

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARION COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 18-1931TTS

RICHARD COLLINS,

Respondent.

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RECOMMENDED ORDER

A duly-noticed hearing was held on October 16, 2018, in Ocala, Florida, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mark E. Levitt, Esquire  
Allen, Norton & Blue  
1477 West Fairbanks Avenue, Suite 100  
Winter Park, Florida 32789

For Respondent: Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
29605 U.S. Highway 19 North, Suite 110  
Clearwater, Florida 33761

STATEMENT OF THE ISSUE

Whether Petitioner, Marion County School Board, had just cause to terminate Respondent, Richard Collins.

PRELIMINARY STATEMENT

Petitioner sent Respondent a Notice of Recommendation for Termination of Employment (Notice) on October 17, 2017. The Notice informed Respondent that he was being terminated for violating Principle of Professional Conduct 6A-10.081 by failing to make reasonable efforts to protect a student from conditions harmful to the student's physical health and safety. On October 25, 2017, Respondent requested a hearing to contest the recommendation for his termination, which was forwarded to the Division of Administrative Hearings (Division) on April 13, 2018, for the assignment of an administrative law judge.<sup>1/</sup>

At the final hearing, Petitioner introduced Exhibits P2 through P4, P6 through P9, and P11 through P15, which were admitted in evidence. Petitioner offered the testimony of Assistant Principal Leona Hunt; Nursing Assistant Cynthia Maurer; students B.A., B.R., and E.F.; and Nicholas Carey, an instructional coach.

Respondent introduced Exhibits R1 and R3 through R7, which were admitted in evidence. Respondent testified on his own behalf and offered the testimony of students S.R., S.C., and A.D.

A one-volume Transcript of the hearing was filed with the Division on November 2, 2018. On November 9, 2018, Petitioner filed an Unopposed Motion for Extension of Time to File Post-hearing Briefs, which was granted, extending the deadline for

filing the parties proposed recommended orders, to November 26, 2018.

The parties timely filed Proposed Recommended Orders, which have been considered by the undersigned in preparation of this Recommended Order.

Unless otherwise noted, all references to the Florida Statutes are to the 2017 version.

#### FINDINGS OF FACT

1. Marion County School Board (the Board or Petitioner), is the constitutional entity authorized to operate, control, and supervise the public schools within Marion County. See Art. IX, § 4(b), Fla. Const.; § 1001.32, Fla. Stat. Petitioner is authorized to discipline instructional staff and other school employees. See § 1012.22(1)(f), Fla. Stat.

2. Respondent, Richard Collins, has been employed under a professional services contract with the Board for approximately 20 years.

3. During the 2017-2018 school year, Respondent taught fourth grade at Greenway Elementary School (Greenway) in Ocala, Florida.

4. B.A., S.C., B.R., E.F., S.R., and A.D. were all students in Respondent's classroom. The children were each nine years of age.

October 2, 2017 Incident

5. On October 2, 2017, Respondent's class was engaged in reading and language arts assignments in small groups throughout the classroom. Some students worked at the computer center, while others sat together at work tables.

6. Respondent was working directly with one small group of students at a table in the front of the classroom.

7. By all accounts, the classroom was noisy. Some of the students were playing loudly, rather than working on their assignments.

8. Student B.A. was at a table in the back of the room with students S.C. and A.D. Rather than attending to their assignments, the students were playing around on top of the table. The students had pillows on top of the table and were taking turns sitting on the pillows and attempting to pull each other off the table by their ankles.

9. Respondent noticed students B.A. and S.C. on the table, and instructed them to sit down. Respondent did not get up from his table at the front of the classroom to correct the children.

10. The record does not reflect that the students heard Respondent tell them to sit down. The students did not sit down.

11. S.C. pulled B.A. off the table by her ankles and B.A.'s head hit the hard tile floor. She began crying.

12. Respondent neither saw B.A. fall nor heard her crying.

13. A third student reported to Respondent that B.A. was crying. Respondent also "overheard" a student say that B.A. could not see, or was having trouble seeing, out of one eye.

14. Rather than seek out B.A. immediately and inquire about her injury, Respondent instructed everyone in the class to return to their seats.

15. After the students returned to their seats, Respondent asked B.A. what had happened and if she was hurt.

16. B.A. reported that she fell and, when Respondent inquired about any injury B.A. sustained, B.A. pointed to the side of her face.

17. B.A. had a red mark on her face by her temple.<sup>2/</sup> Respondent saw the mark. Respondent knew B.A. had been on top of the table, had fallen, and had sustained an injury to her head at the temple area. Respondent knew that the classroom floor was hard tile. Respondent had overheard another student say B.A. was complaining of difficulty with her vision.

18. Shortly after the incident, Respondent's class was scheduled to leave for recess. Respondent did not call for another teacher to take his class to recess so he could accompany B.A. to the clinic. Respondent did not ask another student to accompany B.A. to the clinic while he took the students to recess. Instead, Respondent asked B.A. if she wanted to go to the clinic or to recess.

19. B.A.'s response to this question was a disputed issue. B.A. testified that she probably told Respondent she was fine. However, B.A.'s memory of that day is not reliable. Respondent testified B.A. stated she wanted to go to recess.

20. Shortly thereafter, Respondent sent his class, including B.A., out to recess.

21. The recess area is located just outside Respondent's classroom. Respondent followed the students out and kept an eye on them free-playing in the open grassy field used for recess.

22. B.A. approached Respondent shortly before recess ended, reported that she was not feeling well, and asked if she could return to the classroom and put her head down. Respondent allowed her to do so.

23. Respondent did not ask any other student to accompany B.A. to the classroom or remain with her there. Instead, Respondent stood in the classroom doorway, where he divided his attention between B.A., with her head down at her desk, and his remaining students playing outside at recess.

24. Respondent called the remaining students in a few minutes early from recess. As the students were coming in, B.A. began vomiting. Respondent gave B.A. a cloth to clean up with, and instructed another student, S.C., to accompany B.A. to the clinic.

25. Shortly thereafter, Respondent contacted B.A.'s grandmother, Ms. Franklin,<sup>3/</sup> who was substitute teaching at Greenway that day. Respondent informed Ms. Franklin that he had sent B.A. to the clinic.

26. B.A. was treated briefly at the clinic, then transported to the hospital by emergency vehicle. B.A. was diagnosed with a concussion and was out of school the following day. Under doctor's orders, B.A. was not allowed to engage in any physical activity for 20 days.

#### School Board Investigation

27. After B.A. was transported to the hospital, Assistant Principal Leona Hunt identified the students in Respondent's classroom who had witnessed the incident. Ms. Hunt had each student write his or her own account of the incident.

28. Ms. Hunt also instructed Respondent to complete an accident report regarding the incident.

29. In the accident report, Respondent described the type of injury as "Hit her head," and listed "sit quietly" as the corrective action taken toward the student. Respondent gave the following written description of the incident:

Student [sic] were playing around in reading center while I was working with other students in guided reading. Another student said [B.A.] fell. I had all student [sic] go to their desk. I spoke with them all about playing around. Then we went outside for recess and I asked [B.A.] if she was ok and

she said she was fine. Then she felt sick and came into [sic] lay down. Before I sent her to the clinic she started throwing up.

30. Based on her investigation, Ms. Hunt referred the matter to Jaycee Oliver, Petitioner's Director of Employee Relations. Ms. Oliver handles all employee disciplinary matters.

31. Based on the information received from Ms. Hunt, Ms. Oliver identified Respondent's actions as "egregious," and referred the matter to Petitioner's Chief Investigator, Rose Cohen, for a more thorough investigation.

32. Ms. Cohen conducted a full investigation into the matter. Ms. Cohen interviewed Respondent, the students, the health clinic assistant, and paraprofessionals at Greenway.

33. When asked to recount the incident during his interview with Ms. Cohen, Respondent deferred to his written statement in the accident report. Respondent was asked, but refused, to give a written statement detailing the incident during the investigation.

34. Ms. Cohen issued an investigative report dated October 10, 2017. The report found that Respondent "failed students in the most egregious way when he failed to provide adequate supervision to students in his care." Based on her finding, Ms. Cohen recommended Respondent's termination.

35. Ms. Oliver agreed with Ms. Cohen's recommendation, which was also agreed to by the School District Superintendent



Heidi Maier. The Board approved Respondent's termination, which was signed by Dr. Maier and served on Respondent on October 17, 2017.

#### Prior Disciplinary History

36. Following a history of misconduct at other schools, which resulted in disciplinary action, the Board reassigned Respondent to Greenway for the 2017-2018 school year to "give Respondent a fresh start."

37. In May 2011, Respondent was reprimanded for insubordination and disrespect to his administrator in the presence of other staff and students.

38. In March 2016, Respondent received a written reprimand for making inappropriate verbal remarks of a sexual nature to a colleague.

39. In March 2017, Respondent was reprimanded for leaving his prescription medication on an open shelf in his classroom in plain view of his students. Respondent was warned to be "cognizant of the safety and health of students at all times."

40. In May 2017, Respondent was suspended for five days without pay for inappropriate interactions with students.

41. Just weeks before the incident at issue in this proceeding, Respondent was disciplined for gross insubordination after allowing two students to go to his classroom unattended and

use his keys to access his desk. Respondent had previously been instructed not to send students to his classroom unattended.

#### Administrative Charges

42. The Board first charges Respondent with failure to provide adequate supervision to students in his care, in violation of Principles of Professional Conduct for the Education Profession (Principles) 6A-10.081.

43. Respondent failed to stop students from "playing around on the table" during reading centers on October 2, 2017. Respondent was aware the students were engaged in "horseplay" on top of the table. While Respondent may have asked the students to sit down, he did not ensure that they obeyed, and they were allowed to continue engaging in risky behavior that proved to be dangerous.

44. By all accounts, the classroom atmosphere on October 2, 2017, was loud and chaotic.

45. Nicholas Carey is an instructional coach assigned to assist Respondent with classroom management. Mr. Carey observed Respondent's classroom before the incident and worked with a small group of students. Mr. Carey testified, credibly, that the classroom was so loud on the day of the incident that he could not hear the students he was working with at a small table in the back of the room.

46. Student E.F. testified that the classroom was so loud on the day of the incident that she could not focus on her work.

47. While some students testified that they heard Respondent tell B.A. and her friends to get off the table and sit down, the record does not support a finding that the students at B.A.'s table in the back of the room heard Respondent's instruction. The students were so loud that Respondent did not hear B.A. crying after her fall, and had to be informed by another student that B.A. fell and was crying. Respondent failed to maintain order in the classroom and create an environment conducive to learning.

48. The Board next charges Respondent with failing to protect students from conditions harmful to learning and/or to the student's health and safety. The most significant fact supporting this charge is that Respondent sent B.A. out to recess after her fall, rather than sending her for medical attention at the clinic. Respondent knew B.A. had fallen, most likely from the table top where she was playing; had suffered an injury to her head; and had at least overheard a student state that B.A. was complaining about difficulty with her vision.

49. Yet, Respondent took a nine-year-old's word that she was "fine" and wanted to go to recess. What child would choose the clinic over recess with her friends? Respondent was

responsible for B.A.'s safety, not for satisfying her desire to play with her friends.

#### Insubordination

50. Lastly, the Board charges Respondent with insubordination and falsifying a document in connection with his accident report and his refusal to make a further written statement during the Board's investigation of the incident.<sup>4/</sup>

The charging document reads, as follows:

Respondent was asked to provide a written statement. His written statement stated that the student was playing around, and failed to disclose that the injury was the result of horseplay by students. Although Respondent seemed to later acknowledge the statement provided was not truthful, or at least misrepresented the true facts, Respondent was asked to provide a subsequent statement correcting the information and he refused to do so.

51. Petitioner stated in its Proposed Recommended Order,

It is undisputed that Respondent's written statement was not completely truthful, or at least misrepresented the true facts of the incident. Respondent, however, refused to provide a subsequent statement correcting the information. (citations omitted).

52. On the contrary, whether the statements in the accident report were true and complete was an issue in dispute. The only evidence that Respondent was concerned that his accident report was not accurate was contained in Ms. Cohen's investigative report. However, the statements contained in the report are

hearsay which was not corroborated by any non-hearsay evidence. At the final hearing, Respondent stood by his accident report stating, "I wrote exactly what happened."

53. As to Petitioner's allegation that Respondent was insubordinate in refusing to make another statement during Ms. Cohen's investigation, the record shows Respondent relied upon the advice of his union representative to defer to his accident report.

54. Petitioner established no facts on which to base a finding that Respondent's refusal to provide a further statement during the investigation constituted insubordination.

#### CONCLUSIONS OF LAW

55. The Division has jurisdiction over the subject matter of, and parties to, this case, pursuant to sections 1012.33(6), 120.569, and 120.57(1), Florida Statutes (2018).

56. Petitioner is a duly constituted district school board with the authority to suspend, dismiss, or return to annual contract, members of the instructional staff and other school employees of Marion County, Florida, pursuant to section 1012.22(1)(f).

57. Respondent is an instructional employee of the school board pursuant to an annual contract.

58. Petitioner seeks to terminate Respondent's employment, and has the burden of proving the allegations set forth in its

charging document by a preponderance of the evidence, as opposed to the more stringent standard of clear and convincing evidence applicable to the loss of a license or certification. Cropsey v. Sch. Bd. of Manatee Cnty., 19 So. 3d 351 (Fla. 2d DCA 2009), rev. denied, 29 So. 3d 1118 (Fla. 2010); Cisneros v. Sch. Bd. of Miami-Dade Cnty., 990 So. 2d 1179 (Fla. 3d DCA 2008).

59. Florida Administrative Code Rule 6A-5.056 sets forth criteria for suspension and dismissal of instructional personnel. Subsection (2) defines Misconduct in Office in pertinent part, as follows:

(2) 'Misconduct in Office' means one or more of the following:

\* \* \*

(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. [the Principles.]

#### The Principles

60. Petitioner alleges Respondent violated the following Principle set forth in Florida Administrative Code Rule 6A-10.081(2)(b)1.:

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of the principles shall subject the individual to revocation or suspension of the individual educator's certificate, or other penalties provided by law.

\* \* \*

(b) Obligation to the student requires that the individual:

1. 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.

61. Based on the numerous Findings of Fact herein, Petitioner proved by a preponderance of the evidence that Respondent violated the cited Principle; thus, Petitioner proved that Respondent violated rule 6A-5.056(1)(b).

62. As to Petitioner's charge of insubordination against Respondent, Petitioner did not meet its burden of proof.

63. Despite failure of proof as to the charge of insubordination, Petitioner had just cause to terminate Respondent. Termination was appropriate for Respondent's failure to appropriately supervise his students and protect B.A. from conditions harmful to her physical health and safety. Even if this incident alone was not just cause for termination, the incident, together with Respondent's history of discipline, constitutes just cause for termination.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Marion County School Board enter a final order upholding its termination of Respondent, Richard Collins, from his written contract.

DONE AND ENTERED this 8th day of January, 2019, in  
Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of January, 2019.

ENDNOTES

- 1/ The record does not reflect the reason for the delay in forwarding Petitioner's hearing request to the Division.
- 2/ The record does not reflect whether the mark appeared on the left or right side of B.A.'s face.
- 3/ Ms. Franklin's first name does not appear in the record.
- 4/ In its Proposed Conclusions of Law, Petitioner did not address its allegation of insubordination. It is unclear whether Petitioner abandoned this allegation. The undersigned includes findings and conclusions on this issue in an abundance of caution.

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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.