

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-6802TTS

TODD ERDMAN,

Respondent.

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RECOMMENDED ORDER

On July 28 through 30, 2020, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a final hearing pursuant to section 120.57(1), Florida Statutes (2019), in Tallahassee, Florida, via the Zoom web-conference platform.

APPEARANCES

For Petitioner: Douglas T. Noah, Esquire  
Patricia M. Rego Chapman, Esquire  
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For Respondent: Eric J. Lindstrom, Esquire  
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STATEMENT OF THE ISSUE

Whether just cause exists, pursuant to section 1012.33, Florida Statutes, to terminate Respondent Todd Erdman's professional service contract as a teacher with the Lake County School District, for the reasons set forth in

Petitioner Lake County School Board's (School Board) October 28, 2019, correspondence.

PRELIMINARY STATEMENT

In correspondence dated October 28, 2019, Lake County School Superintendent Diane S. Kornegay informed Mr. Erdman of her recommendation that the School Board terminate his professional service contract, and thus his employment, with the Lake County School District, at an upcoming School Board meeting. Ms. Kornegay's letter outlined the findings of an investigation of Mr. Edrman that the Lake County School District's Employee Relations department conducted, and she concluded that Mr. Edrman violated sections 1012.27(5) and 1012.335, Florida Administrative Code Rules 6A-10.081 and 6A-5.056, and School Board Policies 6.301(2) and (4), 6.37, and 6.371.

On November 8, 2019, Mr. Erdman, through counsel, timely requested a formal hearing to contest the charges alleged in the October 28, 2019, correspondence from Ms. Kornegay.

The final hearing in this matter was originally scheduled for February 24 through 26, 2020. On February 5, 2020, Mr. Erdman's counsel filed an Unopposed Motion to Continue Final Hearing, which the undersigned granted in a February 7, 2020, Order Granting Continuance and Rescheduling Final Hearing. The undersigned rescheduled the final hearing for May 12 through 14, 2020. On April 7, 2020, the parties filed a Joint Motion to Continue Hearing, citing difficulties preparing for the final hearing as a result of the COVID-19 pandemic. On April 9, 2020, the undersigned entered an Order Granting Continuance and Rescheduling Hearing, which rescheduled the final hearing for July 28 through 30, 2020. On July 10, 2020, the undersigned entered an Amended Notice of Hearing by Zoom Conference,

which established that the final hearing would occur via the Zoom web-conference platform.

On July 17, 2020, the School Board filed a Motion to Quash Subpoenas and Motion for Protective Order Regarding Board Members Bill Mathias and Stephanie Luke. On July 20, 2020, Mr. Erdman filed a response. On July 23, 2020, the undersigned conducted a telephonic motion hearing, and on July 24, 2020, issued an Order Denying Petitioner's Motion to Quash Subpoena and Motion for Protective Order Regarding School Board Members Bill Mathias and Stephanie Luke.

The undersigned conducted a final hearing on July 28 through 30, 2020. The School Board presented the testimony of: Mr. Erdman; Michael Hart, the parent of a student at Umatilla Middle School (UMS); Crystal Goff, the parent of a student at UMS; Barbara Cooper, Manager of Employee Relations at Lake County School Board; Tonya Scott Rogers, Vice Principal at UMS; Brent Frazier, Principal at UMS; David Meyers, Supervisor of Employee Relations at Lake County School Board; and Ms. Kornegay. The undersigned admitted into evidence Petitioner's Exhibits P1 through P20, P22 through P48, P52, P58, and P59a through k, n, and o.

Mr. Erdman presented the testimony of: Shannon Erdman, Mr. Erdman's wife; Shawn Hayes, friend of Mr. Erdman; Toni Beckett, former teacher at UMS; David Howard, teacher at UMS; Brent Smith, friend of Mr. Erdman; Queenie Thompson Morrison, bookkeeper at UMS; Heather Widmann, former teacher at UMS; Diane Thomas, former teacher at UMS; and Mr. Erdman. The undersigned admitted into evidence Respondent's Exhibits R1 through R16, R20, and R21.

At the conclusion of the hearing, the undersigned left the record open for the limited purpose of Respondent providing a complete copy of his exhibits to the Division. On August 3, 2020, the undersigned entered an Order Closing Record, after receiving Respondent's exhibits.<sup>1</sup>

The three-volume Transcript was filed with the Division on September 9, 2020. On September 11, 2020, Respondent moved for a 20-day extension of time to file a proposed recommended order, which the undersigned granted on September 16, 2020. Thereafter, the parties timely filed proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013). Accordingly, all statutory references are to the 2019 codification of the Florida Statutes, unless otherwise indicated.

#### FINDINGS OF FACT

1. The School Board is charged with the duty to operate, control, and supervise free public schools within the School District of Lake County (School District). *See* Art. IX, § 4(b), Fla. Const.; § 1012.33(1)(a), Fla. Stat.

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<sup>1</sup> On July 31, 2020, the undersigned also entered an Order Concerning Exhibits R20 and R21, which were deposition transcripts of Ms. Kornegay and Harold C. Farnsworth, the Assistant Superintendent of Schools. The undersigned admitted these exhibits, over Petitioner's objection, pursuant to Florida Rule of Civil Procedure 1.330(a)(2) and section 90.803(18)(d), Florida Statutes, but subject to any objections made during the depositions. Petitioner's counsel noted that at the depositions, he made "form" objections, which may not have provided the complete basis for an objection. The undersigned allowed Petitioner the opportunity to provide a more detailed description of any form-type objections made during those depositions, within 10 days, and allowed Respondent to file a more detailed response to any of those objections, within 10 days of Petitioner's filing. Petitioner did not file a response.

2. The School Board hired Mr. Erdman in 2007, and he has been employed as a teacher at UMS since his hire, until the incident at issue.

3. In August 2010, the School Board and Mr. Erdman executed a professional services contract, as defined in section 1012.33.

4. The School Board has renewed this professional services contract on an annual basis, until the incident that is at issue.

5. The parties' employment relationship is governed by School Board policies, Florida laws, Department of Education rules, and the Collective Bargaining Agreement (CBA) between the School Board and the Lake County Education Association, Inc. The CBA relevant to this matter was effective from July 1, 2018, through June 30, 2019.

#### Mr. Erdman's Employment at UMS

6. The School Board employed Mr. Erdman as a teacher at UMS, which included children in the sixth, seventh, and eighth grades.

7. During his employment, Mr. Erdman served in various service and leadership roles, including: girls' basketball coach; boys' assistant basketball coach; athletic director; testing coordinator; and representative of the school's leadership team.

8. Mr. Erdman also served as the chief chaperone for "Grad Venture," a late-night field trip to Universal Studios in Orlando, for graduating eighth graders.

9. Mr. Erdman also participated in volunteer opportunities, which included tutoring children, and participating in an organization of individuals who dressed up in full costume as "Stormtroopers" from the Star Wars movies and who would attend community and school events and fundraisers.

10. During his career with the School Board, Mr. Erdman received positive employment evaluations. Prior to the incident at issue, the School Board had never disciplined Mr. Erdman.

11. For the 2019-2020 school year, Mr. Erdman was the PASS teacher at UMS. “PASS” means “Positive Alternative to School Suspension.” A PASS teacher:

Provides a supervised and structured environment for students assigned to the in-school suspension program, working with classroom teachers to coordinate the academic activities of assigned students and support students in completing the assigned work along with the implementation of social, emotional learning, behavioral and academic support.

12. As the PASS teacher, the School Board required of Mr. Erdman specific duties and responsibilities, including that he “communicates appropriate behavior, school rules, and regulations to students in the program[,]” and “[t]eaches replacement behaviors in the In-School Suspension classroom; reinforces appropriate behavior.” Mr. Erdman had the opportunity, as PASS teacher, to teach certain students from all grades at UMS.

### TikTok

13. TikTok is a social media network and video-sharing application that allows its users to create and share 15-second videos that incorporates lip-synching, singing, and dancing; additionally, users can create original videos. TikTok’s lip-synching feature allows the user to lip-sync to music, movies, and comedy routines, while being recorded.

14. TikTok users must create an account on the TikTok social media network before creating videos.

15. As a social media network, TikTok allows users to “follow” other users, share their videos, and communicate, all through the TikTok social media network.

16. TikTok has other features as well. A user can add text and effects to a video. A user can edit a video that another user has shared, and add their edited video to the original video, creating a “duet.”

17. Mr. Erdman testified that he created a TikTok account during the summer of 2019. He further testified that, in his account settings, he set his account to “private,” so that he would not share any videos or communicate with anyone else through the TikTok social media platform.

18. Mr. Erdman testified that he created his TikTok account under the username “swfan29,” a reference to his affinity for the Star Wars movie franchise. Additionally, he registered his TikTok account with a personal Google account. Mr. Erdman’s other personal email address, “jangofett29@aol.com,” is another reference to Star Wars.

19. During the summer of 2019, and prior to the start of the school year in August 2019, Mr. Erdman created videos with his smart phone using TikTok. He testified that he created some videos with children’s songs and movies to entertain his kids over summer break. And, he testified that he created some videos with Mrs. Erdman, his wife, which were of a more sexual or adult nature, and that he created some of these videos in the couple’s master bedroom and bathroom.

20. Mr. Erdman testified that he shared some of these videos with his friends by text, as opposed to using the TikTok social media platform, to communicate and for entertainment.

21. Erdman testified that he stopped making TikTok videos in August 2019, before the start of the school year.

22. On or around August 3, 2019, Mr. Erdman testified that someone stole his smart phone, which he had left in his car while attending a back-to-school event. Mr. Erdman reported this stolen smart phone to his provider, Verizon.

23. On August 10, 2019, and again on August 17, 2019, Mr. Erdman received notices from his e-mail provider of attempted sign-ins to his

“jangofett29@aol.com” account from locations in Belarus and the Czech Republic.

#### September 2019 Incident and Investigation

24. On or around September 5, 2019—after the school year had started, and immediately after Lake County Schools reopened after closing because of Hurricane Dorian—the School Board and UMS received complaints from various students, parents, and School Board employees who had viewed numerous TikTok videos of Mr. Erdman under the username “jfett1975.”

25. Principal Frazier explained that he began receiving complaints, via email and text message, the evening before September 5, 2019, from parents and a staff member, concerning Mr. Erdman’s TikTok videos. He testified that he spoke with Vice Principal Rogers about this, and referred this matter to the School Board’s employee relations department.

26. Vice Principal Rogers testified that she also received phone calls and texts concerning Mr. Erdman’s TikTok videos, spoke with Principal Frazier, and then called Mr. Erdman, who was not at school that day. She testified that she spoke with Mr. Erdman twice on September 5, 2019, and told him not to report to UMS the next day.

27. Mr. Erdman testified that he deleted his “swfan29” TikTok account that same day.

28. Around this same time, Superintendent Kornegay viewed one of Mr. Erdman’s TikTok videos. She stated that she was “appalled” at its contents, and asked Assistant Superintendent Harold C. Farnsworth to look into the videos.

29. Ms. Cooper conducted the investigation of Mr. Erdman’s TikTok videos. Upon learning of these videos, Ms. Cooper, under Assistant Superintendent Farnsworth’s direction, alternatively placed Mr. Erdman during the pendency of the investigation.

30. Ms. Cooper, who candidly admitted that she was not familiar with TikTok at the onset of this investigation, first spoke with Principal Frazier



and Vice Principal Rogers. She then created a TikTok account and searched for videos under the username “jfett1975,” which she had learned of from her discussions with Principal Frazier and Vice Principal Rogers.

31. Ms. Cooper also received, from Principal Frazier, a list of students who had complained about the TikTok videos. Ms. Cooper interviewed these and other students, as well as parents and co-workers, who had complained about these TikTok videos or who Mr. Erdman requested Ms. Cooper speak to. All told, Ms. Cooper interviewed eight students, six parents, five School Board employees, Mr. Erdman, and four additional witnesses at Mr. Erdman’s request.

32. During this investigation, Ms. Cooper testified that she found “at least” a hundred videos that feature Mr. Erdman, and which Mr. Erdman (under the username “jfett1975”) was tagged in, or was in a duet with someone. A description of the TikTok videos under the username “jfett1975,” which students, parents, or Lake County school administration viewed and provided to the School Board, and which were received into evidence at the final hearing include:

a. A video depicting Mr. Erdman drinking a beer; he is asked by a voice off-camera if he is really drinking a beer before work, to which Mr. Erdman lip-synch responds, “You’re damn right I’m having a beer, have you been to that fucking job, have you dealt with those fucking idiots all day, let me do me”;

b. A video depicting a shirtless Mr. Erdman, with water dripping from his face, in which Mr. Erdman lip synchs to a song that repeats the lyric, “I need Onstar to find the clit”;

c. A video depicting a shirtless Mr. Erdman, in a candlelit bathtub, lip synching, “I want to fuck you into the middle of next week,” with a woman’s voice off-screen answering “ok”;

d. A split-screen video, also known as a “duet,” with an unidentified woman, in which Mr. Erdman lip-synchs, “Baby girl, I don’t care if you’re big,

small, got big-ass titties or no rack at all. You could have nice thick thighs or that thigh gap – you can still come over here and sit on my face”;

e. A video depicting Mr. Erdman licking a piece of garlic bread, in which Mr. Erdman lip-synchs, “I don’t know if you know this or not, but as soon as I’m finished with this, you’re next”;

f. Another split-screen video, or “duet,” with an unidentified woman, in which Mr. Erdman lip-synchs, “You sucked that guy’s dick? But you said you only had sex with three other guys, you never mentioned him[,]” and then, after a response from the woman, “Anyway, something like 36, does that include me ... I’m 37?”;

g. A video depicting a shirtless Mr. Erdman, in which an unidentified woman off-screen says, “Just so you know, a dick is not an apology. I mean, I’m going to bend over though, but it’s not an apology”;

h. A video in which Mr. Erdman is in his car, recording himself speaking, where he says “Hey everybody” and continues to state that he “hopes everybody had a great day and great evening,” and stated that he wanted to “remind everyone to have fun out there,” “be kind to each other,” and that he will “talk to you and see you in some videos tomorrow”; this TikTok also video states, at the bottom of the screen, that the “original audio” was created by “jfett1975”;

i. Another duet, with an unidentified woman, in which Mr. Erdman lip-synchs, “I hope you are ok with anal”;

j. Another duet, with another unidentified woman, in which she asks, “Hey babe, did you know a bull fucks 3,000 times a year, why can’t you do that,” to which Mr. Erdman lip-synch replies, “ask the bull if he fucks the same miserable cow every night”; and

k. Another duet, with an unidentified woman (and a screen name “chubzmonkiee23”) in which she asks Mr. Erdman if he will be her “TikTok Brother,” to which Mr. Erdman replied, “yes.”

33. Two of the six parents Ms. Cooper interviewed testified at the final hearing:

a. Mr. Hart, who has three children, two of whom previously attended UMS, and one who is a current UMS student, testified that his three children showed him four of the TikTok videos described in paragraph 32. Mr. Hart stated, after viewing these videos, that he was concerned that Mr. Erdman had interacted with his daughters, and had served as the UMS girls' basketball coach. He further stated that Mr. Erdman used "horrible judgment"; and

b. Ms. Goff, who has a daughter at UMS, testified that her daughter showed her four of the TikTok videos described in paragraph 32. Ms. Goff testified that she was "disgusted" and refused to send her daughter back to UMS until she found out that Mr. Erdman had been removed from the school.

34. Principal Frazier and Vice Principal Rogers testified that they believed that these TikTok videos were offensive and inconsistent with the morals and standards expected at UMS, that these TikTok videos negatively impacted the learning environment at UMS, and that they believed that Mr. Erdman failed to exercise good judgment in making these TikTok videos.

#### Mr. Erdman's Explanation and Investigation Recommendation

35. Mr. Erdman provided a five-page statement as part of the School Board's investigation, dated September 5, 2019. The statement does not mention the theft of Mr. Erdman's smart phone. The statement provides a detailed explanation of irregularities that occurred with Mr. Erdman's personal Google account, which he believed resulted in a hacking of his "swfan29" TikTok account.

36. Mr. Erdman, in his first interview with Ms. Cooper on September 24, 2019, stated that his TikTok account had been hacked, and that he was not responsible for the public posting of the videos described in paragraph 32. He told Ms. Cooper that his TikTok account username was "swfan29," and not

“jfett1975.” In a second interview on October 14, 2019, Mr. Erdman similarly stated that his TikTok account had been hacked.

37. Mr. Erdman testified at the hearing that someone stole his smartphone on August 3, 2019, and that he had received notices from his e-mail provider of attempted sign-ins to his personal e-mail address, “jangofett29@aol.com,” from foreign countries, thereafter.

38. Mr. Erdman, and Mrs. Erdman, confirmed that Mr. Erdman, or the two of them, made the TikTok videos described in paragraph 32, with the exception of those videos that were “duets” with other women. Both testified that Mr. Erdman’s “swfan29” account was set to private—meaning that they believed the videos would never make their way into the public domain—and that Mr. Erdman never intended to share these videos publicly through the TikTok social media network, or have “followers” of his “swfan29” account. Mr. Erdman testified that he never notified TikTok of the suspected hack of his “swfan29” account.

39. Essentially, to credit Mr. Erdman’s explanation that he is not responsible for the public sharing of the videos described in paragraph 32 on the TikTok social media platform, the undersigned would need to find credible evidence that all of the following occurred:

a. Mr. Erdman’s “swfan29” TikTok account was set to “private,” meaning that any content he (or his wife) created was completely shielded from public view for as long as it remained “private”;

b. Someone stole Mr. Erdman’s smart phone on August 3, 2019, after he made the TikTok videos, and someone thereafter hacked his personal Google account that he used to register the “swfan29” TikTok account (Mr. Erdman provided evidence and testimony that he received notice of an attempted sign-in of his “jangofett29@aol.com” email account);

c. Someone then hacked his “swfan29” TikTok account, presumably through hacking his Google or “jangofett29@aol.com” account, or possibly through hacking the TikTok account on his stolen smartphone;

d. Someone then created a “jfett1975” TikTok account (which, by coincidence, is similar to his email account, an homage to Mr. Erdman’s Star Wars affinity, and a number that Mr. Erdman used previously to reflect the year he was born);

e. Someone in control of the “jfett1975” TikTok account transferred the content from Mr. Erdman’s “swfan29” TikTok account to the “jfett1975” account and made sure these videos could be publicly posted or shared across the TikTok social media platform;

f. Someone in control of the “jfett1975” TikTok account posed as Mr. Erdman, accepted followers, and created “duets” with other TikTok users, including a user named “chubzmonkiee23,” and would have manipulated these “duet” videos to make it look like Mr. Erdman is actually interacting with these other TikTok users;

g. Someone in control of the “jfett1975” account was able to manipulate the video described in paragraph 32(h) above (in which Mr. Erdman, in his own voice, asks everybody to “be kind to each other” and the like) to indicate that the “original audio” was created by “jfett1975”; and

h. Mr. Erdman’s failure to notify TikTok of the suspected hack of “swfan29” was inconsequential.

40. Ms. Cooper investigated whether Mr. Erdman’s “swfan29” TikTok account had been hacked, and whether Mr. Erdman was the owner of the “jfett1975” TikTok account. She concluded that Mr. Erdman was the owner of “jfett1975,” and had posted at least one hundred videos under that username. She based this conclusion, in part, on a duet video with a woman with the username “chubzmonkiee23” in which “chubzmonkiee23” asked Mr. Erdman, under the “jfett1975” username, to be her TikTok brother, and Mr. Erdman, actually interacting with this woman, responded yes. Ms. Cooper also based this conclusion on the “jfett1975” profile page, which had Mr. Erdman’s picture and many videos, including those listed in paragraph 32, and the

profile page of “chubzmonkiee23,” which listed her TikTok brother as “jfett1975.”

41. Ms. Cooper’s investigation concluded with a recommendation that Mr. Erdman’s employment with Lake County Schools be terminated.

Recommendation for Termination

42. Superintendent Kornegay made the recommendation to terminate Mr. Erdman’s professional services contract. She testified that she never considered a lesser form of punishment, stating:

I felt like this was, in my many, many years as we discussed in education, this is probably one of the most disturbing and most appalling things that I’ve ever seen from an educator.... I have no doubt that my decision to terminate Mr. Erdman is right for students and that I am upholding the commitment that I made several years ago to protect our kids.

43. Superintendent Kornegay further testified that it did not matter to her that Mr. Erdman intended for the TikTok videos to be private and that these videos were never intended to be viewed by the public; Superintendent Kornegay stated that:

[R]egardless, they were viewed by children and parents. And I think that as the employees in alignment with our code of ethics, there were policies that he bears the burden to make sure if they were not intended for outside viewing, that that not occur. And it did.

44. Superintendent Kornegay also testified that the TikTok videos: brought the school district into disrepute and disrupted the orderly process of the school district; demonstrated that Mr. Erdman engaged in conduct that brought him into public disgrace or disrespect; resulted in a disruption to the learning environment; reduced Mr. Erdman’s ability to effectively perform his duties as a PASS teacher at UMS; and demonstrated that Mr. Erdman

engaged in conduct that exposed students to unnecessary embarrassment or disparagement.

#### Mr. Erdman's Additional Evidence

45. Mr. Erdman called several colleagues as witnesses, who testified that they had not seen the TikTok videos. For example, Ms. Beckett, who is a former UMS teacher, had not seen the TikTok videos. Ms. Thompson Morrison, the UMS bookkeeper and accountant (and not a teacher), testified that she had not seen the TikTok videos. Ms. Widman, who is a former UMS teacher and currently teaches at a different school, also testified that she had not seen the TikTok videos. And, Ms. Thomas, a current UMS teacher, testified that she had not seen the TikTok videos, and did not think the TikTok videos were widespread among the UMS students.

46. These former colleagues testified to Mr. Erdman's good character and their respect for him as an educator.

47. Mr. Erdman testified that he shared some of the TikTok videos with a friend named Amanda Yaudes. He testified that he had a falling out with Ms. Yaudes.

48. Mr. Erdman also presented evidence of social media postings of two School Board members, who are subject to School Board Policy 6.00 ("Principles of Professional Conduct"), in an attempt to establish the social norms in the School District. The various social media postings presented of one School Board Member, Mr. Mathias, appear to contain attempts at humor that some would consider vulgar, boorish, offensive, and sometimes political, but also contain references to updates to school district programs. The other social media post presented of Ms. Luke included a video of a young woman lip-synching to a song that contained vulgar lyrics, but also included other social media posts that contain references to school district programs.<sup>2</sup>

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<sup>2</sup> While the School Board members may be subject to School Board Policy 6.00, neither are teachers or contract employees of the school district.

### Ultimate Findings of Fact

49. Mr. Erdman created and appeared in the TikTok videos described in paragraph 32, using the TikTok social media application. Those TikTok videos contain lewd and offensive material.

50. Mr. Erdman contends that he never intended to share these videos publicly through the TikTok social media network, and that these TikTok videos made their way into the public after hackers manipulated his TikTok account. The undersigned finds that Mr. Erdman's explanation is not credible, as the sequence of events outlined in paragraph 39 to reach such an explanation is not plausible. The undersigned finds that the School Board established, by a preponderance of the evidence, that Mr. Erdman either posted the TikTok videos publicly using the "jfett1975" account, or posted them to the "swfan29" account and shared them in a manner that did not ensure that they remain private.

51. Further, the TikTok videos described in paragraph 32 ultimately made their way into the public sphere, and students, parents, and school district personnel viewed and became aware of them.

52. Mr. Erdman violated rule 6A-10.081(1)(b), because the School Board established, by a preponderance of the evidence, that he failed to exercise best professional judgment and integrity. As a result, the School Board has also established, by a preponderance of the evidence, a violation of rule 6A-5.056(2)(b).

53. Mr. Erdman violated rule 6A-10.081(1)(c), because the School Board established, by a preponderance of the evidence, that he failed to maintain the respect and confidence of his colleagues, students, and parents, and failed to sustain the highest degree of ethical conduct. As a result, the School Board has also established, by a preponderance of the evidence, a violation of rule 6A-5.056(2)(b), which concerns "misconduct in office."

54. Mr. Erdman violated rule 6A-10.081(2)(a)1., because the School Board established, by a preponderance of the evidence, that he failed to make



reasonable effort to protect students from conditions harmful to learning and/or to the students' mental and/or physical health and/or safety. As a result, the School Board has also established, by a preponderance of the evidence, a violation of rules 6A-5.056(2)(b), (c), and (d), which concerns "misconduct in office."

55. Mr. Erdman violated rule 6A-10.081(2)(a)5., because the School Board established, by a preponderance of the evidence, that he intentionally exposed students to unnecessary embarrassment or disparagement. As a result, the School Board has also established, by a preponderance of the evidence, a violation of rule 6A-5.056(2)(b), (c), and (d), which concerns "misconduct in office."

56. Mr. Erdman violated rule 6A-10.081(c)1., because the School Board established, by a preponderance of the evidence, that he failed to maintain honesty in all professional dealings. As a result, the School Board has also established, by a preponderance of the evidence, a violation of rule 6A-5.056(2)(b), which concerns "misconduct in office."

57. Mr. Erdman violated rule 6A-5.056(1), which concerns "immorality," because the School Board established, by a preponderance of the evidence, that his actions constituted immorality, which is "conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community." Additionally, the School Board has established, by a preponderance of the evidence, that Mr. Erdman violated School Board Policy 6.301(4), by engaging in conduct unbecoming of an employee of the School Board that brings the school district into disrepute or that disrupts the orderly processes of the school district.

58. Mr. Erdman violated rule 6A-5.5056(3)(a)2., which concerns "incompetency" and "inefficiency," because the School Board established, by a preponderance of the evidence, that he failed to communicate appropriately with and relate to students.

59. The School Board established that Mr. Erdman’s conduct constituted “immorality,” and thus, under article VIII, section 2 of the CBA, Superintendent Kornegay was not required to follow the steps of progressive discipline, and had just cause to terminate Mr. Erdman’s professional services contract.

#### CONCLUSIONS OF LAW

60. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569, 120.57(1), and 1012.33(6)(a)2.

61. This is a disciplinary proceeding in which Petitioner seeks to terminate Mr. Erdman’s professional service contract as a teacher with the Lake County School District.

62. This is a *de novo* proceeding designed to formulate agency action, not review agency action taken earlier and preliminarily. *See Dep’t of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 785 (Fla. 1st DCA 1981); *Capelleti Bros., Inc. v. Dep’t of Transp.*, 362 So. 2d 346, 348 (Fla. 1st DCA 1978); *McDonald v. Dep’t of Banking & Fin.*, 346 So. 2d 569, 584 (Fla. 1st DCA 1977). Accordingly, the undersigned is charged in this proceeding with determining anew, based on the competent substantial evidence in the record, whether just cause exists to terminate Mr. Erdman’s professional services contract as a teacher with the Lake County School District.

63. Section 1012.01(2), classifies Mr. Erdman as “instructional personnel.”

64. Section 1012.33(6)(a) states that, “[a]ny member of the instructional staff ... may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a).”

65. Section 1012.33(1)(a) defines “just cause” as including, but not limited to:

[T]he following instances, as defined by the State Board of Education: immorality, misconduct in office, incompetency, two consecutive annual

performance evaluation ratings of unsatisfactory under s. 1012.34, two annual performance evaluation ratings of unsatisfactory within a 3-year period under s. 1012.34, three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory under s. 1012.34, 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.

66. Similarly, section 1012.335(5) provides:

JUST CAUSE.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to define the term “just cause.” Just cause includes, but is not limited to:

- (a) Immorality.
- (b) Misconduct in office.
- (c) Incompetency.
- (d) Gross insubordination.
- (e) Willful neglect of duty.
- (f) Being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

67. Rule 6A-5.056(1) defines immorality as “conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual’s service in the community.”

68. Rule 6A-5.056(2) defines misconduct in office as:

- (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;
- (d) Behavior that disrupts the student's learning environment; or
- (e) Behavior that reduces the teacher's ability or his or her colleague's ability to perform duties.

69. Rule 6A-5.056(3)(a)2., defines incompetency as:

(3) "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.

(a) "Inefficiency" means one or more of the following:

\* \* \*

2. Failure to communicate appropriately with and relate to students[.]

70. To terminate Mr. Erdman's professional services contract, the School Board must prove that he committed the alleged conduct, that the conduct violates the rules and policies cited in the October 28, 2019, letter from Lake County School Superintendent Diane S. Kornegay, and that the violation of these rules and policies constitutes just cause to terminate his professional services contract. *See Dileo v. Sch. Bd. Of Dade Cty.*, 569 So. 2d 883 (Fla. 3d DCA 1990); *Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977)

(holding that unless otherwise provided in statute, the burden of proof is on the party asserting the affirmative of the issue).

71. It is well-established under Florida law that determining whether alleged misconduct violates a statute or rule is a question of ultimate fact to be decided by the trier-of-fact, based on the weight of the evidence. *See Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995). Thus, determining whether alleged misconduct violates the law is a factual, rather than a legal, inquiry.

72. The burden of proof applicable to this proceeding is a preponderance, or greater weight, of the evidence. *McNeil v. Pinellas Cty. Sch. Bd.*, 678 So. 2d 476, 477 (Fla. 2d DCA 1996); *Dileo*, 569 So. 2d at 884.

73. Rule 6A-10.081, the Principles of Professional Conduct for the Education Profession in Florida, prescribes standards of conduct applicable to instructional personnel. The rule states, in pertinent part:

(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.

(c) Aware of the importance of maintaining 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.

\* \* \*

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

\* \* \*

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

74. The ethical principles in rule 6A-10.081(1) have been described as “aspirational in nature, and in most cases [are] not susceptible of forming a basis for suspension or dismissal[.]” *Sarasota County School Board v. Simmons*, Case No. 92-7278 (Fla. DOAH Nov. 9, 1993), and “of little practical use in defining normative behavior.” *Miami-Dade Cty. Sch. Bd. v. Lantz*, Case No. 12-3970 (Fla. DOAH Jul. 29, 2014). By contrast, the disciplinary principles in rule 6A-10.081(2) enumerate specific “dos” and “don’ts” to put a teacher on notice concerning forbidden conduct. *See Miami-Dade Cty. Sch. Bd. v. Brenes*, Case No. 06-1758 (Fla. DOAH Feb. 27, 2007; Fla. Miami-Dade

Cty. Sch. Bd. Apr. 25, 2007). “Thus, it is concluded that while any violation of [rule 6A-10.081(2)] would also be a violation of [rule 6A-10.081(1)], the converse is not true.” *Id.* “Put another way, in order to punish a teacher for misconduct in office, it is necessary but not sufficient that a violation of the broad ideal articulated in [rule 6A-10.081(1)] be proved, whereas it is both necessary and sufficient that a violation of a specific rule in [rule 6A-10.081(2)] be proved.” *Id.*; see *Miami-Dade Cty. Sch. Bd. v. Regueira*, Case No. 06-4752RO n.4 (Fla. DOAH Apr. 11, 2007; Fla. Miami-Dade Cty. Sch. Bd. May 25, 2007).

75. The School Board proved, by a preponderance of the evidence, that Mr. Erdman violated rules 6A-5.056(1), (2)(b), (c), (d), and (3)(a)2., and rules 6A-10.081(1)(b), (1)(c), (2)(a)1., and 5., by establishing that:

(a) Mr. Erdman created and appeared in the TikTok videos described in paragraph 32, using the TikTok social media application;

(b) Those TikTok videos contain lewd and offensive material;

(c) Those TikTok videos made their way into the public sphere, and were viewed by students and parents in the school district, as well as school district personnel;

(d) Mr. Erdman either posted the TikTok videos publicly using the “jfett1975” account, or posted them to the “swfan29” account and shared them in a manner that did not ensure that they would remain private.<sup>3</sup>

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<sup>3</sup> Florida courts have held that generally, content posted on a social media site is neither privileged nor protected by any right of privacy, regardless of any privacy settings that the user may have established. *Nucci v. Target Corp.*, 162 So. 3d 146, 154 (Fla. 4th DCA 2015). The *Nucci* court, reviewing cases from other jurisdictions, noted that the sharing of information with others on a social media network “is the very nature and purpose of these social networking sites else they would cease to exist.” *Id.* (quoting *Romano v. Steelcase, Inc.*, 30 Misc.3d 426, 907 N.Y.S.2d 650, 656 (N.Y.Sup.Ct. 2010)). Thus, the undersigned has considered Mr. Erdman’s contentions that he intended to set his TikTok account to private and intended that his TikTok videos remain private, but reject these contentions pursuant to *Nucci*.

76. Based on the above, the School Board has demonstrated, by a preponderance of the evidence, just cause in this matter to terminate Mr. Erdman's professional services contract.

77. Although the CBA provides for progressive discipline, the School Board established that Mr. Erdman's conduct constituted "immorality," and thus, under article VIII, section 2 of the CBA, the School Board has just cause to terminate Mr. Erdman's professional services contract. *See Costin v. Fla. A&M Univ. Bd. of Trs.*, 972 So. 2d 1084, 1086-87 (Fla. 5th DCA 2008) (holding whether employee's misconduct justified dismissal based on terms of the university's progressive discipline rule was "an 'ultimate fact' best left to" the ALJ).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Lake County School Board enter a final order terminating Mr. Erdman's professional services contract.

DONE AND ENTERED this 6th day of November, 2020, in Tallahassee, Leon County, Florida.



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ROBERT J. TELFER III  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of November, 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.