Appeal held:

> An agency may not reach a decision as to disciplinary action on one occasion, and then at a later date increase the disciplinary action so that the agency disciplines the employee twice for the same offense . . . . As PERC properly found, by issuing a written reprimand on September 20 and, two months later issuing another written notice informing Barker of his demotion and transfer, the agency disciplined him twice for the same offense.

Id. (internal citations and quotation marks omitted); Dep't of Transp. v. Career Serv. Comm'n, 366 So. 2d 473, 474 (Fla. 1st DCA 1979)("D.O.T. not only lacked authority to discipline Woodard twice for the same offense but its action was fundamentally unfair. . . . [D]isciplinary action may not be increased at a later date nor may an agency discipline an employee twice for the same offense."); see also Sch. Bd. of Highlands Cnty. v. Locke, 1991 Fla. Div. Adm. Hear. LEXIS 6127, *19-20 (Fla. DOAH July 31, 1991)("The Petitioner having elected to discipline the Respondent for such conduct by the issuance of a letter of official reprimand cannot now use the same conduct as the basis for suspension without pay.").[6/]

41. As the foregoing authority demonstrates, the School Board is not permitted to discipline Respondent——by terminating his employment or taking any other action——for the same conduct that was the subject of the June 3, 2014, written reprimand. Accordingly, the charge of misconduct in office must be dismissed.

B. Incompetency

42. The School Board further alleges, based upon Respondent's conduct and/or Dr. Austin's evaluation, that Respondent is guilty of incompetency, an offense defined in relevant part as:

> [T]he inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.
>
> (a) "Inefficiency" means one or more of the following:
>
> * * *
>
> 2. Failure to communicate appropriately with and relate to students;
>
> 3. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
>
> * * *
>
> (b) "Incapacity" means one or more of the following:
>
> 1. Lack of emotional stability.

Fla. Admin. Code R. 6A-5.056(3).

43. This charge likewise fails. First, the authority cited above precludes the School Board from basing the incompetency charge upon Respondent's previously-punished misconduct.

44. As for the testimony of Dr. Austin, the record demonstrates that his opinion concerning Respondent's fitness is

grounded almost exclusively on the very same misconduct for which Respondent was reprimanded.[7/] That being so, to sustain the incompetency charge upon Dr. Austin's testimony (which, distilled to its essence, simply recapitulates Respondent's behavior as described in the School Board's investigative materials) would violate the axiom that a party cannot do indirectly what it cannot do directly. See, e.g., Cnty. of Volusia v. State, 417 So. 2d 968, 972 (Fla. 1982)("That which may not be done directly may not be done indirectly."). In any event, Dr. Austin's evaluation was insufficiently comprehensive and, therefore, unpersuasive.

RECOMMENDATION

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

RECOMMENDED that the Lake County School Board enter a final order: dismissing the charges brought against Respondent in this proceeding; and awarding Respondent any lost pay and benefits.

DONE AND ENTERED this 26th day of March, 2015, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of March, 2015.

ENDNOTES

[1/] As for what occurred next, the only non-hearsay evidence comes from Respondent himself, who testified, incredibly, as follows:

> And I said, okay, I just wanted to come by and let him know I had an argument with his wife, to let him know that I'm not being a jerk. And that was pretty much it. [The secretary] had said okay. And I said, well, have a nice day, and then I left.

Hr'g Tr. 343:20-24.

[2/] During cross-examination, Mr. Pedata acknowledged what is readily apparent from the face of the reprimand, namely, that the reprimand constituted disciplinary action in connection with the three incidents:

> Q. Let's go to the June 3rd letter, which is Petitioner['s] Exhibit 27, the Level 2 written reprimand.
>
> A. Okay.

> Q. That was to reprimand him for the three incidents; correct?
>
> A. That's correct.
>
> * * *
>
> Q. But you did discipline him for the three incidences [sic]; correct?
>
> A. That was part of the letter.

Hr'g Tr. 108:17-22; 111:13-15.

[3/] Pet'r Ex. 10, p. 35:10-23.

[4/] Pet'r Ex. 10, p. 53:1-19. The undersigned rejects this testimony in favor of Dr. Austin's later testimony that Respondent subjectively believed in the truthfulness of his test responses. Pet'r Ex. 10, pp. 68:5-9; 68:23-69:3.

[5/] Dr. DeLeon testified as follows concerning the inadequacy of Dr. Austin's evaluation:

> A. I would say definitely more than one visit. On average when I have done this before it takes me at the very least – and that is to do a poor one – at least three hours in different encounters like different sessions, different moments in time.
>
> Q. And why is that?
>
> A. Because just one encounter of an hour or two or three to do a one-time only, it's just like taking a snapshot with a camera of a small moment in time. And it's only going to reflect what is happening within that frame of time. The more I get to see of everything, the more clear the big picture is going to be. So it's really -- I would say to the point of malpractice to do just an opinion like that on just one encounter . . . .

Hr'g Tr. 418:12-25.

[6/] As an exception to this principle, an agency may temporarily suspend an employee pending an investigation and, upon its completion of the investigation, pursue harsher disciplinary action. Dep't of Corr. v. Duncan, 382 So. 2d 135, 136-37 (Fla. 1st DCA 1980). This exception is inapplicable where, as here, the agency's issuance of a reprimand constituted "a disciplinary measure in itself." Id. at 137; Dep't of Transp. v. Career Serv. Comm'n, 366 So. 2d 473, 474 (Fla. 1st DCA 1979)("[H]aving concluded its investigation and reached its decision as to the disciplinary action it will administer to an employee, the disciplinary action administered may not be increased at a later date nor may an agency discipline an employee twice for the same offense.").

[7/] To be sure, Dr. Austin's efforts to gather objective information were thwarted by Respondent's unrealistically virtuous responses during the MMPI-2. The undersigned is persuaded, however, that Respondent's test answers were not the product of a conscious attempt to mislead the examiner. Pet'r Ex. 10, pp. 68:5-9; 68:23-69:3.

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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.