

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

SARASOTA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-3135

JOY DEAL,

Respondent.

RECOMMENDED ORDER

On November 2 through 4, 2020, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) conducted an evidentiary hearing via Zoom conference.

APPEARANCES

For Petitioner: Robert K. Robinson, Esquire
 Rob Robinson Attorney, P.A.
 500 South Washington Boulevard, Suite 400
 Sarasota, Florida 34236

For Respondent: Joy L. Deal, pro se
 4503 Hale Street
 Sarasota, Florida 34233

STATEMENT OF THE ISSUES

Whether Respondent, Joy Deal (Respondent or Ms. Deal), committed misconduct as alleged by the School Board of Sarasota County (School Board), and, if so, whether the School Board had just cause to terminate her employment.

PRELIMINARY STATEMENT

On December 14, 2018, the School Board's Superintendent, Todd Bowden, issued a letter to Ms. Deal indicating he had found just cause to recommend termination of her employment to the School Board for committing the offense of "misconduct in office." Respondent grieved that finding and recommendation.

On May 14, 2019, Mr. Bowden issued another letter to Respondent indicating that the original recommended termination had proceeded through the grievance process. The May 14 letter indicated that the School Board would vote to accept or reject the recommendation for termination at a meeting on June 4, 2019, unless she requested an administrative hearing.

On May 28, 2019, Ms. Deal submitted a letter requesting a hearing pursuant to section 120.569, Florida Statutes (2018).¹ On June 10, 2019, the School Board referred the matter to DOAH, where it was assigned to the undersigned Administrative Law Judge. A final hearing was noticed within 60 days of Respondent's request for an administrative hearing for August 26 and 27, 2019. § 1012.33(6)(a)2., Fla. Stat.

On June 28, 2019, the School Board filed an Administrative Complaint providing more specific charges of misconduct against Ms. Deal.² Specifically, the School Board alleged that Ms. Deal had an incident with a student on November 2, 2018, involving Ms. Deal yelling at a student.³

¹ All references to Florida Statutes, administrative rules, and the School Board's policies are to the 2018 versions in effect at the time of the allegation, except as otherwise indicated.

² The Administrative Complaint was filed in response to an Order Requiring Notice of Specific Charges, rendered on June 13, 2019.

³ The Administrative Complaint also contained an allegation that Ms. Deal acted inappropriately in front of parents on November 7, 2018. This basis for termination was abandoned in the School Board's Proposed Recommended Order (PRO). *See* Pet. PRO, ¶72.

On August 20, 2019, Ms. Deal filed a document titled "Respondent Complaint to the Honorable Judge Robert S. Cohen" (Complaint), requesting that DOAH conduct an investigation and "suspend any further proceedings." Specifically, Ms. Deal complained about the use of her deposition testimony at the final hearing and alleged that the School Board had committed evidence tampering and conspiracy, and had violated chapter 119, Florida Statutes, Florida's public records law. The Complaint was treated as a motion to stay and denied on August 20, 2019.

The final hearing commenced on August 26, 2019, but concluded abruptly after a few hours due to an emergency involving Respondent's family. The final hearing was rescheduled, continued due to the COVID-19 health crisis, placed in abeyance for three months due to Respondent's health issues, and ultimately set to be heard November 2 through 6, 2020.⁴

On October 23, 2020, the School Board filed a Motion to Strike Respondent Joy Deal's Second Amended Pre-Hearing Statement or, in the alternative, to Exclude Untimely Disclosed Exhibits and Witnesses, and for Fees and Costs. This motion was treated as a motion in limine and heard at the pre-hearing conference held October 26, 2020. Ultimately, the undersigned struck a number of untimely disclosed witnesses who Respondent intended to present on her claims of spoliation of evidence (missing emails and video footage), and alleged harassment of other employees. The undersigned ruled these issues were not appropriate for the final hearing. Petitioner's request for fees and costs were denied.

⁴ Because of the length of time between the original commencement date and the resumption of the hearing on November 2, 2020, the testimony at the August 26 hearing was not considered. The parties agreed to start the hearing over and began with their opening arguments on November 2, 2020.

The final hearing was held via Zoom on November 2 through 4, 2020. The School Board presented testimony from a number of its employees and former employees who worked at Sarasota High School: David Jones (principal), Jeffrey Hradek (former principal), Denise Masi (security aide), Ryan Chase (former assistant principal), and Becky Moyer (assistant principal). The School Board also relied on the deposition testimony of Ms. Deal. Petitioner's Exhibits P1 through P8 and P16 through P57 were admitted into evidence. Respondent presented the testimony of Madison Byrd (Ms. Deal's daughter), and Mark Gilliland (assistant principal). Ms. Deal did not testify. Respondent's Exhibits R2 through R4, R9 through R11, and R16 through R18 were admitted into evidence.

At the conclusion of the hearing, the parties requested an extended deadline of the traditional deadline of 20 days after the transcript is filed to submit their PROs, thus waiving the requirement for the undersigned to issue this Recommended Order within 30 days after receiving the Transcript. *See Fla. Admin. Code R. 28-106.216(2)*.

The Transcript of the hearing was filed with DOAH on November 23, 2020. Petitioner filed an agreed motion for a further extension to file PROs on December 31, 2020, which was granted. Petitioner's PRO was timely filed, but Respondent's PRO was not. Because there was no objection to Respondent's late-filed PRO, both PROs have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties and Personnel

1. Petitioner is responsible for operating the public schools in the Sarasota County School District, including Sarasota High School (Sarasota High). The School Board is responsible for hiring, firing, and overseeing both

instructional employees and non-instructional employees within Sarasota County, Florida.

2. Respondent has been an employee the School Board for 22 years. She has worked as an administrative secretary, but relevant to these proceedings, Ms. Deal was employed at Sarasota High as an SSP-5 Attendance Clerk (Attendance Clerk).⁵

3. David Jones (Principal Jones) is Sarasota High's principal and has been employed by the School Board since 2005. He previously served as a math teacher, assistant principal, middle school principal, and principal of another high school. He became the principal at Sarasota High at the start of the 2016/2017 school year, replacing Jeffrey Hradek (Principal Hradek).

4. Sarasota High's administrative team was made up of Principal Jones and numerous assistant principals. Both Ryan Chase and Becky Moyer served as assistant principals under Principal Jones during the 2016/2017, 2017/2018, and 2018/2019 school years. Principal Jones, Assistant Principal Chase, and Assistant Principal Moyer all supervised Respondent during these years at different times.

Collective Bargaining Agreement (CBA)

5. There is a Collective Bargaining Agreement (CBA) between the School Board and the Sarasota Classified, Teachers Association (SC/TA). Ms. Deal is a member of the SC/TA and subject to the CBA.

6. Article XXI of the CBA (Disciplinary Actions) provides for progressive discipline, with termination of employment as the last step of the disciplinary process:

(A) Scope of Article

1. This article covers actions involving oral and written warning, written reprimands, suspensions, demotions, dismissals, or reductions in grade or pay with prejudice.

⁵ "SSP-5" means Salary Schedule P-5.

2. Disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by sufficient evidence which supports the recommended disciplinary action.

3. All facts pertaining to a disciplinary action shall be developed as promptly as possible. Actions under this Article shall be promptly initiated after all the facts have been made known to the official responsible for taking the actions.

* * *

(C) An employee whom disciplinary action is to be taken may appeal through the grievance procedure that proposal.

(D) An employee against whom action is to be taken under this Article shall have the right to review all of the information relied upon to support the proposed action and shall be given a copy upon request.

(E) The Union shall be provided with a copy of all correspondence that is related to the action of the employee the Union is representing.

(F) The employee and his/her representative shall be afforded reasonable amount of time to prepare and present appropriate responses to the proposed actions under this article, through Step One of the Grievance Process. This amount of time is to be mutually agreed upon by the parties.

* * *

(H) Previous charges or actions that have been brought forth by the administration may be cited against employee if these previous acts are reasonably related to the existing charge. All previous charges or actions must have been shared with the employee.

(I) Progressive Discipline

1. The discipline, dismissal, demotion, and suspension of any employee shall be for just cause.

2. Where just cause warrants such action(s), an employee may be demoted, suspended, or dismissed upon recommendation of the immediate supervisor to the Superintendent of Schools. Except in cases that constitute a real immediate danger to the district or [sic] the other flagrant violation, progressive discipline shall be administered as follows:

a. Verbal reprimand (written notation placed in site file).

b. Written reprimand filed in personnel and site files.

c. Suspension with or without pay.

d. Dismissal.

7. Sarasota High's administration utilized meetings known as "Weingarten hearings" to make factual findings that would determine whether discipline was warranted for an employee. Employees were provided notice of the allegations against them and allowed to bring counsel or union representation to the hearing.⁶

Ms. Deal's Job Description

8. As her job title implies, Ms. Deal was responsible for maintaining attendance data and monitoring the comings and goings of students throughout the school day. Ms. Deal's job duties were listed in Board Policy 6.42, Job Description 11 for Attendance Clerk, and include:

⁶ Article XXI sets forth what is commonly referred to as "Weingarten" rights. *See In NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975)(holding unionized employee has right to notice and union representation, in instances where member reasonably believes investigatory meetings, conferences, or interviews may result in disciplinary action).

- (8) Communicate daily with a variety of parents and staff.
- (9) Assist office staff with answering the telephone and greeting parents.

* * *

- (12) Provide a safe and secure workplace.
- (13) Model and maintain high ethical standards.

* * *

- (15) Maintain confidentiality regarding school matters.

* * *

- (18) Respond to inquiries and concerns in a timely manner.
- (19) Follow all School Board policies, rules and regulations.
- (20) Exhibit interpersonal skills to work as an effective team member.
- (21) Demonstrate support for the School District and its goals and priorities.
- (22) Perform other incidental tasks consistent with the goals and objectives of this position.

9. As an Attendance Clerk, Ms. Deal had constant interactions with students and parents when they checked in or out of school. She was privy to the students' personal information because she was the school employee with whom parents would interact if they were picking or dropping off a child (outside of normal school start and stop times) for personal or medical reasons.

10. The attendance desk, Ms. Deal's workspace, was in Sarasota High's front office. The front office also houses the school clinic and the office of the

At-Risk Coordinator, Keri Gartland. To enter either the clinic or Ms. Gartland's office, staff and students would have to go through the front office. The clinic also has a sliding glass window looking into the front office.

11. The front office had an "outside door" which was open to the public, and a "campus door" to the school grounds. Anyone coming to school after the start of the school day would have to come in the front office through the outside door, stop at the attendance desk to sign in, and go through the campus door to get to class. Students leaving the school before normal exiting times were required to stop by the attendance desk to sign out of school, or have their parent sign them out.

Employment History

12. School administrators utilized memorandums of instruction (MOI) as a non-disciplinary means of working with employees to improve job performance. Although MOIs are not disciplinary in nature, they are intended to be corrective tools to focus an employee's attention on certain guidelines and acceptable standards of conduct in response to performance or behavioral issues.

13. Principal Hradek supervised Ms. Deal from 2003 through 2016. During this period, Ms. Deal received non-disciplinary MOIs from Principal Hradek and assistant principals outlining the need to improve her level of cooperation while working with others, stop gossiping, be more tactful, be more courteous to parents and students, be more patient with and respectful of others, and accept guidance from others regarding these issues.

14. On August 25, 2010, Ms. Deal was issued an MOI with regard to ethical deficiencies. The MOI focused on the Principles of Professional Conduct of the Education Profession in Florida (the Principles) which, as explained below, require employees to take reasonable precautions to distinguish between personal views and those of the School Board, not intentionally distort or misrepresent facts concerning an educational

matter in direct or indirect public expression, and not make malicious or intentionally false statements about another employee.

15. In her 2010 evaluation, Ms. Deal was rated "Effective," "Needs Improvement," and "Not Effective." Specifically, the evaluation indicated that Respondent needed improvement accepting constructive criticism and that she needed to increase her ability to accept guidance. The evaluation also stated Ms. Deal was ineffective in the areas of "Cooperation" and "Personal Relationships." Ms. Deal was again reminded to "increase her level of cooperation working with others [and] decrease gossip." Regarding her personal relationships, she was told to "increase tact, courtesy to parents and students, patience and respect for others."

16. At some point during his tenure, Principal Hradek relieved Ms. Deal of her attendance duties and moved her out of the front office into Building 14. Ms. Deal's duties in this new area were to provide secretarial support to the assistant principals, the school resource officer, and the Exceptional Student Education (ESE) liaison. Neither Principal Hradek nor the School Board changed Respondent's SSP-5 Attendance Clerk designation, even though she was no longer performing the duties of that job.

17. In this new role, Respondent had less contact with parents and students. Principal Hradek explained:

I think in the role of an attendance clerk with all the public interaction that [Ms. Deal] had with families and various staff it was – that was her flaw. She wanted to talk about things other than her job responsibilities or elicit her opinions. So, moving her over to Building 14, she did a very good job with the special needs students.

18. Ms. Deal had no disciplinary issues or MOIs for a number of years. Then, on August 20, 2015, Principal Hradek issued an MOI to Ms. Deal for having loud outbursts and making profane statements in front of students

and staff while contesting new parking procedures. Respondent was again reminded of her ethical obligations and the Principles.

19. When Principal Jones replaced Principal Hradek, Principal Jones made the decision to move Ms. Deal back to the attendance desk in the front office to perform the duties she was designated to do as Attendance Clerk.

20. Shortly after resuming her position as Attendance Clerk, Respondent received an MOI from Principal Jones addressing numerous issues including: her failure to take consistent breaks throughout the day; her use and volume of musical devices during school hours; her verbal communications with colleagues, parents, and students; her failure to bring her concerns to administration instead of voicing them to others; and her need to collaborate with and receive approval from an administrator prior to changing office procedures and protocols. Respondent was reminded again to adhere to acceptable ethical standards and the Principles.

21. On December 1, 2016, Principal Jones received a complaint from a parent complaining Ms. Deal had made an inappropriate comment to his or her child. The student, who suffers from a medical condition, was attempting to address school absences with Ms. Deal. Ms. Deal made rude, embarrassing, and inappropriate comments to the student, her brother, and two other students who were in the front office. The parent's complaint was corroborated by another student.

22. Around the same time, the school administration received another complaint from a different parent regarding inappropriate comments to her child made by Ms. Deal regarding the child's illness. Ms. Deal questioned whether the student should be able to leave the school, and whether the student should be able to obtain work from his or her teachers.

23. On February 1, 2017, as a result of these incidents and after following the proper procedures under the CBA, Assistant Principal Moyer issued Ms. Deal a verbal reprimand for unprofessional behavior. Respondent did not grieve this action.

24. On September 25, 2017, the administration was informed that Respondent had made inappropriate statements regarding a student suffering a seizure to a parent who was signing out another student from school.

25. On September 26, 2017, Respondent was involved in an incident in which she allegedly discussed and laughed at a student's medical issue with a teacher in the student's presence. Ms. Deal refused to allow the student to contact her parents to request a change of clothes needed due to a menstruation accident. Ms. Deal then demanded the student's parent call Ms. Deal even though the student informed Respondent that her parent did not speak English. Ms. Deal allegedly told the student that she did not care if her parents spoke Chinese or Spanish. She then proceeded to discuss the student's medical condition in front of another parent.

26. After an investigation and following the procedures in the CBA, on October 5, 2017, Assistant Principal Chase issued a written reprimand to Ms. Deal for unprofessional behavior in connection with the September 25 and 26 incidents. Respondent did not grieve this action.

27. On August 7, 2018, the administration received two reports from staff regarding inappropriate behavior by Ms. Deal during the distribution of locker assignments. Ms. Deal was frustrated with her computer and was disrespectful to fellow staff members. Ms. Deal also complained to students and parents about the computer and process for assigning lockers, and eventually left school early that day.

28. After an investigation and following the procedures in the CBA, on September 18, 2018, Principal Jones recommended Ms. Deal be suspended for three days without pay for unprofessional behavior.

29. Ms. Deal grieved the suspension. As a result, the suspension was reduced to two days. Ms. Deal did not further grieve or appeal the suspension.

30. At the final hearing, Ms. Deal sought to relitigate the facts underlying these previous disciplinary actions and argued she accepted the discipline based on the faulty advice of her union representative. Ms. Deal presented no evidence contradicting the circumstances regarding these incidents and chose not to testify on her behalf. Even if she had presented such evidence, the time for appealing these previous steps of progressive discipline has passed.

November 2, 2018

31. On November 2, 2018, Ms. Deal had an incident with a student, Johneshia Burks, in the front office (the Incident). The School Board presented no testimony from anyone who was in the front office at the time the Incident started. According to Ms. Deal's PRO, Ms. Burks entered the attendance office, told Ms. Deal that she was there to see Ms. Gartland, and asked Ms. Deal where Ms. Gartland was. Ms. Deal claims she replied, "she did not keep Ms. Gartland's schedule." (Resp. PRO, p.5, ¶8).

32. In her PRO, Ms. Deal also claims she asked Ms. Burks for a hall pass, at which point, Ms. Burks got upset and started verbally attacking Ms. Deal. Ms. Deal also claims Ms. Burks became physically aggressive. (Resp. PRO, p.5, ¶8). Ms. Deal, however, did not testify and offered no credible evidence of the Incident. Although other evidence establishes they were both yelling, there is no evidence that Ms. Burks was physically aggressive or started the argument.

33. Regardless, Denise Masi, the school's security aide and a former New York City police officer, testified as to what she witnessed that day. The undersigned finds Ms. Masi's testimony is unbiased, credible, and convincing; her testimony also is corroborated by various witness statements in the investigative file.

34. Sometime between 11:00 a.m. and noon, Ms. Deal called Ms. Masi for assistance in the front office on the school-issued radio. Ms. Masi arrived at the front office entering from the campus door. She observed Ms. Burks on the side of the door yelling at Ms. Deal, and Ms. Deal behind her desk

yelling at Ms. Burks. Although she did not understand what they were yelling about, she heard Ms. Deal yell "you can't stay in here. She has to go."

35. Ms. Masi also observed that there were parents in the office. She also noticed the clinic nurse and assistant looked frightened behind the clinic's glass sliding window, which was closed.

36. Ms. Masi tried to de-escalate the situation by asking Ms. Deal to "keep quiet" and stop yelling. Ms. Deal did not comply. Ms. Masi testified that Ms. Deal was not making it easy to calm everyone down.

37. Realizing Ms. Deal was not going to stop yelling, Ms. Masi removed Ms. Burks from the front office. Ms. Masi assessed that Ms. Burks was waiting to see Ms. Gartland and remained with Ms. Burks. While in a breezeway between the front office and the administrative office, they encountered Ms. Gartland. Ms. Gartland returned to her office through the front office with Ms. Burks without incident.

38. Ms. Masi then went back into the front office to check on the nurse and assistant. The nurse and assistant told Ms. Masi that, in response to hearing the yelling, they suggested to Ms. Deal that she call security and then they closed the glass window into the front office.

39. During Ms. Masi's return to the front office, she observed Ms. Deal was still agitated and kept repeating that she was not Ms. Gartland's secretary.

40. Ms. Masi was interviewed separately by Principal Jones and by Assistant Principal Chase regarding the Incident. Assistant Principal Chase also interviewed Ms. Burks, who gave him a written statement. Based on his conversations with Ms. Burks he learned that Ms. Gartland had requested Ms. Burks to come to her office but Ms. Gartland was not there when Ms. Burks arrived. Ms. Burks claimed Ms. Deal started yelling when she asked her about Ms. Gartland's whereabouts.

41. As part of their investigation, both Principal Jones and Assistant Principal Chase reviewed a video of the Incident. The video had no audio.

This video was not retained and was not offered into evidence at the final hearing. The undersigned finds that the testimony regarding what was in the video is not helpful in determining what happened between Ms. Deal and Ms. Burks.

42. Ms. Deal did not testify. Instead, she offered the testimony of Madison Byrd (her daughter and a Sarasota High student), in an attempt to establish that Ms. Deal's actions during the Incident were justified and appropriate. Ms. Byrd claimed she was in the front office during the Incident. According to Ms. Byrd, Ms. Burks was the only person yelling and her mother did not say anything to Ms. Burks. Ms. Byrd admitted she walked into the front office "in the middle of the situation." She also heard the nurse ask Ms. Deal to call security.

43. Ms. Byrd's testimony was subject to bias because of her familial and financial ties to Respondent. Ms. Byrd also indicated she disliked Ms. Burks because of something that happened in middle school. The undersigned finds, to the extent Ms. Byrd's testimony was inconsistent with Ms. Masi's testimony, Ms. Masi's testimony is more reliable and corroborated by other evidence.

44. On November 15, 2018, Principal Jones met with Ms. Deal in a Weingarten meeting to address the Incident. During this meeting, Respondent took no personal responsibility, attempted to lay blame upon Ms. Burks, and denied yelling. Similarly, at the final hearing, Ms. Deal presented no evidence that she accepted some responsibility or that her behavior was appropriate and justified under the circumstances.

45. On November 30, 2018, Principal Jones recommended termination of Respondent's employment based upon Ms. Deal's past disciplinary history for unprofessional conduct in the workplace and the Incident.

46. At the final hearing, Ms. Deal attempted to impeach the School Board's witnesses by asking them if the administration told them to "keep an eye" on

her or give written statements against her. There was no evidence anyone was asked to fabricate information about Ms. Deal.

47. It is clear from the testimony and evidence at the hearing that Ms. Deal and Ms. Burks were involved in a shouting match in the front office that could be heard by other parents and staff. Regardless of who started the argument, Ms. Deal was the adult in the room. More importantly, as an Attendance Clerk, Ms. Deal was required to act professionally and according to School Board rules and regulations. Instead, she took no steps to de-escalate the situation, and refused to regain her composure even after being asked by Ms. Masi to do so.

CONCLUSIONS OF LAW

48. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.⁷

49. Ms. Deal is an educational support employee. §§ 1012.40(1)(a) and 1012.01(6), Fla. Stat.

50. The School Board is charged with the duty to operate, control, and supervise all free public schools within the school district of Sarasota County, Florida. Art. IX, § 4(b), Fla. Const.; §§ 1001.30 and 1001.33, Fla. Stat. The School Board's superintendent has the authority to recommend to the School Board that an employee be terminated from employment. § 1012.27(5), Fla. Stat.

51. The School Board has the statutory authority to adopt rules governing personnel matters pursuant to sections 1001.42(28), 1012.22, and 1012.23, Florida Statutes. Section 1012.22, provides, in pertinent part:

The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for

⁷ The School Board has contracted with DOAH to conduct the administrative proceedings pursuant to Article XXI(C)(14) of the CBA.

the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

* * *

(f) Suspension, dismissal, and return to annual contract status. —The district school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

52. Section 1012.40(2)(c) provides:

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 or by district school board rule in the event there is no collective bargaining agreement.

53. The School Board bears the burden of proving by a preponderance of the evidence that the alleged misconduct occurred and just cause exists to terminate Respondent's employment. *Cropsey v. Sch. Bd. of Manatee Cty.*, 19 So. 3d 351, 355 (Fla. 2d DCA 2009). A preponderance of the evidence is evidence that "more likely than not" tends to prove the proposition set forth by a proponent. *Gross v. Lyons*, 763 So. 2d 276 (Fla. 2000).

54. As an initial matter, the undersigned must determine whether Ms. Deal's conduct constitutes "just cause" for dismissal. Florida Administrative Code Rule 6A-5.056 provides in pertinent part:

Criteria for Suspension and Dismissal.

"Just cause" means cause that is legally sufficient. Each of the charges upon which just cause for a dismissal action against specified school personnel may be pursued are set forth in Sections 1012.33 and 1012.335, F.S. In fulfillment of these laws, the basis for each such charge is hereby defined:

* * *

(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.;

(c) A violation of the adopted school board rules;

(d) Behavior that disrupts the student's learning environment;

(e) Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.

55. Additionally, Article XXI(A)(2) of the CBA provides that the discipline, including dismissal, of any employee shall be for just cause.

The Principles

56. The Principles provide guidance to educational employees on how they should act, and state in relevant part:

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

(1) Florida educators shall be guided by the following ethical principles:

(a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to

excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(b) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

* * *

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

(a) 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.

* * *

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

57. Ms. Deal was required to value "the worth and dignity" of Ms. Burks. Fla. Admin. Code R. 6A-10.081(1)(a). Ms. Deal's behavior during the Incident violated this principle.

58. Rule 6A-10.081(1)(b) required that Ms. Deal's primary professional concern "always be for the student and for the development of the student's potential. Therefore, one will strive for professional growth and will seek to

exercise the best professional judgment and integrity." Ms. Deal's behavior during the Incident violated this principle.

59. Rule 6A-10.081(2)(a)1. required Ms. Deal to make a reasonable effort to protect Ms. Burks from conditions harmful to learning and "towards the student's mental and/or physical health and/or safety." Ms. Deal's behavior during the Incident violated this principle.

60. Finally, rule 6A-10.081(2)(a)5. provides that one "[s]hall not intentionally expose a student to necessary embarrassment or disparagement." Ms. Deal's behavior during the Incident toward Ms. Burks in the presence of others violated this principle.

61. The School Board had previously warned and counseled Ms. Deal for violating these and other Principles through her performance evaluations, MOIs, and discipline. There was no evidence that Ms. Deal was remorseful for the Incident or that she would change her behavior in the future to better comply with the Principles.

School Board Rules

62. School Board Rule 6.27 requires Ms. Deal to adhere to the Principles. Because she violated the Principles, as explained above, Ms. Deal has also violated this rule. *See also* School Board Policy 6.42, Job Description 11 (19).

63. Additionally, Ms. Deal's behavior violated School Board Policy 6.42, Job Description 11(12), which sets forth her job description and requires her to "provide a safe and secure workplace."

Previous Discipline

64. The School Board previously issued Ms. Deal the following discipline: a verbal reprimand on February 1, 2017; a written reprimand on October 5, 2017; and a two-day suspension on September 18, 2018.

65. Respondent's attempt to rehash what happened to warrant her previous disciplines is barred by the doctrine of "administrative finality," which holds that agency orders must become final and no longer subject to change or modification. *See Delray Med. Ctr. v. Ag. for Health Care Admin.*,

5 So. 3d 26, 29 (Fla. 4th DCA 2009)(comparing administrative finality to res judicata). The credibility and persuasiveness of the evidence supporting past disciplinary actions, as well as whether the discipline was appropriate, were issues previously litigated (or could have been litigated) and decided. Respondent may not relitigate these issues in this proceeding, especially when she had been provided due process and union representation. *See Fla. Power Corp. v. Garcia*, 780 So. 2d 34, 44 (Fla. 2001)(noting there must be a "terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein."); *Reedy Creek Utils. Co. v. Fla. Pub. Serv. Comm'n*, 418 So. 2d 249, 254 (Fla. 1982)("An underlying purpose of the doctrine of [administrative] finality is to protect those who rely on a judgment or ruling.").

Ultimate Conclusions

66. The School Board has satisfied its burden to show that Ms. Deal was guilty of misconduct on November 2, 2018.

67. The School Board has satisfied its burden to show that the misconduct constituted just cause for disciplinary action.

68. The School Board has complied with the progressive discipline steps set forth in Article XXI(I)(2) of the CBA. Thus, termination is the appropriate disciplinary action.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED the School Board of Sarasota County terminate Joy Deal's employment.

DONE AND ENTERED this 11th day of February, 2021, in Tallahassee, Leon County, Florida.



HETAL DESAI
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of February, 2021.

COPIES FURNISHED:

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Dr. Brennan Asplen, III, Superintendent
Sarasota County School Board
1960 Landings Boulevard
Sarasota, FL 34231-3365

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.