

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-6427TTS

DARLENE G. TAYLOR,

Respondent.

\_\_\_\_\_/

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-6470TTS

KAMLA C. BHAGWANDIN,

Respondent.

\_\_\_\_\_/

RECOMMENDED ORDER

These cases came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings ("DOAH"), for final hearing by video teleconference on February 19, 2018, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner Miami-Dade County School Board:

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For Respondent Darlene G. Taylor:

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STATEMENT OF THE ISSUE

The issue in these cases is whether, as the district school board alleges, a teacher and a paraprofessional physically abused, mistreated, or otherwise behaved inappropriately towards one of their special-needs students.

PRELIMINARY STATEMENT

At its regular meeting on November 15, 2017, Petitioner Miami-Dade County School Board voted to approve the superintendent's recommendation that Respondents Darlene G. Taylor and Kamla C. Bhagwandin be immediately suspended without pay pending termination of their employment as, respectively, a paraprofessional and a teacher. The reasons for this action were spelled out in a Notice of Specific Charges that was filed with DOAH on January 17, 2018. The gravamen of Petitioner's charges is that, on August 31, 2017, Dr. Bhagwandin and Ms. Taylor each abused, mistreated, or otherwise behaved inappropriately towards an autistic student named D.

Each Respondent timely requested a formal administrative hearing to contest Petitioner's intended action. In late November 2017, Petitioner referred the matters to DOAH for further proceedings. On January 17, 2018, the undersigned consolidated the two cases.

At the final hearing, which took place on February 18, 2018, Petitioner called the following witnesses: Greg Siegel, John Galardi, Tony Bermudez, and D.M.-E. (the student D.'s mother). Petitioner's Exhibits 1, 2, 4 through 8, 11, 12, and 19 through 22 were received in evidence. Each Respondent testified, and they offered, in addition, the testimony of Elizabeth Rodriguez. Respondent Bhagwandin's Exhibit 2 was admitted into evidence. (Respondents skillfully used Mr. Bermudez's December 27, 2017, deposition to impeach his credibility with numerous prior inconsistent statements. Because Mr. Bermudez did not deny having made the prior inconsistent statements, his deposition was not admitted. See § 90.614(2), Fla. Stat. The relevant portions of this deposition would have been admissible pursuant to section 90.801(2)(a), Florida Statutes, but its limited use as impeachment material was sufficient for Respondents' purposes.)

The two-volume final hearing transcript was filed on April 13, 2018. Each party timely filed a Proposed Recommended Order ("PRO") on May 4, 2018, which was the deadline. The

parties' PROs have been considered in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the official statute law of the state of Florida refer to Florida Statutes 2018.

FINDINGS OF FACT

1. The Miami-Dade County School Board ("School Board" or the "district"), Petitioner in these cases, is the constitutional entity authorized to operate, control, and supervise the Miami-Dade County Public School System.

2. At all times relevant to these cases, Respondent Kamla C. Bhagwandin ("Dr. B.") was employed as an exceptional student education ("ESE") teacher in the Miami-Dade County public schools, a position which she had held for approximately 17 years. Dr. B. has earned a bachelor's degree in special education, a master's degree in English as a second language ("ESOL"), and a doctoral degree in educational leadership and organization.

3. When the 2017-2018 school year started, Dr. B. was a special education teacher at South Dade Middle School ("SDMS"), where she taught a self-contained class containing 19 ESE students.

4. At the beginning of the 2017-2018 school year, Respondent Darlene Taylor ("Taylor"), a paraprofessional, was assigned to Dr. B.'s classroom.

5. Because Dr. B. had a relatively large class with nearly three times the number of students in other ESE classes at SDMS, substitute teachers were routinely assigned Dr. B.'s classroom to provide assistance. Thus, three adults typically were present in Dr. B.'s classroom during school hours.

6. Tony Bermudez ("Bermudez") was one of the substitute teachers assigned to work in Dr. B.'s classroom during the 2017-2018 school year. He was assigned to Dr. B.'s classroom about five times, his last day with her being August 31, 2017. That is the date of the event at issue, to which Bermudez, who has accused Dr. B. and Taylor of child abuse, is the district's only witness.

7. Before turning to the disputed event, which occurred at the start of the school day, it will be useful to look at what happened immediately before and after the incident in question.

8. At SDMS that year, the first bell summoning the students to class rang at 8:30 a.m., and the last bell at 8:35 a.m. Dr. B.'s regular practice was to escort her students from the cafeteria to the classroom between 8:30 a.m. and 8:35 a.m. It is undisputed that this is what she did on August 31, 2017, and that, by 8:35 a.m., Dr. B. and her

students, including a 12-year-old autistic student named D., were in the classroom. Therefore, if anything unusual happened to D. that morning, as alleged, it happened no earlier than 8:30 a.m., and most likely *after* 8:35 a.m.

9. It is undisputed that, on the morning of August 31, 2017, Bermudez informed Dr. B. (untruthfully) that he needed to go to the bathroom because his stomach was upset. He then left the classroom and proceeded directly to the office of Elizabeth Rodriguez, who he mistakenly thought was an assistant principal, but who was actually the school's test chairperson and ESOL chairperson. Ms. Rodriguez testified credibly at hearing that she had just returned to her office, to which she usually repaired after the last bell rang at 8:35 a.m., when Bermudez arrived. Bermudez came to her, she explained, "*in the morning right after we had let the students into the classrooms.*"

10. Later that same day, after Bermudez had accused Dr. B. and Taylor of wrongdoing, Ms. Rodriguez wrote and signed a statement describing her encounter with Bermudez. This contemporaneous statement is consistent with her final hearing testimony, but since it was written before any dispute about the *time* of Bermudez's visit had arisen, Ms. Rodriguez's initial account is particularly probative on that point. When the matter was fresh in her mind and she had no reason to hedge on the time, Ms. Rodriguez recorded the following:

At approximately 8:30 a.m., Mr. Bermudez asked to speak to me in my office. (He was under the impression I was one of the Assistant Principals). He stated he wanted to inform the [person who assigns substitute teachers that] he no longer wanted to be assigned to the [special education] unit because of the aggressiveness. I asked him if the students were aggressive and he stated, "No, it's the adults". He elaborated by stating he had witnessed some things that were very upsetting and he had discussed it with his wife, who is also a teacher at another school and she advised him to speak to the principal.

I assured him I would speak to the principal and to the ESE Program Specialist . . . on his behalf. I advised him to go back to the classroom and we would address his concern.

11. By the time of the hearing, Ms. Rodriguez must have known that her contemporaneously recorded recollection of Bermudez's having approached her at "approximately 8:30 a.m." was not helpful to her employer's case against Dr. B. and Taylor because it leaves little or no time for anything untoward to have occurred in Dr. B.'s classroom that morning. Under questioning by the district's counsel, Ms. Rodriguez did her best to stretch the "approximately 8:30 a.m." time frame as wide as it would go, first to 8:40 a.m., and finally to "possibly" 9:00 a.m. Given her unqualified testimony about encountering Bermudez right after the students had gone to class (between 8:30 and 8:35 a.m.), however, and the contemporaneous statement that he had shown up in her office at "approximately 8:30 a.m.,"

the undersigned finds that Bermudez met with Ms. Rodriguez no later than 8:40 a.m. on August 31, 2017.

12. This means that if Dr. B. and Taylor abused D., as Bermudez claims, then they did so in a hurry, for the students were not let into Dr. B.'s classroom until around 8:35 a.m., and Bermudez needed a minute or two to get from the classroom to Ms. Rodriguez's office.

13. Ms. Rodriguez brought Bermudez to the principal, John Galardi, according to the latter, whose testimony on this point is credible, albeit inconsistent with Ms. Rodriguez's written statement. After Bermudez told Mr. Galardi that he had witnessed Dr. B. and Taylor abuse a student, Mr. Galardi called the school police department, which dispatched officers and detectives. Meantime, Mr. Galardi asked Bermudez to write a statement describing the incident he claimed to have observed. Bermudez wrote a statement, the first of several he would draft that day.

14. When the detectives arrived, they asked Mr. Galardi if there were any surveillance videos that might have captured the incident. Mr. Galardi directed a custodian to retrieve the video from the closed-circuit TV camera in the hallway near Dr. B.'s classroom. The custodian brought out a video, which the detectives watched with Mr. Galardi.



15. One of the detectives made a video recording *on his cellphone* of the monitor to which the surveillance video was being transmitted. This cellphone video, which runs about 67 seconds, is the footage that the district offered into evidence at hearing. The actual surveillance video was not offered. No information concerning its whereabouts was provided.

16. Neither the custodian nor the detective testified at hearing about the circumstances surrounding the making of the cellphone video.<sup>1/</sup> Putting aside the obvious chain of custody issues with the video, the quality of the derivative image is very poor. (Imagine using your cellphone to film the movie you're watching on TV, and then viewing the movie on your phone, and you'll get the picture.) Crucially, the detective cropped the image so as to eliminate the date and time stamp that, according to Mr. Galardi, the original surveillance video displayed.

17. The thing that jumps out at the fact-finder when he watches this dubious video is that it not only fails to corroborate Bermudez's initial written statement, it actually *contradicts* him (if we assume, as the district contends, that the video depicts some portion of the event he claims to have witnessed). Although the record is silent as to when Bermudez first saw the video, there is little doubt (and the undersigned

finds) that he had not viewed the recording before writing his initial statement.

18. As the video begins, two figures (identified as Dr. B. and D.) emerge into the hallway, having exited the classroom, whose door—in a recessed entryway—is out of view. There is no indication of distress or discomfort in either individual's movements or posture, nothing consistent with a commotion or struggle. Although the video does not have an audio track, D.'s body language gives no suggestion that she is screaming or crying; rather, she appears to be composed, compliant, and unharmed. The pair does not remain outside the door to the classroom.

19. Their faces are not visible. Dr. B. and D. immediately turn away from the camera, and walk calmly but purposefully down the hallway, towards glass doors at the far end. The two are walking side by side, and their body language suggests that Dr. B. is escorting D. The teacher might have her hand on the student's back, but that is not clear. What is clear is that Dr. B. is not pushing, pulling, or forcing D. to move.

20. Before reaching the glass doors, Dr. B. and D. turn left, and it looks like they are about to enter a classroom. At this point, they are far from the camera, and the image quality is so poor that it is not possible to make out in detail what

happens next. We can see, however, that Dr. B. and D. do not go into a classroom. Instead, they back up and return to the hallway, where they face each other for a few moments. There seems to have been a disturbance of some sort—perhaps D. has become uncooperative. Due to the graininess of the image and the distance of the subjects from the camera, the figures on the screen are practically silhouettes; they have their arms outstretched towards one another and might be holding hands. The image resembles that of a parent in a grocery store explaining to her pleading child that she cannot have a bag of cookies. There is nothing happening on screen that looks like physical abuse or violence of any kind.

21. While this is going on, a third person appears, entering the hallway through the glass doors that are behind Dr. B. and D. in relation to the video surveillance camera. This person has been identified as Taylor. The arrival of Taylor prompts D. to hurry back to Dr. B.'s classroom, nearly breaking into a run. Dr. B. and Taylor follow, but at a normal walking speed. D. beats them to the classroom, obviously, and dashes into the recessed entryway, which takes her out of our view for more than ten seconds, as Dr. B. and Taylor make their way to the room.

22. When the adults turn to enter the classroom, we lose sight of them as well, but for a split second we can tell that

all three individuals are in the recessed entryway, probably because the door is locked. Suddenly, D. walks backwards into the hallway, as if to leave, and one of the adults (it is impossible to see which, as they are both off camera) promptly reaches out and takes hold of D. around the shoulder area. The district argues that the video shows Dr. B. grabbing D. by the head and jerking the student into the room. The undersigned rejects the district's interpretation of the blurry image because (a) the teacher appears more likely to have found purchase for her grip in D.'s collar and (b) D.'s *head* does not react as though she were being pulled by, e.g., the hair.

23. The district further argues that, on the film, D. can be seen bending sharply at the waist, forming a 90-degree angle with her upper and lower body, proving that she was jerked with considerable force. Again, however, the undersigned rejects the district's interpretation of the ambiguous image.

24. It must be stressed that this happens very fast and the video quality is very poor. As a result, people will see what they want to see. No doubt, therefore, some who see the video will agree with the district that someone yanked D. by the head. But the image does not persuade the undersigned that such is *more likely than not* what happened. Furthermore, Bermudez's hearing testimony, which for the first time included the detail that D. was bent over at a 90-degree angle, is unreliable, and

not only because (as will be seen) Bermudez could not keep his story straight. It is highly unlikely that Bermudez could have seen this particular transaction, because he was in the classroom when it occurred, while D. and the adults were outside, in the entryway and hallway; indeed, the classroom door (although unseen in the video) was probably still closed. The undersigned infers that one (but not the only) reason Bermudez has given so many different versions of the disputed event is that he has been trying to tailor his testimony to the video.

25. At any rate, based on the video, which is low-quality evidence, to be sure, but is at least more credible than Bermudez, the undersigned finds it to be as likely as not that D. instinctively bent forward under her own power, as opposed to someone else's forceful tug, because doing so probably would have improved her ability to resist, if she were inclined to struggle. Bending quickly towards the teacher would keep D.'s weight in front of her and her body lower to the ground, likely improving her balance, and also might loosen the teacher's grip.

26. The main point, however, is that the video, with all of its limitations, is nowhere close to the knockout punch the district thinks it is. What it shows, at the end, is a teacher making a reasonable effort to stop a student from escaping, which could lead to a dangerous situation. This is what teachers are supposed to do.

27. The district argues that this brief contact with D. constituted a manual physical restraint, which Dr. B. failed to report in accordance with district policy and state law. This argument is rejected. If the term "manual physical restraint" were interpreted so liberally as to include such incidental contact as this, which (for all that can be seen in the video) was reasonably intended to prevent a student from bolting, and which restricted the student's movement for about a second, the reporting burden would be unjustifiably heavy, and (worse) would create a perverse disincentive to reasonable protective intervention.

28. Having reviewed what happened before and after the incident in question, and having looked at the video, the time has come to focus on Bermudez's many accounts of what he claims to have seen. As mentioned, Bermudez prepared three written statements on August 31, 2017. The first, though dated, does not reflect the time that it was drafted. Presumably, however, this initial statement was written in the morning, only a short time after the events described therein. The second states that it was signed by Bermudez at 12:50 p.m., less than four hours later. The third statement is typewritten and (as relevant to this case) is substantially similar to the second statement.

29. On December 27, 2017, nearly four months after the disputed incident, Bermudez gave a deposition in the criminal

case that the state brought against Dr. B. and Taylor. He also testified at their trial, but the transcript was unavailable for use in the instant hearing.<sup>2/</sup> Finally, Bermudez testified at the final hearing of this matter.

30. The following table summarizes the material portions of Bermudez's ever-changing testimony:

<b>Fist Written Statement 08/31/17</b>	<b>Second and Third Written Statements 08/31/17</b>	<b>Deposition 12/27/17</b>	<b>Final Hearing Testimony 02/19/18</b>
No mention of D. screaming for 20-30 minutes about headphones.	No mention of D. screaming for 20-30 minutes about headphones.	For about a minute after the students entered the classroom, from the cafeteria, nothing unusual happened; it was a regular day. Then Dr. B. saw D. with headphones, walked up to D., and yanked the headphones away, which made D. act up and scream, for 20 to 30 minutes. "It had to be more than twenty, thirty minutes, around that time frame."	T.B. had just gotten to the classroom. Dr. B. and Taylor were coming back from the cafeteria with the students. D. was complaining, and screaming intensely, "Headphones, headphones," over and over, for 20 to 30 minutes. <b>D. was sitting down and never stood up.</b> [Later, T.B. changes this to "she was maybe, like—kinda like in between, like between sitting and standing, kinda like."] Taylor wasn't in the classroom.
<p><b>Dr. B. and Taylor</b> grabbed D. by the neck and threw her into a closed door with extreme force.</p> <p>No mention of D. being dragged out of the classroom.</p> <p>No mention of Dr. B. dragging D. by the ear.</p>	<p>"This [is what] occurred today at approximately 9 a.m."]</p> <p>D. <b>refused to sit down</b>, so Dr. B. pulled D. by the hair and slammed her into the door.</p> <p>Dr. B. dragged D. out of the classroom.</p> <p>No mention of Dr. B. dragging D. by the ear.</p>	<p>Taylor left with one of the kids. She returned with the child at the time <b>Dr. B. picked up D. by the shirt.</b> Taylor slammed or "bumped" the other child she was with (not D.) against the door.</p> <p>Dr. B. pulled D. by the shirt and slammed her face against the door. Then <b>she dragged D. by the ear</b> out the door.</p> <p>Taylor, who had reentered the classroom, remained inside, just sitting in her chair, waiting for Dr. B. to return.</p>	<p>After 20-30 minutes, Dr. B. approached D. and told her to get up. Dr. B. grabbed D. by the sleeve and hair, <b>pulled her out of the chair</b>, and dragged her towards the door. Dr. B. slammed D.'s face against the door. Then, <b>Dr. B. grabbed D. by her ear</b>, and pulled D. outside by the ear.</p>
No mention of Dr. B., Taylor, or D. being out of the classroom.	Dr. B. closed the classroom door, and T.B. couldn't see them, but he could hear D. screaming and crying outside.	T.B. could hear D. screaming from the other side of the door.	Dr. B. and D. were out of the classroom, in hallway, and T.B. couldn't see them, but he could hear D. screaming, for a few minutes. [Later, T.B. defines a "few minutes" as meaning "two to seven minutes."]

Dr. B. and Taylor dragged D. by the hair and threw her into a desk with great force.	After a couple of minutes, Dr. B. opened the door, dragged D. into the classroom by her hair, and threw her onto the desk in a rough, abusive way.	<b>Taylor was in the room with T.B.</b> , texting on her phone. When Dr. B. reentered with D., after being out of the class for a minute or two, Dr. B. <b>had D. by the back of D.'s shirt, not pulling but holding onto her.</b> Dr. B. <b>guided D. to her chair,</b> and D. sat down.	After a few minutes, they reentered the room. Dr. B. had D. by the hair, <b>and D. was bent at the waist at a 90 degree angle. Taylor came in behind them.</b> Dr. B. pulled D towards the chair. Then Dr. B. threw or slammed D. into her chair, and D. was crying.
Taylor hit D. on the back of the head, hard.	Taylor <b>walked into the classroom</b> and hit D. in the back of the head, in a rough and very violent manner.	No mention of this in the deposition. T.B. testifies at hearing that he couldn't remember it then.	While D. was at her desk, Taylor walked behind D., told her to shut up, and smacked her in the back of the head.

31. The material discrepancies are plain to see. The undersigned will discuss a few. Starting with the first statement, notice that Bermudez's original account is very straightforward and has just three salient details: (i) Dr. B. and Taylor threw D. into the door; (ii) together, they threw D. into her desk; and (iii) Taylor, by herself, hit D. in the head. Notice, as well, that this statement, prepared right after the event supposedly occurred, places Dr. B. and Taylor together in the room for the entire relevant time, and they never leave the classroom with D.

32. The video shows something else completely. Contrary to Bermudez's statement, Taylor was not, and could not possibly have been, present in the classroom before Dr. B. and D. emerged into the hallway, as shown at the beginning of the short clip. We know for certain that Taylor was not there because she shows up later in the video, entering through a door at the other end of the hallway. Yet, in his most contemporaneous statement, Bermudez gets this critical detail badly, undeniably wrong,



saying that Taylor was not only there, but was an active participant to boot. Conversely, the only scene in the video that could possibly raise an eyebrow—when someone grabs D.'s collar to prevent her from escaping—is not mentioned in Bermudez's first statement.

33. Given the striking irreconcilability of Bermudez's first statement and the video, the undersigned wonders how anyone looking at the video on the morning of August 31, 2017, could *not* have questioned Bermudez's veracity or inquired further as to whether the custodian had retrieved the correct video footage.

34. By 12:50 p.m., however, Bermudez had begun to back and fill. The undersigned suspects that before writing the second statement, Bermudez had watched the video, or been told of its contents. Yet, the changes to his story are so ham-fisted, how could no one have noticed? In the revised statement, without explanation, Taylor is *not* present when Dr. B., alone, flings D. into the door and, later, onto her desk. Now, conveniently, Bermudez tells us that Dr. B. dragged D. out of the classroom, and that they were gone for a couple of minutes (approximately the length of the video clip). Taylor appears in time to hit D. on the back of the head, but she must *return to the classroom* to do so, as the video requires.

35. Bermudez's story became richer with (inconsistent) details during the December 27, 2017, deposition, while omitting key elements of his original version(s). At hearing, forced to acknowledge the inconsistencies, Bermudez made excuses: he was nervous, was on vacation, wasn't prepared, and didn't have an attorney. These are not persuasive. Think about it. Bermudez was the *only witness* in a criminal trial that might have put two people behind bars, and he was too nervous and unprepared to testify truthfully?

36. At the final hearing, Bermudez struggled to harmonize all of his prior statements, but the result was a hot mess. The undersigned finds him, ultimately, to be an unreliable and incredible witness, and his testimony is rejected as unbelievable.

37. This leaves the district with the video, which, for reasons already discussed, fails to prove the charges against Dr. B. and Taylor. Moreover, Dr. B. testified that the video actually depicts events of the preceding day, which she described at hearing. The undersigned is inclined to believe her.<sup>3/</sup> The fault for the video's ambiguity with regard to the date and time of its making belongs solely to the district. It was the district's unilateral choice to rely on a low-quality, derivative "home movie" in lieu of the original surveillance video—a shabby copy that just happens to omit the date/time

stamp, which, incidentally, would likely belie Bermudez's most recent testimony (assuming the video was truly made on the morning of August 31, 2017). This is because there was not enough time after 8:30 a.m. for the so-called "headphones incident" (see the table above) to occur and allow for Bermudez to make it to Ms. Rodriguez's office by 8:40 a.m.

38. It is not necessary to make exculpatory findings of fact based on Dr. B.'s testimony because neither she nor Taylor was obligated to prove her innocence.

#### Determinations of Ultimate Fact

39. The district has failed to prove its allegations against Dr. B. by a preponderance of the evidence.

40. The district has failed to prove its allegations against Taylor by a preponderance of the evidence.

#### CONCLUSIONS OF LAW

41. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33(6)(a)2., 120.569, and 120.57(1), Florida Statutes.

42. 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).

43. 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 Luskin v. Ag. for Health Care Admin., 731 So. 2d 67, 69 (Fla. 4th DCA 1999); 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); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992); Willner v. Dep't of Prof'l Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

44. 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(s). See McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter Cnty. Sch. Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); MacMillan v. Nassau Cnty. Sch. Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

45. 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); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

46. In its Notice of Specific Charges, the district charged Dr. B. and Taylor with Misconduct in Office based on a number of theories. The gravamen of the district's charges was that, on August 31, 2017, Dr. B. and Taylor each abused, mistreated, or otherwise behaved inappropriately towards the student referred to herein as D. The parties agreed that if these allegations were proven, the district would have just cause to dismiss both Respondents.

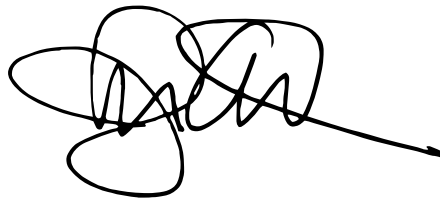
47. The district, however, failed to prove the essential allegations by a preponderance of the evidence. Thus, all of the charges against Respondents necessarily fail, as a matter of fact. Due to this dispositive failure of proof, it is not necessary to render additional conclusions of law.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board enter a final order exonerating Darlene G. Taylor and Kamla C. Bhagwandin of all charges brought against them in this proceeding, reinstating them to their pre-dismissal positions,

and awarding them back salary as required under section 1012.33(6) (a).

DONE AND ENTERED this 28th day of June, 2018, in Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of June, 2018.

ENDNOTES

<sup>1/</sup> No evidence was offered, either, about how the detectives or other school personnel examined D. for visible injuries, or if they did. Given the nature of Bermudez's allegations, however, the undersigned reasonably infers that such an examination must have occurred that morning, not only for purposes of attempting to corroborate Bermudez's claims, but also to ensure that D. would receive prompt medical attention if needed. The undersigned infers, further, from the absence of evidence in this regard, that D. was found to be uninjured shortly after the alleged incident. For what it's worth, Bermudez, the accuser, did not see any injuries on D.'s person.

<sup>2/</sup> Although the fact is not directly relevant here, Dr. B. and Taylor were acquitted of all criminal charges by jury verdicts of not guilty.

<sup>3/</sup> The undersigned is frankly disturbed by the district's reliance on the derivative video because it creates the appearance that the district doctored the original recording. No matter how you slice it, the fact remains that material content (the date/time stamp) was effectively edited out of the primary source. Perhaps this is not as egregious as would be, say, the digital manipulation of the visual images. On the other hand, one could fairly argue that such distinction reflects a difference in degree, not kind. After all, the date/time stamp is put there for good reasons, and, as this case shows, can provide highly relevant information. To be clear, the undersigned is not finding that the district deliberately altered material evidence. That said, he *is* putting the district on notice that the use of a derivative video in lieu of actual surveillance footage is unacceptable as a general practice and could have adverse consequences in future cases. For example, had Respondents here objected to the video's admissibility, the undersigned would have excluded it. Moreover, were it necessary to make affirmative findings of an exculpatory nature, the undersigned would have drawn adverse inferences against the district based on the video.

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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.