STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 19-5282TTS,

JACINTA LARSON,

Respondent.
_____/

RECOMMENDED ORDER

On September 21 and 22, 2020, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by Zoom.

APPEARANCES

For Petitioner: Jean Marie Middleton, Esquire
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STATEMENT OF THE ISSUES

The issues are whether Respondent threw a chair at one student, missed him, but hit a desk that impacted and injured another student; if so, whether such conduct constitutes a violation of section 1012.27(5), Florida Statutes (2018), or any of the various School Board Policies (Policies) or Department of

Education rules (Rules) discussed below; and, if so, whether Petitioner's termination of Respondent is consistent with the provision of progressive discipline set forth in the Collective Bargaining Agreement for the period, July 1, 2017, through June 30, 2020 (CBA).

PRELIMINARY STATEMENT

By undated Administrative Complaint served on Respondent's counsel on October 3, 2019, Petitioner alleged that the above-stated facts constitute just cause for a 15-day suspension without pay followed by termination under section 1012.27(5), Policies 1.013(2) and 3.27, Rule 6A-5.056(2), and CBA article II, section M, on the grounds that Respondent failed to fulfill the responsibilities of a teacher, failed to exercise best judgment, injured a student, and disrupted the students' learning environment. The Administrative Complaint alleges that Respondent is guilty of ethical misconduct, as proscribed by Policies 3.02(4)(a) and (d) and (5)(a)(i)-(iii) and (viii), Rules 6A-10.081(1)(b) and (c) and (2)(a)1. and 5. and 6A-5.056(2)(a)-(d); a failure to fulfill the responsibilities of a teacher, as required by Rule 6A-10.081(1)(b) and (c) and (2)(a)1. and Policy 1.013(1); and a failure to follow a policy, rule, directive, or statute, as required by Policies 1.013(1), 3.10(6), and 3.27; Rule 6A-5.056(2)(a); and CBA article II, section M.

By request filed on August 30, 2019, Respondent requested a formal hearing.

Petitioner transmitted the file to DOAH on October 3, 2019. In the Joint Response to Initial Order, the parties waived the 60-day deadline, set forth in section 1012.33(6)(a)2., for conducting the hearing following the receipt of Respondent's request for a hearing. The administrative law judge issued a Notice of Hearing setting the case to be heard on December 4 and 5, 2019. On October 17, 2019, the parties filed a Joint Motion for Continuance. By notice

issued on October 18, 2019, the administrative law judge reset the hearing for January 6 and 7, 2020; by notice issued on October 31, 2019, the administrative law judge, on his own initiative, reset the hearing for January 9 and 10, 2020, as had been requested by the parties in their joint motion. On December 13, 2019, Respondent filed an Unopposed Motion for Continuance, which the administrative law judge granted by order of even date that reset the hearing for April 13 and 14, 2020. On March 26, 2020, the parties filed an Unopposed Motion for Continuance, which the administrative law judge granted by order entered April 8, 2020, resetting the hearing for August 13 and 14, 2020. On August 3 and 7, 2020, the parties filed Joint Motion[s] for Continuance, which the administrative law judge granted by order entered August 11, 2020, resetting the hearing for September 21 and 22, 2020.

At the hearing, Petitioner called four witnesses and offered into evidence 31 exhibits: Petitioner Exhibits 1 through 31. Respondent called two witnesses and offered into evidence 45 exhibits: Respondent Exhibits 1 through 45. All exhibits were admitted.

The court reporter filed the transcript on October 14, 2020. After obtaining a couple of extensions of time, the parties filed proposed recommended orders on November 30, 2020.

FINDINGS OF FACT

1. Respondent is a 61-year-old teacher holding educator certificates in middle school mathematics and business education. Petitioner has employed Respondent as a classroom teacher since 2005. Respondent has no prior discipline.

2. Since 2012, Respondent has taught at Turning Point Academy, which is an alternative school operated by Petitioner. The students at Turning

Point Academy have been expelled from, or repeatedly disciplined at, other schools and range in age from 14 to 17 years old. In December 2018, 90 to 95 students were enrolled in the school, but absences, usually unexcused, averaged about 40% each day.

3. The school building is organized with several classrooms opening onto a common area, where a behavior intervention associate (BIA) sits at a desk, ready to help a teacher in an adjoining classroom control disruptive student behavior. In each common area are restrooms and an eating area. The BIA serving Respondent's common area on the date in question had ten years' experience as a BIA and 22 years' prior experience as a sheriff's deputy.

4. Respondent has been fully trained in appropriate interactions with students and classroom management. Respondent's evaluations for 2016-18 were all "Effective"; her evaluation for 2019 was "Highly Effective." However, the assistant principal of the school was dissatisfied with Respondent's classroom management skills. In response to what he viewed to be an excessive number of office referrals, the assistant principal had recently directed Respondent to take care of the behavior problems herself and had assigned her to take a two-part program on classroom management.

5. The assistant principal also directed Respondent to use the school's system of assigning tally marks for good and bad behavior. Absent seriously inappropriate behavior, the tally system requires three bad tally marks before the teacher could refer a student to the BIA, who then could decide whether to refer the student to the office. The record is silent as to the effectiveness of the tally system in shaping student behavior in general, but it is unlikely that the two student disrupters at the center of the incident on December 20, 2018, were deterred by the prospect of a few (more) bad tally marks.

6. During the 2018-19 school year, Respondent taught math to students in sixth through eighth grades. The class at issue was a 100-minute,

eighth-grade math class that took place late on the day of December 20, 2018, just before winter break.

7. Midway through the class, which was attended by six students on that day, three students began acting up. Respondent promptly intervened, and one of the students returned to his work. However, the other students left their assigned seats without permission. One student ran toward the back of the classroom, and the other student ran toward the front of the classroom, where Respondent was situated at her desk in the corner opposite from the corner at which the door to the common area was located. The students were yelling profanities and tossing paper in the air--some of both of which were directed at Respondent. One or both of the students demanded to know where Respondent lived and what kind of car she drove in a clear attempt to intimidate her. The student running toward Respondent invaded Respondent's space, as he ran behind her desk in the narrow space between her desk and the whiteboard, where he seized a marker, taunted Respondent that he had the marker, and wrote the word, "fuck," on the whiteboard.

8. The class was equipped with a buzzer to summon the BIA, but the buzzer was located by the classroom door on the opposite side of the room from Respondent's desk. It is unclear if it occurred to Respondent to tell another student to hit the buzzer, but she never did so and had never previously done so. Instead, Respondent leaned over the depth of her desk--about three feet--and grasped a lightweight chair with a plastic back and seat and metal legs. She shoved or pushed the chair briskly across the tile floor in the direction of the student who had rushed her desk, even though he was now careening toward the classroom door along the front of the classroom in the space between the whiteboard and the first row of desks. The chair missed the fleeing student, but struck the wall under the whiteboard with sufficient force that it ricocheted into the desk of a student who was seated, watching this incident unfold. The chair caused the desk to topple onto the right knee of the student.

9. In his deposition, the injured student testified that, in addition to the ice applied to the knee immediately after the incident, the only treatment that his knee required was a couple of weeks' rest. The next day, the injured student was back at school walking without favoring the injured knee. The assistant principal directed Respondent to telephone the injured student's parent and inform her what had happened, suggesting that the assistant principal considered the injury minor--or else, from a liability perspective, he would have made the call himself, rather than assign the responsibility for making the call to the staffperson who had caused the injury. Respondent made the assigned call to the injured student's parents--and, on her own, several others during the winter break to check on the child whom she had accidentally injured with the shoved chair.

10. In her initial statement, Respondent stated that she had thrown the chair, rather than shoved it along the floor. The injured student testified that Respondent threw the chair above the height of the desks, but desks did not occupy the space between her and the fleeing student, so, at minimum, elevation was unneeded to hit the student with the chair. Other student testimony indicated that the chair did not rise above the tops of the desks.

11. More importantly, Respondent remained behind her desk, and the chair was in front of the desk. If Respondent could gain the leverage to lean across the desk and grasp the chair, she would lack the leverage to throw it with any force at all. The proof establishes no more than that Respondent leaned across her desk and gave the chair a hard shove across the front of the classroom in the direction of the fleeing student.

12. It is difficult to understand why Respondent would state that she had thrown the chair, if she had not thrown the chair in the common sense of the word, "throw," which is "to propel through the air by a forward motion of the hand and arm."[1] Clearly, when she gave the statement to the school police investigator shortly after the incident, Respondent remained overwhelmed

[1] Merriam-Webster online dictionary, https://www.merriam-webster.com/dictionary/throw.

by what had happened to her in her classroom. Also, as demonstrated at the hearing, Respondent's language skills are not so highly developed that she would invariably differentiate between throwing a chair in the air and shoving a chair along a floor.

13. Two key witnesses establish Respondent's condition during and immediately after the incident. According to the BIA, who saw Respondent a few seconds after the incident ended, Respondent was not angry, but was visibly shaken up and upset. She told the BIA that she had been afraid when the student charged her. The injured student testified similarly that Respondent's reaction was fear, not anger. Interestingly, the injured student admitted that he too would have experienced fear, even though the charging student was a classmate. Immediately after testifying to this fact, the injured student added that he had overheard the two disruptive students at lunch discussing school shootings--a highly sensitive issue in schools today and even more so in December 2018, only a few months after the Parkland shootings.

14. Respondent claims that she acted in self-defense. There are two problems with this claim. First, objectively, Respondent did not act in self-defense, because, by the time that she shoved the chair, the student was running away from her, and she was out of immediate peril. On the other hand, the charging student had momentarily terrified Respondent, and it is not inconceivable that, in her fearful or panicked state, she formed a plan of action that, by the time she executed it, was a fraction of a second after the rushing student had turned to run across the front of the classroom.

15. The second problem is the belated emergence of Respondent's claim of self-defense, months after the incident took place, but there are a couple of explanations. As noted above, Respondent's claim of self-defense is a little bit of a mislabeling. Perhaps the two students' outrageous behavior caused Respondent to feel that she needed to defend herself; without doubt, this behavior caused Respondent to react in fear and even panic. Perhaps

Respondent did not find even the self-defense label for her claim until represented by counsel. Clearly, Respondent omitted numerous important details concerning the behavior of the two disruptive students in her initial statement--again, not surprisingly, as she was still overwhelmed by what had happened to her and that she had accidentally injured an innocent student--in fear, not in anger.

16. Interestingly, when Respondent finally presented the additional details, the assistant principal rejected them as Respondent's "changing her story." This dismissal betrays Petitioner's misconception of the case, whose center is not the changed fact of the specific action that Respondent applied to the chair, but to her state of mind when she applied the action to the chair. Regardless of whether she had thrown the chair high in the air or shoved it along the floor, Respondent had been driven by the two disruptive students to a state of utter fear and likely panic. To the assistant principal and Petitioner generally, a second changing fact may have been that she acted in fear, not anger, but no competent evidence ever supported characterizing her state of mind as angry. Despite the myriad conferences, emails, and witness statements filling Petitioner's file, there is no thoughtful analysis of what motivated, or drove, Respondent to apply force to the chair in the direction of the fleeing student. To the contrary, Petitioner has ignored strong evidence on this crucial issue from two witnesses--one of whom is disinterested and exceptionally experienced and competent at reading demeanors, collecting evidence, and analyzing evidence. And this evidence clearly establishes the reaction of an older woman in a state of fear or panic, not anger.

17. Nor did student testimony, besides from the injured student, support Petitioner's theory of the case. The deposition testimony of these students was of little value because it was vague or guarded. During a particularly

unproductive deposition of one of the disruptive students, likely the one who rushed Respondent,[2] the following exchanges occurred:

> Q: Okay, Mr. O, I want to make something very clear that we're not here today because of anything that you did. You're not in trouble or you're not here because you did something wrong.
>
> A: Uh-huh.
>
> Q: Okay. We just are trying to get some information and to see if you have any recollection of some events that occurred--
>
> A. All right.
>
> Q: last school year in December. Do you recall giving a statement to school police about a situation that happened in Ms. Larson's class, a chair that was thrown?
>
> A: (Shakes head)
>
> Q: You don't? Say yes or no.
>
> A: No, ma'am.
>
> Q: All right. One moment please. Do you recall giving a statement to school police that you were getting papers off Ms. Larson's desk when a chair was thrown at another student?
>
> A: No. Who this go to?
>
> Q. Pardon me?
>
> A. Who this go to?
>
> Q. What is your question?
>
> A. Who do all this go to?

[2] It is hard to identify individual students due to the redactions and absence even of students' initials in the Petitioner's investigative paperwork.

Q. It's going before a judge in a case, a different case.

A. I'm saying, so why do I got something to do with this?

Q. Because you gave a statement to the school police. You were in class the day that Ms. Larson threw a chair and hit a student in his knee.

A. I gave a statement?

* * *

[After the student refused to waive reading and signing]:

Q. Okay. So we will have [the transcript] sent to Ms. Richardson.

A. So this something that I got to go to court for?

Q. Well, probably not. We might use your deposition instead of … . Remember, this has nothing to do with you.

A. I thought--

Q. This is all about Ms. Larson.

A. A deposition like when you get send sent to a program.

Deposition of G.O., pp. 10-11 and 16-17.

18. At bottom, Respondent found herself in a very bad situation not at all of her making. In a blatant attempt to reduce the classroom to utter chaos, rather than to cause a mere disruption, two students unfortunately seem to have succeeded in momentarily terrorizing a teacher into incoherence.

19. Neither the school police officer nor any of Petitioner's supervisory employees saw the need to contact outside law enforcement. A document

mentions a child protective investigator by name, but the record does not suggest that she pursued an investigation. The prevailing thinking among Petitioner's representatives seems to have been that Respondent was neither negligent nor reckless and that she did not intend to hurt the injured student, whose parents did not wish to pursue the matter due to the negligible injury. Understandably, no one seems to have analyzed the situation from the perspective of the actual target of the chair--the fleeing student--as such an exercise would have uneasily cast the real perpetrator as the victim. But such an exercise might have led Petitioner at least provisionally to set aside its fixation with the "fact" that Respondent had thrown the chair high in the air and, more importantly, its assumption that Respondent had acted in anger.

CONCLUSIONS OF LAW

20. DOAH has jurisdiction. §§ 120.569, 120.57(1), and 1012.33(6)(a)2.

21. Petitioner must prove the material allegations by clear and convincing evidence. CBA, art. II, § M.1. Clear and convincing evidence is evidence that is "'precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.'" *Robles-Martinez v. Diaz, Reus & Targ, LLP*, 88 So. 3d 177, 179 n.3 (Fla. 3d DCA 2011) (citing Fla. Std. Jury Instr. (Civ.) 405.4).

22. A charging document must allege facts that support an alleged violation of law, because disciplinary action against a licensee based on unalleged facts would violate the licensee's right to a hearing under chapter 120. *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). *See also Trevisani v. Dep't of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005).

23. Section 1012.33(6)(a) authorizes Petitioner to suspend or dismiss an instructional employee for "just cause" at any time during the term of her

contract, although, "if the charges are not sustained," Petitioner must reinstate the employee with back pay.

24. As provided by section 1012.33(1)(a), "just cause includes" the following, as defined by rules of the State Board of Education of the Department of Education:

> immorality, misconduct in office, incompetency, … gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

25. Rule 6A-5.056(2)(a)-(d) provides:

> "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:
> (a) A violation of the Code of Ethics of the Education Profession in Florida as adopted in Rule 6A-10.080, F.A.C.;
> (b) A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.;
> (c) A violation of the adopted school board rules; [or]
> (d) Behavior that disrupts the student's learning environment[.]

26. Rule 6A-10.081 provides:

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

> (c) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.
>
> (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.
> 2. Shall not unreasonably restrain a student from independent action in pursuit of learning.
> 3. Shall not unreasonably deny a student access to diverse points of view.
> 4. Shall not intentionally suppress or distort subject matter relevant to a student's academic program.
> 5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

27. Despite its arguable inclusion as a basis for misconduct in office, as defined by Rule 6A-5.056(2)(b), Rule 6A-10.081(1) provides no disciplinary grounds due to its aspirational nature. Impliedly underscoring this fact, Rule 6A-10.081(2) explicitly states that its elements are mandatory or prohibitory and the violation of any of them exposes the teacher to discipline.

28. Policy 1.013(1) states that school board employees must carry out their assigned duties in accordance with all applicable laws. Policy 3.10(6) provides that employees must carry out their obligations under "Policy 1.013 … , their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to

health and safety or clearly violate established law or policy." The final part of this policy starting with "that do not pose" modifies only "reasonable directives," so Policy 3.10(6) says only that employees must conform to Policy 1.013, which, as noted above, says only that employees must conform to all applicable laws--all duly noted.

29. Policy 3.02 is the Code of Ethics governing Petitioner's employees. The Administrative Complaint cites Policy 3.02(4)(a) and (d), but out of context, so a much fuller citation of this policy is necessary to understand why the cited provisions are inapplicable for present purposes.[3]
Policy 3.02(2) provides that Policy 3.02 applies to all of Petitioner's employees. Policy 3.02(3) states that the Code of Ethics provides "general guidance" for the benefit of employees, who "should use good judgment to fulfill the spirit as well as the letter of this Code of Ethics, and should" identify ethical issues, apply the Code of Ethics and applicable law to ethical issues, and obtain guidance from the relevant department head.

30. Policy 3.02(4) provides:

> **Accountability and Compliance**
>
> Each employee agrees and pledges:
>
> a. To provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace.
>
> b. To obey local, state and national laws, codes and regulations.
>
> c. To support the principles of due process to protect the civil and human rights of all students and individuals.

[3] Petitioner Exhibit 32 was intended to be Policy 3.02 or at least 3.02(4), but omits the provisions following the introduction to Policy 3.02(3). The citation in the text accompanying this footnote is from Petitioner's official website: https://go.boarddocs.com/fl/palmbeach/Board.nsf/Public#. The website states that the policy was last revised in 2017.

> d. To treat all students and individuals with respect and to strive to be fair in all matters.
>
> e. To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.
>
> f. To take responsibility and be accountable for his or her acts or omissions.
>
> g. To avoid conflicts of interest or any appearance of impropriety.
>
> h. To cooperate with others to protect and advance the District and its students.
>
> i. To report improper conduct.
>
> j. To be efficient and effective in the delivery of all job duties.
>
> k. To cooperate during any investigations or proceedings.

31. The general pronouncements of Policy 3.02(4) are fleshed out in Policy 3.02(5). For instance, the general admonition against conflicts of interest generates 15 specific provisions in Policy 3.02(5)(d) and (e); these specific provisions, not the general pronouncement, contain the grounds for employee discipline. In the same way, Policy 3.02(5) provides the enforceable requirements and prohibitions referenced generally in Policy 3.02(4)(a) and (d).

32. The Administrative Complaint cites Policy 3.02(5)(a)(i)-(iii) and (viii), although the entire subsection is cited for context in support of the treatment of Policy 3.02(4):

> Abuse of Students--We are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships.

Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to:

i. Committing any act of child abuse or cruelty, including physical and verbal abuse, or any act of child endangerment.

ii. Exposing a student to unnecessary embarrassment or disparagement.

iii. Excessive or unnecessary physical interaction with a student, including horseplay.

iv. Using one's professional relationship or authority with students for one's personal advantage.

v. Engaging in, or being convicted of, a crime involving children as provided in Section 1012.315, Florida Statutes, as now or hereafter amended.

vi. Engaging in any sexually related behavior with a student with or without consent of the student. Sexually related behavior shall include, but not be limited to, such behaviors as sexual jokes; sexual remarks; sexual kidding or teasing; sexual innuendo; pressure for dates or sexual favors; inappropriate physical touching, kissing, or grabbing; rape; threats of physical harm; sexual assault and any sexual act as provided for in Section 1012.315, Florida Statutes.

vii. Engaging in bullying or harassing behavior on the basis of race, gender, sex, national origin, age, religion or disability, sexual orientation or gender identity in violation of School Board Policy Nos. 5.001 (Protecting Students from Harassment and Discrimination); 5.81 (Protecting Students from Sexual Harassment and Discrimination), as now or hereafter amended; and 5.002 (Anti-Bullying and Harassment) as now or hereafter amended; or, in violation of any related federal or state laws.

> viii. Engaging in misconduct which affects the health, safety and welfare of a student(s).
>
> ix. Soliciting, encouraging, participating or consummating an inappropriate written, verbal, or physical relationship with a student.
>
> x. Furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student or allowing a student to consume alcohol, or illegal/unauthorized drugs, contrary to School Board Policy Nos. 3.96 (Drug-and Alcohol-free Workplace) and 3.961 (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses), as now or hereafter amended.

33. Policy 3.27 contains a number of procedural provisions governing hearings in connection with the suspension and dismissal of employees, but does not provide additional grounds for such action.

34. CBA article II, section 7., provides:

> Except in cases which clearly constitute a real and immediate danger to the District, a District employee, and/or a child … or the actions [or] inactions of the employee clearly constitute flagrant or purposeful violations of reasonable school rules and regulations, progressive discipline shall be administered as follows:
>
> a. Verbal Reprimand with a Written Notation … .
> b. Written Reprimand … .
> c. Suspension Without Pay … .
> d. Dismissal … .

35. The salient provisions of law applicable to a determination of whether Petitioner has proved by clear and convincing evidence that it has just cause to dismiss Respondent are thus Rules 6A-5.056(2)(d) and 6A-10.081(2)(a)1. and 5. and Policy 3.02(5)(a)(i)-(iii) and (viii).

36. Petitioner failed to prove that Respondent is guilty of behavior that disrupted the student's learning environment. The two disrupting students had destroyed the learning environment, likely for the remainder of the class period, with their outrageous behavior, including the charging student's assault of Respondent. In this sense, there was no learning environment left to disrupt when Respondent shoved the chair. Nor has Petitioner proved that Respondent's fear-driven reaction to the assault by the charging student constituted behavior for which she could be held accountable.

37. Petitioner failed to prove that Respondent failed to 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. The charging student in particular set into motion the chain of events that led to Respondent's shoving the chair across the floor toward the student, but accidentally inflicting a mild injury on an innocent student. Respondent had tried to restore order at the start of this incident and thus had done what she was required to have done. Respondent's fear-driven shoving of the chair was excusable and did not breach this duty that she owed to the injured student. Of course, the same analysis applies, if Petitioner intended this allegation also to apply to the target of the chair, the charging student.

38. Petitioner failed to prove that Respondent intentionally exposed a student to unnecessary embarrassment or disparagement. There is no suggestion that the injured student suffered any embarrassment or disparagement as the result of his improbable, but minor, injury. Respondent's fear-driven shoving of the chair was not an intentional act within the meaning of this rule. If Petitioner intended this allegation also to apply to the target of the chair, it is unlikely that he was thus exposed to any embarrassment or disparagement or, if he was, that the embarrassment or disparagement was unnecessary.

39. For the same reasons, Petitioner failed to prove that Respondent committed any act of child abuse or cruelty, including physical and verbal

abuse, or any act of child endangerment, that Respondent exposed a student to unnecessary embarrassment or disparagement, that Respondent entered into excessive or unnecessary physical interaction with a student, or that Respondent engaged in misconduct that affects the health, safety, or welfare of a student. Again, Respondent acted in fear upon an immediate assault upon her by the charging student, so that her shoving of the chair in his direction did not violate any of these provisions.

40. Under the circumstances, it is unnecessary to consider the issue of progressive discipline.

RECOMMENDATION

It is

RECOMMENDED that Petitioner enter a final order finding Respondent not guilty of the charges set forth in the Administrative Complaint and reinstating her with full back pay.

DONE AND ENTERED this 2nd day of December, 2020, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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this 2nd day of December, 2020.

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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.