

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. LUCIE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-4929

RANDOLPH LOCKRIDGE,

Respondent.

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RECOMMENDED ORDER

A final hearing was held in this case before Robert L. Kilbride, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on January 20, 2016, in Port St. Lucie, Florida.

APPEARANCES

For Petitioner: Barbara Lee Sadaka, Esquire  
St. Lucie County School Board  
4204 Okeechobee Road  
Fort Pierce, Florida 34947

For Respondent: Nicholas Anthony Caggia, Esquire  
Law Office of Thomas L. Johnson, P.A.  
510 Vonderburg Drive, Suite 309  
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner, St. Lucie County School Board, has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

The St. Lucie County School Board ("Petitioner" or "School Board") employs Randolph Lockridge ("Respondent" or "Lockridge") as an exceptional student education ("ESE") behavior technician. In September 2014, Respondent was removed from the classroom and placed on temporary duty assignment pending an investigation for using an inappropriate method to discipline or control a disabled child.

On May 1, 2015, Respondent received a Letter of Reprimand for administering an inappropriate method of discipline on a disabled child and for unsatisfactory work performance and was reassigned as a behavior technician at a different school, Northport K-8 School.

On May 19, 2015, Respondent was involved in another episode of administering an inappropriate method of discipline on a disabled student.

On June 29, 2015, the superintendent sent Respondent a letter stating that he had violated numerous School Board policies and was being recommended for termination at the August 25, 2015, School Board meeting.

On July 6, 2015, Respondent, through his attorney, requested a hearing before an administrative law judge appointed by DOAH pursuant to sections 120.569 and 120.57, Florida Statutes.

In response to the July 6, 2015, request, a letter was sent to Respondent's counsel on July 23, 2015, advising that pursuant to Respondent's DOAH request, his name was being submitted to the School Board at its regularly scheduled meeting on July 28, 2015, for suspension without pay and referral to DOAH. On September 2, 2015, Petitioner forwarded the request to DOAH, which scheduled and conducted the final hearing on January 20, 2016.

Petitioner called the following witnesses: Teacher (former student teacher) Deborah Ramsingh; Teacher Amber McDonald; Behavior Technician Jennifer Staab; Records Custodian for Port St. Lucie Police Department Linda Cole; Executive Director for Student Services and Exceptional Student Education Bill Tomlinson; Child Protective Investigator for the Department of Children and Families Virginia Snyder; and Executive Director of Human Resources Maurice Bonner. Petitioner's Exhibits 2, 4, 6 through 16, and 18 through 24 were admitted in evidence. Respondent testified on his own behalf and called one additional witness, President of the Classroom Teachers Association Victoria Rodriguez. Respondent's Exhibits 2 through 7 were admitted in evidence.

The two-volume final hearing Transcript was filed on February 18, 2016. Respondent filed an Unopposed Motion for Extension of Time to File Proposed Recommended Order, and, pursuant to the undersigned's Order dated February 22, 2016, the

date for the parties' proposed recommended orders was extended, and the proposed recommended orders were due March 10, 2016.

In this document, citations to the hearing Transcript are indicated by a "Tr.," the volume number, the page number of the Transcript, and the line number(s). Citations to exhibits are indicated by either "Pet." for Petitioner's exhibit or "Resp." for Respondent's exhibit, "Exh." number.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2015.

#### FINDINGS OF FACT

Based on the evidence presented at the hearing, the undersigned credits and makes the following findings of material and relevant facts:

1. Lockridge has been employed by the School Board and last worked as an ESE behavior technician at Northport K-8 School.

Pet. Exh. 1.

2. Lockridge is a continuing status employee covered under the Collective Bargaining Agreement ("CBA") between the School Board and the Classroom Teachers' Association Classified Unit ("CTA/CU"). Resp. Exh. 6.

3. The CTA/CU consists of behavior technicians, paraprofessionals, bus paraprofessionals, and clerical staff.

Tr. II, p. 180, lines 10-14.

4. During the 2014-2015 school year, Lockridge was assigned to Teacher Amber McDonald's self-contained classroom for intellectually disabled students at Floresta Elementary. The intellectually disabled classroom is for students with emotional disorders and students with an intelligence quotient ("IQ") under 69. Tr. I, p. 51, line 25-p. 52, line 2.

5. For the 2014-2015 school year, there were five adults working in Ms. McDoanld's classroom: Randolph Lockridge, behavior technician; Sharon Koen, paraprofessional; Stephanie Ludwig, paraprofessional; Ms. McDonald, classroom teacher; and Deborah Ramsingh, student teacher. Tr. I, p. 52, line 24-p. 53, line 7. There were approximately 12 students in the classroom. Tr. I, p. 53, lines 8-10.

6. Student D.S. was an eight-year-old ESE student whose primary disability is intellectual. D.S. is non-verbal and has Down's syndrome. Pet. Exh. 7. Because of his disability, D.S. is limited to two-word utterances "here and there." He has an IQ below 60 and intellectually he is on about a one and one-half-year-old level. Tr. I, p. 54, lines 10-17.

September 8 and 9, 2014, Incidents with D.S.

7. On September 8, 2014, Ms. Ramsingh was engaged in a lesson with the students on using crayons, teaching them how to hold the crayons and how to draw on the paper. D.S. kept taking his crayons and throwing them on the floor. She observed

Lockridge take the student's hand and press his fingernail into the palm of D.S.'s hand. The student screamed "ow" and pulled his hand back. Tr. I, p. 34, lines 9-18. Lockridge looked at him and asked, "Why are you crying, what's wrong?" Tr. I, p. 35, lines 14-15.

8. Ms. Ramsingh reported what she saw the following day to Ms. McDonald, the supervising teacher in the classroom. Tr. I, p. 35, line 25-p. 36, line 12.

9. On September 9, 2014, when Lockridge and D.S. returned to the classroom from physical education ("PE"), Ms. Ramsingh observed another interaction between them. D.S. had his crayons, and he threw them on the floor again. Lockridge took his hand and pushed his fingernail into the palm of the student's hand again. He said "ow" again, but continued to throw his crayons on the floor. Lockridge pressed his finger into the student's hand a second time. The student said "ow" again. When Lockridge realized Ms. Ramsingh was looking at him, he commented, "I shouldn't do that, they don't like when I do that, some people think it is abuse." Tr. I, p. 36 line 22-p. 37 line 9.

Ms. Ramsingh went to Ms. McDonald and told her that Lockridge put his fingernail in the student's hand two more times, and she told Ms. McDonald the statement that Lockridge made. Tr. I, p. 38, lines 12-18. Ms. McDonald left the classroom to report it. Tr. I, p. 38, lines 17- 20.

10. Ms. Ludwig took D.S. into the restroom and yelled for Ms. Koen to come into the restroom. Tr. I, p. 39, lines 14-18.

11. Ms. Koen told Lockridge to get Ms. McDonald. Tr. I, p. 40, lines 9-14. The staff had ice packs on D.S. Tr. I, p. 40, lines 21-23.

12. Ms. Ramsingh observed the fingernail marks in D.S.'s hand and the ice that the staff was putting on D.S.'s wrist. Tr. I, p. 47, lines 5-9. Ms. Ramsingh gave a statement to law enforcement the following day. Tr. I, p. 41, lines 3-7; Pet. Exh. 4. She also provided a statement for the School Board's investigation. Pet. Exh. 7.

13. Ms. McDonald testified about what she observed on D.S.'s body (after the student had returned from P.E.). She described it as a fresh bruise about three to four inches on both of D.S.'s wrists; it looked like he had a hand mark on both his wrists, and it was purplish already. Tr. I, p. 55, lines 5-11. D.S. did not have any bruises on his body before he went to PE.

14. Ms. McDonald asked Lockridge what happened. Lockridge said he did not know, "maybe he fell." Tr. I, p. 56, lines 1-2. Lockridge said he had to help D.S. walk. Tr. I, p. 56, lines 5-6. D.S. did not have any bruising on his body when he left the classroom for PE. But, he returned with bruises on his wrist, and Lockridge was responsible for supervising D.S. while he was at PE. Tr. I, p. 73, lines 17-25.

15. Ms. McDonald testified that her observation of Lockridge was that there were a lot of times he was loud and instead of de-escalating a situation, he would often escalate it. Tr. I, p. 59, lines 1-3. There were parents of children that Lockridge had worked with who had concerns about Lockridge. As a result, Ms. McDonald restricted him from working with specific students in the classroom. Tr. I, p. 58, lines 4-5 and lines 15-18.

16. As a behavior technician, Lockridge was trained in Crisis Prevention Intervention (CPI). Pet. Exh. 20 and Exh. 23. The purpose of CPI is to de-escalate a situation before it ever comes to the point of having to restrain a child. Tr. I, p. 59, lines 4-8, and p. 59, lines 12-14.

17. Ms. McDonald testified that de-escalation means to approach the student and get them to calm down, to breathe. Tr. I, p. 60, lines 1-6.

18. Ms. McDonald also testified that it is not appropriate to restrain a child by the wrist where bruising would be caused. Tr. I, p. 62, lines 21-24.

19. If the child begins to resist, "the teacher should not move, but should stand there until the child is ready to move." Tr. I, p. 64, lines 2-4.

20. Lockridge provided a statement to the principal regarding the September 9, 2014, incident with D.S. Pet. Exh. 9.



21. Law enforcement was contacted. Tr. I, p. 56, lines 14-15; Pet. Exh. 4.

22. On September 10, 2014, the school security officer, Frank Sisto, notified Maurice Bonner, executive director of Human Resources, of Ms. Ramsingh's report. Pet. Exh. 11.

23. On September 10, 2014, Mr. Bonner hand-delivered a Formal Notice of Investigation and Temporary Duty Assignment to Lockridge and also verbally notified Lockridge of the allegations. Pet. Exh. 6; Tr. II, p. 171, lines 23-p. 172, line 11. Lockridge was temporarily assigned to the ESE office pending an investigation.

24. On March 19, 2015, the School Board's internal investigation concluded. Pet. Exh. 7.

25. On May 1, 2015, Mr. Lockridge received a Letter of Reprimand from Mr. Bonner and was reassigned to Northport K-8 School as a behavior technician. Pet. Exh. 15.

Involvement by Mr. Maurice Bonner

26. Mr. Bonner testified that he discussed Lockridge's conduct and his expectations concerning future conduct with Lockridge. Specifically, Mr. Bonner explained to Lockridge that inappropriate discipline of students was not acceptable behavior and that he was to cease and desist from any type of such discipline in the future. Tr. II, p. 174, line 15-21.

27. As executive director of Human Resources for St. Lucie County Public Schools, Mr. Bonner is in charge of the hiring process for applicants, in charge of records for the school district employees, supports administrators in the discipline process, works with employees on leave, interprets School Board policy, and provides support to the superintendent and the School Board members. Tr. II, p. 168, lines 12-17.

28. Mr. Bonner is responsible for applying and enforcing School Board Policy Chapter 6.00, Human Resources. Tr. II, p. 169, line 24-p. 170, line 4.

29. When an allegation of inappropriate conduct or violation of School Board policy is made for an individual who interacts with students, and if it rises to the level of institutional abuse, the school district's protocol is for the School Board administrators to contact the Department of Children and Families, law enforcement, the human resources administrator, and then the parent. Tr. II, p. 171, lines 5-15.

30. After Lockridge was assigned to Northport K-8 School on May 1, 2015, there was another incident involving Lockridge and a disabled student, V.S.I. Tr. II, p. 175, lines 14-18.

31. On January 20, 2015, when Lockridge said he did not want to give any further statement, he and Victoria Rodriguez, his union representative, asked for a copy of the incident report

from the law enforcement officer. Tr. II, p. 179, lines 21-  
p. 180, line 3.

32. The School Board provided the incident report to Lockridge and Ms. Rodriguez, and Lockridge wrote a statement. Pet. Exh. 10.

33. Lockridge said he was too nervous (about the meeting) and he did not want to sit down and answer questions. But, he eventually wrote his statement after reviewing law enforcement's incident report while his union representative was present. Pet. Exh. 10; Tr. II, p. 182, line 6.

34. By letter dated June 29, 2015, Superintendent Genelle Yost informed Lockridge that she intended to recommend to the School Board that he be terminated. Pet. Exh. 22.

35. Mr. Bonner, in his conversation with Lockridge regarding the first incident (with Student D.S.), warned and instructed Lockridge to not use inappropriate discipline on students. Despite this warning, a few weeks later at Northport K-8 School, Lockridge used inappropriate discipline on a student again. Mr. Bonner, as an administrator, had given Lockridge a previous directive that was not followed. In Mr. Bonner's professional opinion, that constituted insubordination. Tr. II, p. 185, lines 17-p. 186, line 1; Pet. Exh. 24.

36. Mr. Bonner testified that sitting on a student's hands is not appropriate discipline. It is not an appropriate method of restraint of a student. Tr. II, p. 186, lines 5-9.

37. In addition, it constitutes a violation of the code of ethics of the standards for employees in the education profession, putting students in danger of harm. Mr. Bonner stated that "We're in charge of their health, welfare and safety and that's not meeting that standard." Pet. Exh. 24; Tr. II, p. 186, lines 10-14.

38. Commenting on the incident involved, Mr. Bonner felt that "sticking a thumb down in a student's palm" was indecent conduct and can be considered abusive to a student. Tr. II, p. 186, lines 21-p. 187, line 1; Pet. Exh. 24.

39. In his opinion, Lockridge's conduct constituted unsatisfactory work performance since he had harmed a student. He also felt it constituted neglect of duty and violation of any rule, policy, or regulation. Tr. II, p. 187, lines 5-18; Pet. Exh. 24.

40. Mr. Bonner explained how progressive discipline works:

We have several steps that we can use as far as disciplining employees based on their conduct and based on the severity . . . if we believe that the incident or the behavior is severe enough, we can skip steps . . . we can start immediately with termination if it's severe enough. If we don't believe it is severe enough to go that way, then we go down

that continuum--a letter of concern, letter of reprimand, suspension or termination.

Tr. II, p. 191, lines 7-23.

41. When you look at progressive discipline, you have to look at what the previous action is. If you're going to look at multiple offenses of the same nature, you can't discredit that.

T. II, p. 193, line 23-p. 194, line 2.

42. In Mr. Bonner's opinion, Lockridge's second incident of sitting on a child's hand is "also abusive and discourteous conduct, it's immoral and indecent, it's negligent because he was told not to use inappropriate discipline, it's unsatisfactory work performance, and it's a neglect of his duty because it's not proper protocol or training for restraint of a student. His conduct is also a violation of the rules, policies, and regulations." Tr. II, p. 194, lines 3-10; Pet. Exh. 24.

43. Lockridge had a duty and responsibility, and he failed to discharge that duty knowingly, and that was negligence, in Mr. Bonner's opinion. Tr. II, p. 194, lines 23-25; Pet. Exh. 24.

44. Lockridge knew that sitting on a child's hands was not a proper restraint technique under the CPI training that he has received as a behavior technician for the St. Lucie County Public School System. He was told, based on a previous instruction, that sticking his thumb down in the student's hand was not appropriate discipline or restraint of a student. He knew that

what he was doing was not appropriate and that it did not meet the standards of the St. Lucie County Public School System nor the training he received. Tr. II, p. 195, lines 11-23.

45. Mr. Bonner told Lockridge when he gave him the Letter of Reprimand that if Lockridge violated any of the School Board policies again, more severe disciplinary action could be taken. Tr. II, p. 197, lines 13-22.

46. The standard for skipping steps in progressive discipline is based on the employee's behavior. Tr. II, p. 198, lines 12-15.

47. "It is on a case by case basis . . . if you did something very egregious, we don't have to start at the beginning of that continuum. Based on the behavior of the employee then [sic] dictates where we go on to that continuum." Tr. II, p. 198, lines 17-23.

May 19, 2015, Incident with V.S.I.

48. Jennifer Staab was a behavior technician at Northport K-8 School. Tr. I, p. 80, lines 1-6. Ms. Staab was certified in CPI. Tr. I, p. 81, lines 5-9.

49. She worked with students in an emotionally behaviorally disturbed ("EBD") classroom on May 19, 2015. It is a self-contained classroom. Tr. I, p. 82, lines 1-7.

50. On May 19, 2015, there were eight or nine students in the EDB self-contained classroom. Tr. I, p. 82, lines 11-14.

51. There was only one way into the desk; the desk was pushed up against the computers. Tr. I, p. 83, lines 11-15.

52. Ms. Staab heard a slap and that drew her attention to that direction. Tr. I, p. 84, lines 5-8.

53. Lockridge was sitting on the desk; his back was towards V.S.I. Tr. I, p. 84, lines 11-12.

54. V.S.I. was sitting in the desk. Tr. I, p. 84, lines 14-18.

55. When Lockridge got off of the desk, Ms. Staab noticed deep indentations, at least two or three of them, on the student's one arm. Tr. I, p. 85, lines 22-p. 86, line 5.

56. Ms. Staab concluded that Lockridge had to have been sitting on V.S.I.'s hands. Tr. I, p. 86, lines 16-18.

57. From the way behavior technicians are trained, Ms. Staab considered Lockridge being seated on the desk and trying to prevent the student from getting out of the desk, to be an inappropriate restraint. Tr. I, p. 87, lines 14-22.

58. If the student is not a threat to themselves or others, then physical restraint is not appropriate. Tr. I, p. 89, lines 15-18.

59. While doing a single-hold restraint, the adult is behind the child. Tr. I, p. 93, lines 1-4.

60. Ms. Staab never observed Lockridge behind the child. Tr. I, p. 93, lines 5-7.

61. Ms. Staab noticed two indentations on V.S.I.'s arm, about three inches long. Tr. I, p. 93, lines 8-19.

Testimony of Randolph Lockridge

62. Ms. Staab did not witness V.S.I. trying to elope or run from the classroom. Tr. I, p. 98, lines 22-24.

63. Lockridge admitted that he took hold of V.S.I.'s wrists, causing bruising to her wrists. Pet. Exh. 16; Tr. II, p. 213, lines 6-9.

64. From Lockridge's perspective, "it was crisis because she was not being safe . . . she was 'not complying' with his verbal direction." (emphasis added). Tr. II, p. 213, lines 19-23.

65. Lockridge argued that V.S.I. exhibited behavior, i.e. her elopement, that might harm other students. Tr. II, p. 213, line 24-p. 214, line 5.<sup>1/</sup>

66. Lockridge testified, without specific detail, that V.S.I. "could have hit, kicked, maybe spit on somebody or something." Tr. II, p. 214, lines 7-10.

67. Lockridge testified that he was holding V.S.I.'s wrists when he was sitting on them. Tr. II, p. 215, lines 4-6.

68. Despite his training, Lockridge testified that he did not understand that it was an inappropriate method of discipline for him to be sitting on V.S.I.'s hands. Tr. II, p. 215, lines 11-13.



69. Lockridge testified that he did not intentionally violate any School Board policies or intend to violate any directives that he was given. Tr. II, p. 220, line 24-p. 221, line 3.

70. This appeared, in part, to be the crux of his defense to the charges brought.

71. Lockridge testified that when the incident was happening at Northport K-8 School with V.S.I., he reverted to and used his "military restraint training," instead of his School Board restraint training. Tr. II, p. 222, lines 15-17.

72. Lockridge testified that he did not bring up this issue of his military training "kicking in," as he put it, concerning the incident involving V.S.I. However, he discussed it before with a behavior analyst concerning another student. Tr. II, p. 230, lines 19-21, and p. 231, lines 18-20.

73. Lockridge related an incident that had occurred in May 2015. Apparently, a student tried to assault him while he was walking back to the ESE office. His old military restraint training came into play, and he ended up having to put the student on the ground. He physically put the student on the ground. Tr. II, p. 232, lines 12-16, and p. 233, lines 4-11.

74. In a candid admission, Lockridge testified that he does not believe that "at this moment" he could work with disabled

students at the school district as a behavior technician. Pet. Exh. 12; Tr. II, p. 236, lines 21-24.

75. Describing his military restraint training (that he sometimes reverts to), Lockridge testified that because he was going to be working with prison detainees, "They taught us various techniques to keep yourself safe and try not to do harm to the prisoners either." Tr. II, p. 237, lines 17-22.

76. Lockridge testified that, unlike CPI training, military restraint training is not non-violent training. It could be violent. Because, as he put it, you are working with prison detainees. So, Lockridge could not say it was non-violent. Tr. II, p. 237, line 23-p. 238, line 3.

77. When asked if it is foreseeable that he could become violent with a student, Lockridge answered, "I don't know. . . . I understand what I did was wrong. I don't know how I could have done some things differently. I don't know." Tr. II, p. 238, lines 4-8.

78. When asked if he can say with any degree of certainty that he may not pose a danger to students, Lockridge testified that, "if I'm put in a stressful situation with a very aggressive student or that I perceive to be aggressive, I do what I think is best for my safety at the time. Or the student's safety too." Tr. II, p. 238, lines 14-24.

79. Lockridge testified, frankly, that for him, it is sometimes more of an automatic response and that he cannot really control this military restraint training that kicks in. Tr. II, p. 238. line 25-p. 239, line 3.

Testimony of Virginia Snyder

80. Virginia Snyder works for the Department of Children and Families as a child protective investigator. Tr. I, p. 153, lines 6-8.

81. She prepared a report of institutional abuse, an investigative summary. Pet. Exh. 2.; Tr. I, p. 153, lines 13-25.

82. Her investigation and report involved Lockridge sitting on V.S.I.'s hands to restrain her in the classroom at Northport K-8 School. Tr. I, p. 154, lines 21-25.

83. She went to the school, talked with administration, talked to witnesses, and talked to children involved on the report. Tr. I, p. 154, lines 3-9.

84. Ms. Snyder made verified findings for "threatened harm of physical injury." Tr. I, p. 154, lines 11-16.

85. Ms. Snyder concluded that Lockridge had in fact sat on the child's hand. Tr. I, p. 155, lines 2-4.

86. She also made a finding that the school district's policies and practices were appropriate. Tr. I, p. 155, lines 15-17.

87. "Threatened harm" means the possibility that the person's actions can cause an injury to the child. Tr. I, p. 155, line 23-p. 156, line 1.

88. Ms. Snyder testified that the Department of Children and Families felt that a pattern was appearing due to a prior investigation that was closed without a substantiated finding. When the Department of Children and Families conducted an institutional staffing, the Department of Children and Families was concerned that there was a pattern starting. Tr. I, p. 157, lines 4-8.

89. Specifically, Ms. Snyder "looked at how Lockridge restrained the child, was it appropriate or was it inappropriate . . . . And that is where we established that there was a type of behavior, a pattern starting." Tr. I, p. 157, line 20-p. 158, line 2.

90. "We (DCF) don't make the recommendation. We make the report so that those involved can have a copy of an official report from the Department of Children and Families. We put the findings in there so that whoever administrative-wise is taking a look at it can make a decision, like the School Board, as to what penalty that staff member may face." Tr. I, p. 159, lines 17-24.

91. Based on Department of Children and Families legislation, she felt that the two incidents are "a pattern" and

are not reflective of just isolated events. Tr. I, p. 162, lines 1-5, 16-17.

Testimony of William Tomlinson

92. Bill Tomlinson is the executive director for Student Services and Exceptional Student Education. Tr. I, p.112, lines 4-5.

93. He has worked for the School Board a total of 29 years. Tr. I, p. 112, lines 13-14.

94. Tomlinson testified regarding whether behavior technicians are trained in any sort of restraint or CPI. He testified that the school district has two separate models that are used in the district. The first is non-violent crisis prevention intervention, better known as CPI. The second model the district uses, for more severe children that may be in a special day school, is professional crisis management. Non-violent CPI is a nationally recognized model that deals primarily with strategies to verbally de-escalate behavior. It employs different levels of strategies with students before getting into physical management of any type of behavior. The physical management piece is a part or a component of the training, but it is really the last resort. In his opinion, "that (i.e., physical management) should be last." Tr. I, p. 114, lines 4-21.

95. It is meant to be a process in which the teacher tries to curtail the behavior of the student by working with them to

help them self-regulate so that the student can take ownership of his/her behavior and get themselves under control without the teacher having to do any type of physical management. Tr. I, p. 115, lines 8-16.

96. "Many teachers, many principals have all been trained in this method so that they understand how to de-escalate behavior verbally, how to work with students to offer choices that you can do, versus doing this." Tr. I, p. 115, line 24.

97. Tomlinson noted that "restraint" is a term used "whenever we physically manage a person . . . the way we define it is if you have to immobilize someone's limbs and they're not free, they no longer have freedom of movement, that would be considered a restraint." Tr. I, p. 116, lines 5-10.

98. In his opinion, restraint of anyone is the last resort. Tr. I, p. 117, line 7.

99. He added that "if you see that the behavior is something that you can verbally begin to de-escalate, have conversation with the child, the child is able to understand rationally what it is that you're asking of them, then you're going to employ all of these strategies before you ever get to that last resort." Tr. I, p. 118, lines 4-9.

100. Any time an employee in the district has involvement with a child and there is a report of suspected institutional abuse, Tomlinson is notified. Mr. Bonner (Human Resources) is

notified, and he, law enforcement, and the Department of Children and Families all work through the process together. Tr. I, p. 122, lines 16-23.

101. Lockridge was removed and placed in the ESE department, working in the reception area where there was no access to children while the investigation was ongoing. Tr. I, p. 123, lines 6-11.

102. Freedom of movement is good (the child likes the freedom of running off and playing on a playground or during PE) as long as they are safe. Tr. I, p. 126, lines 19-23.

103. "If we end up bruising the child in anything that means to us that we have applied the wrong process or the wrong procedure." Tr. I, p. 127, lines 4-8.<sup>2/</sup>

104. "If the child starts fighting back in the process where there is restraint used, they're trying to get out of that, you need to let them go. You may have to resume the restraint once it is safe to do so." Tr. I, p. 127, lines 9-11.

105. "If the child isn't hurting anybody . . . from crawling under (the desk) or crawling out of their desk . . . then it would be appropriate to not bring attention or get attention from someone. Instead, praise another child for acting appropriately or remaining in their chair. This is an effective approach to use." Tr. I, p. 128, lines 3-25.

106. It is "absolutely not appropriate," in terms of restraint, to sit on a child's hand. Tr. I, p. 129, lines 1-3.

107. It is not appropriate to take a disabled child by the wrist to try to get them to go where you want them to. The first appropriate response is "take my hand and let's walk." Tr. I, p. 131, lines 17-p. 132, line 3.

108. Tomlinson testified, "I may take a person simply by the elbow and follow me. . . . That . . . is after you have exhausted the verbal demand for this. Because it's unnatural to have to do that, to lead people or to pull them where you want them to go." Tr. I, p. 132, lines 14-24.

109. The January 13, 2012, mid-year review for Lockridge shows improvement needed in job knowledge and skills and quality of work. Resp. Exh. 5; Tr. I, p. 143 line 25-p. 144, line 2.

110. Listed on Lockridge's mid-year evaluation at the time was that he needed improvement in job knowledge and skills and the quality of work. The narrative indicated that he was required to work with the behavior analyst at Sam Gaines School to review the appropriate protocols to follow to gain compliance from the students with whom he is working. Lockridge was required to attend training offered behavior technicians on early release and professional development days. Tr. I, p. 149, lines 6-14; Pet. Exh. 19.



111. Lockridge was directed to increase his knowledge of behavioral tools to verbally de-escalate a situation, as well as to remain objective instead of entering into a verbal disagreement with students. It means not getting into a verbal power struggle with the child. "Be calm, relaxed in the tone and tenor of your voice and, whenever you work with the individual, don't let that person bring you into the type of behavior that they're exhibiting." Tr. I, p. 149, line 4-p. 150, line 4; Pet. Exh. 19.

112. Finally, Tomlinson testified that it would not be appropriate for a behavior technician to drive their fingernail into the palm of any child. Tr. I, p. 150 lines 5-9.

#### CONCLUSIONS OF LAW

113. DOAH has jurisdiction over the subject matter and the parties to this proceeding. §§ 120.569, 120.57(1), and 1012.33(6)(a)2., Fla. Stat.

114. A school board is required to prove disciplinary charges against an employee by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.; M.H. v. Dep't of Child. & Fams., 977 So. 2d 755 (Fla. 2d DCA 2008); and Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351 (Fla. 2d DCA 2009).

115. 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. In

this case, that proposition would be whether or not there is just cause to terminate Respondent. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

116. A hearing at DOAH before an administrative law judge is "de novo." Evidence must be developed at the administrative hearing to justify the action contemplated by Petitioner. See generally, § 120.57(1)(j) and (k), Fla. Stat. ("All proceedings conducted under this subsection shall be "de novo.").

117. Further, a de novo proceeding is intended to formulate and determine action by Petitioner and is not simply to review action taken earlier or preliminarily. Beverly Enters.-Fla., Inc. v. Dep't of HRS, 573 So. 2d 19 (Fla. 1st DCA 1990).

118. Petitioner is the duly-constituted governing body of the School District of St. Lucie County (Art. IX, § 4, Fla. Const.; §§ 1001.20 and 1001.33, Fla. Stat.) and, thus, has the statutory authority to adopt rules governing personnel matters pursuant to section 1001.42(5), Florida Statutes.

119. An agency or school board's interpretation of its own rules and policies is entitled to deference. Beach v. Great W. Bank, 692 So. 2d 146, 149 (Fla. 1997).

120. Although this deference is not absolute, the courts should defer to the agency unless the agency's construction amounts to an unreasonable interpretation, or is clearly erroneous. Legal Env'tl. Assistance Found., Inc. v. Bd. of Cnty.

Comm'rs. of Brevard Cnty., 642 So. 2d 1081, 1083-84 (Fla. 1994); Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000).

121. Gross insubordination has been found to constitute sufficient cause to terminate an employee. Dolega v. Sch. Bd. of Miami-Dade Cnty., 840 So. 2d 445 (Fla. 3d DCA 2003). See also Johnson v. Sch. Bd. of Dade Cnty., 578 So. 2d 387 (Fla. 3d DCA 1991).

122. Moreover, in certain circumstances, simple "insubordination" has been held sufficient to warrant termination of a public employee. Muldrow v. Bd. of Public Instruction, 189 So. 2d 414, 415 (Fla. 1st DCA 1966). In Muldrow, the court adopted the dictionary definition of the term "insubordination" and held:

Merriam-Webster New International Dictionary (3d ed. 1966) defines insubordination as a disobedience of orders, infraction of rules, or a generally disaffected attitude toward authority. It is generally synonymous with contumacious, which indicates persistent, willful or overt defiance of authority and obedience, sometimes contemptuous of authority.

123. Generally, in the absence of a rule or written policy defining "just cause," a school board has broad discretion to set standards which subject an employee to discipline. Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217 (Fla. 2d DCA 1994) (concurring opinion Judge Blue). "Just cause" for discipline or

"terminations for cause" must rationally and logically relate to misconduct, some violation of the law, or dereliction of duty on the part of the officer or employee affected. State ex. rel. Hathaway v. Smith, 35 So. 2d 650 (Fla. 1948).

124. Even in the absence of a specific rule of conduct requiring that employees show proper respect for their employers, as a matter of common sense, if not of common law, such a requirement is inherent in the employment relationship. Jacker v. Sch. Bd. of Dade Cnty., 426 So. 2d 1149, 1151 (Fla. 3d DCA 1983). Significantly, the right of a public employer to discipline an employee for "proper cause" embodies, without the need for separate delineation, the right to discipline for failure to show proper respect to the employer. Jacker, supra.

125. The superintendent of St. Lucie County Public Schools has the authority to recommend that Respondent be terminated for just cause under section 1012.40, Florida Statutes, and the applicable CBA.

126. At all material times, Respondent's terms and conditions of employment were governed by section 1012.40 and the CBA. Section 1012.40 provides, in pertinent part:

(1) As used in the section:

(a) "Educational support employee" means any person employed by a district school system who is employed as a teacher assistant, an education paraprofessional, . . . or any other person who by virtue of his or her

position of employment is not required to be certified by the Department of Education or district school board pursuant to §1012.39.

(b) "Employee" means any person employed as an educational support employee.

(2) (a) Each educational support employee shall be employed on a probationary status for a period to be determined through the appropriate collective bargaining agreement or by district school board rule in cases where a collective bargaining agreement does not exist.

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement.

(c) In the event a district school superintendent seeks termination of an employee, the district school board may suspend the employee with or without pay. The employee shall receive written notice and shall have the opportunity to formally appeal the termination. The appeals process shall be determined by the appropriate collective bargaining process.

127. Article XI, Section F.6.a. of the CBA, provides that "[a]ny member of the Classified Unit may be dismissed by the School Board during his/her term of appointment, when a recommendation for dismissal is made by the Superintendent, for just cause." As defined by the CBA, "just cause" shall include: insubordination; unsatisfactory work performance; neglect of

duty; and violation of School Board policies and/or rules which Petitioner shall have the unilateral right to establish.

128. Section 1012.23 provides Petitioner with the authority to issue policies relating to personnel matters. Abiding by the policies, procedures, and rules of Petitioner is a requirement of employment.

129. School Board Rule 6.301(3), Disciplinary Guidelines for Employees, provides:

(a) The School District generally follows a system of progressive discipline in dealing with deficiencies in employee work performance or conduct. Should unacceptable behavior occur, corrective measures will be taken to prevent re-occurrence. The Superintendent is authorized to place employees on administrative assignment and/or leave as necessary during an investigation. However, **some behavior may be so extreme as to merit immediate dismissal.** (emphasis added).

130. School Board Rule 6.301(3)(b)(xix) prohibits, violation of any rule, policy, regulation, or established procedure. School Board Rule 6.301(3)(b)(i) prohibits insubordination. Mr. Bonner, in his conversation with Respondent regarding the first incident (with Student D.S.), instructed Respondent on not using inappropriate discipline for students. And, just 12 school days later at Northport K-8 School, Respondent used inappropriate discipline on Student V.S.I. Mr. Bonner, as an administrator, gave an administrative directive

or order to Respondent which he did not follow. That constitutes insubordination.

131. School Board Rule 6.301(3)(b)(viii) prohibits immoral or indecent conduct. Respondent's conduct of sitting on a child's hands is rough and heavy-handed conduct. It was also negligent because Respondent was told not to use inappropriate discipline. Likewise, it constituted unsatisfactory work performance. It was also a neglect of Respondent's duties because he did not follow proper protocol or training to restrain a disabled student.

132. School Board Rule 6.301(3)(b)(ix) prohibits abusive and discourteous conduct or language towards students. By engaging in inappropriate methods of discipline of a disabled child, Respondent violated the rule prohibiting abusive or discourteous conduct or language towards a student.

133. School Board Rule 6.301(3)(b)(xii) and (xvi) prohibits negligence and neglect of duty, respectively. By failing to follow the directive of administration following a formal Letter of Reprimand and counseling, and engaging in an inappropriate method of discipline on a disabled student just 12 days after receiving a Letter of Reprimand, Respondent violated the rule prohibiting negligence. Respondent had a duty and he failed to properly discharge that duty.

134. School Board Rule 6.301(3) (b) (xiv) prohibits unsatisfactory work performance. By failing to follow the directive of administration following a formal Letter of Reprimand and counseling, and engaging in an inappropriate method of discipline on a student just 12 days after receiving a Letter of Reprimand, as well as engaging in inappropriate methods of discipline of a disabled child, Respondent violated the rule prohibiting unsatisfactory work performance.

135. School Board Rule 6.301(3) (b) (xix) prohibits violation of any rule, policy, regulation, or established procedure. By failing to follow the directive of administration following a formal Letter of Reprimand and counseling, and engaging in an inappropriate method of discipline on a disabled student just 12 days after receiving a Letter of Reprimand, Respondent violated the rules, policies, regulations, and established procedures of Petitioner.

136. School Board Rule 6.301(3) (b) (xxxviii) prohibits inappropriate methods of discipline. Respondent admitted he sat on V.S.I.'s hands, causing injury. By failing to follow the directive of administration, following a formal Letter of Reprimand and counseling, and engaging in an inappropriate method of discipline on a disabled student just 12 days after receiving a Letter of Reprimand, Respondent violated the rule prohibiting inappropriate methods of discipline.



137. School Board Rule 6.301(3) (b) (xxix) prohibits, "any violation of the Code of Ethics of the Education Profession, the Principals of Professional Conduct for the Education Profession, the Standards of Competent and Professional Performance, or the Code of Ethics for Public Officers and Employees."

138. Respondent's actions in September 2014 and May 2015, viewed in their entirety, demonstrate that:

(a) Respondent failed to exercise the best professional judgment (Fla. Admin. Code R.6A-10.080);

(b) Respondent failed to always have the concern for students as his primary professional concern (Fla. Admin. Code R. 6A-10.080); and

(c) Respondent failed to make a reasonable effort to protect the students from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety (Fla. Admin. Code R. 6A-10.081).

139. This violated the Code of Ethics of the Education Profession in Florida with which all the St. Lucie County School District employees were required to abide.

140. Respondent's violation of the above-mentioned School Board rules and/or sections of the Code of Ethics constituted "just cause" for Respondent's termination from the position of ESE behavior technician. Pet. Exh. 24.

141. Petitioner has proved in this proceeding, by a preponderance of the evidence, that Respondent engaged in insubordination; immoral or indecent conduct; abusive or discourteous conduct or language to students; negligence; unsatisfactory work performance; neglect of duty; violation of any rule, policy, regulation, or established procedure; and inappropriate method of discipline, and has neglected his duties and violated one or more School Board rules, which establishes just cause for termination.

142. By his own admissions, Respondent is not sufficiently capable or suited to be involved in the care or custody of the children he was charged to protect and oversee.

143. In summation, based on the totality of the circumstances proven by Petitioner, the undersigned concludes that Respondent's conduct and actions herein constituted "just cause" for dismissal under the applicable CBA provisions, as well as being "behavior so extreme as to merit immediate dismissal."

144. Respondent's repeated conduct, after clear and fair warning, combined with Respondent's own admission regarding his unsuitability to supervise disabled students, further justifies the action proposed by Petitioner.

#### RECOMMENDATION

Based on the foregoing proposed Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be

entered by the St. Lucie County School Board terminating Respondent from his position as an ESE behavior technician.

DONE AND ENTERED this 4th day of April, 2016, in Tallahassee, Leon County, Florida.



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ROBERT L. KILBRIDE  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of April, 2016.

ENDNOTES

<sup>1/</sup> This was inconsistent with the testimony from Ms. Staab, and the undersigned finds her testimony more persuasive.

<sup>2/</sup> The undersigned credits testimony from other witnesses that Lockridge caused bruising to the child's wrist area.

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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.