



Before the Education Practices Commission of the State of Florida

PAM STEWART,
Commissioner of Education,

Petitioner,

vs.

ELIJAH MARK RICHARDSON,

Respondent.



EPC CASE N° 16-0022-RT
DOAH CASE N° 17-6388PL
PPS N° 123-2574
CERTIFICATE N° 696450
INDEX N°: 18-305-FOF

Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on June 14, 2018, in Altamonte Springs, Florida, for consideration of the Recommended Order (RO) entered in this case by F. SCOTT BOYD, Administrative Law Judge. Respondent was present and represented. Petitioner was represented by Charles T. Whitelock, Esq. Attached hereto as Exhibit A is a copy of Respondent's Exceptions. Attached hereto as Exhibit B is a copy of Petitioner's Exception to the Penalty. Attached hereto as Exhibit C is a copy of Petitioner's Response to Respondent's Exceptions to the Recommended Order and Penalty. Attached hereto as Exhibit D is a copy of Respondent's Response (With Correction) to Petitioner's Response to Respondent's Exceptions.

Ruling on Exceptions

Exception No. 1: Respondent filed an exception to the conclusion of law on page 19, paragraphs 46-48, of the Recommended Order that Respondent violated Rule 6B-1.006(3)(a), F.A.C. There is competent substantial evidence in the record to support the conclusion of law. The exception is rejected.

Exception No. 2: Respondent filed an exception to the conclusion of law on page 20, paragraphs 49-50, of the Recommended Order that Respondent violated Rule 6B-1.006(3)(e), F.A.C. There is competent substantial evidence in the record to support the conclusion of law. The exception is rejected.

Respondent filed an exception to the penalty in the recommendation. The exception is rejected.

Petitioner filed an exception to the penalty in the recommendation. The exception is rejected.

Findings of Fact

1. The Panel hereby adopts the findings of fact in the Recommended Order. There is competent substantial evidence to support these findings of fact.

Conclusions of Law

1. The Education Practices Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 1012, Florida Statutes.

2. The Panel hereby adopts the conclusions of law in the Recommended Order.

Penalty

Upon a complete review of the record in this case, it is therefore **ORDERED** that:

1. Respondent is hereby issued a letter of reprimand.
2. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on 1 employment year of probation with the conditions that during that period, (s)he shall:
 - A. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.
 - B. Have Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
 - C. Pay to the Commission during the first 6 months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.
 - D. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
 - E. Satisfactorily perform all assigned duties in a competent, professional manner.
 - F. Bear all costs of complying with the terms of a final order entered by the Commission.

This Final Order takes effect upon filing with the Clerk of the Education Practices Commission.

DONE AND ORDERED, this 29th day of June, 2018.



NICHOLAS PIETKIEWICZ, Presiding Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to ELIJAH MARK RICHARDSON, [REDACTED], Fort Lauderdale, FL 33311 and Emily Moore, FEA, 213 South Adams Street, Tallahassee, FL 32301 by Certified U.S. Mail and by electronic mail to Darby Shaw, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 and Charles T. Whitelock, Esq., 300 Southeast 13th Street, Suite E, Ft. Lauderdale, FL 33316-1924 on this 29th day of June, 2018.



Lisa Forbess, Clerk
Education Practices Commission

COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

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Division of Administrative Hearings

Probation

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 17-6388PL

ELIJAH RICHARDSON,

Respondent.

RECOMMENDED ORDER

On February 16, 2018, a final hearing was held by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Charles T. Whitelock, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

For Respondent: Emily Moore, Esquire
Florida Education Association
213 South Adams Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent violated section 1012.795(1)(j), Florida Statutes, and administrative rules or section 1012.795(1)(a),^{1/} as alleged in the

Administrative Complaint; and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On or about April 10, 2015, Pam Stewart, as Commissioner of the Department of Education (Petitioner or Commissioner), filed an Administrative Complaint against Mr. Elijah Mark Richardson (Respondent or Mr. Richardson), alleging violations of section 1012.795(1)(a) and (j) and administrative rules. Respondent filed an Election of Rights form, disputing allegations in the Administrative Complaint and requesting a hearing pursuant to section 120.57(1), Florida Statutes. On November 21, 2017, the case was referred to the Division of Administrative Hearings (DOAH), where it was scheduled for final hearing on January 24, 2018.

After continuance upon joint motion of the parties, the final hearing was held as rescheduled on February 16, 2018. Through Joint Prehearing Stipulation, the parties stipulated to certain facts, which were accepted and, where relevant, are included among the findings of fact below.

Petitioner offered the testimony of five witnesses: Ms. Kristen Rodriguez, a media specialist at West Hollywood Elementary School (WHE) in Broward County during the 2012-2013 school year; Student ██████, in the fourth grade at WHE during the 2012-2013 school year; Student ██████, a fifth grader that school

year; Student [REDACTED], a fourth grader then; and Ms. Marian Lambeth, chief of the Office of Professional Practices of the Department of Education. Petitioner offered 11 exhibits, all which were admitted, with the caveat that several were hearsay and so could only be used to supplement or explain other competent evidence and were not sufficient in themselves to support findings of fact. Petitioner's Exhibit P-10 was a deposition of Mr. Richardson, admitted under the party admission exception to the hearsay rule.

Respondent testified on his own behalf and presented the testimony of three other witnesses, all teachers at WHE during the 2012-2013 school year: Ms. Kalima Carson; Ms. Deborah Khadaran; and Ms. Diane Velasco-Ortiz. Respondent offered five exhibits, all of which were admitted, and requested official recognition of two items. Recognition of the Florida District Court case was granted. Recognition of an article that had been published on an online professional education journal, The Hechinger Report, offering reasons why African-American teachers become frustrated with their profession, was denied as not relevant.

The one-volume Transcript of the proceeding was filed with DOAH on March 9, 2018. After an Order granting an extension of time until April 9, 2018, both parties timely submitted proposed recommended orders, which were considered.

FINDINGS OF FACT

1. The Commissioner is responsible for investigating and prosecuting allegations of misconduct against individuals holding educator's certificates.

2. Mr. Richardson holds Florida Educator's Certificate 696450, covering the areas of Elementary Education and English for Speakers of Other Languages (ESOL), which is valid through June 30, 2019.

3. At all pertinent times, Mr. Richardson was employed as a fourth and fifth-grade reading teacher at WHE.

4. As Ms. Kristen Rodriguez later testified, during the 2012-2013 school year, she encountered several students who asked her to let them remain with her in the media center at WHE rather than return to their scheduled class with Mr. Richardson. Based upon their accounts of Mr. Richardson's behavior in the classroom, she took the students to the school office and asked them to talk to the principal. The Broward County School District (District) subsequently conducted an investigation.

5. Student [REDACTED] credibly testified at hearing that during the 2012-2013 school year, when she was a fourth-grade student in his class, Mr. Richardson would sometimes scream at students who were not behaving, but did not scream at the well-behaved

students. She testified that on a loudness scale of 1 to 10, he was a "7," while she rated other teachers at "5."

6. Student ██████'s testimony was supplemented and explained by the written statements of other students in that class: Student ██████ wrote that Mr. Richardson screamed at him close to his face; Student ██████ wrote that Mr. Richardson would scream if he was mad; Student ██████ wrote that when Mr. Richardson yelled at some students, he put his face within inches of the students' faces; Student ██████ wrote that he would yell in students' faces; and Student ██████ wrote that Mr. Richardson would yell in students' faces from inches away.

7. The evidence was clear and convincing that when students were misbehaving, Mr. Richardson would sometimes yell or scream at them, placing his face close to theirs.

8. Student ██████ credibly testified that if a student "wouldn't do like the work or behaved bad, he [Mr. Richardson] would grab them by their shoulders and yell at them and shake them." Student ██████ went on to clarify, "I mean not that bad, but like to get ahold."

9. Student ██████'s testimony was supplemented and explained by the written statements of other students: Student ██████ reported that Mr. Richardson "grabbed this kid and shook him"; and Student ██████ wrote that Mr. Richardson would shake students who were being bad, writing that "[w]hen he shaked

[sic] kids he would shake them by the shoulders, on a scale from 0 to 5 he would shake kids like about a 2."

10. The Department of Education (DOE) was notified of the allegations against Mr. Richardson. On or about April 5, 2013, Mr. Richardson received notice from Chief Marian Lambeth that the Office of Professional Practices of DOE had opened a case for purposes of investigating Mr. Richardson's alleged inappropriate conduct; and, if founded, the allegations could lead to disciplinary action against Mr. Richardson's Florida Educator's Certificate.

11. On April 18, 2013, Mr. Richardson's attorney sent written notice to Chief Lambeth informing the DOE of her representation of Mr. Richardson in their investigation and requesting a copy of their investigative report upon its completion. Mr. Richardson was copied on the correspondence.

12. As documented by letter later sent to Mr. Richardson, the Professional Standards Committee of the Broward County Public Schools met on May 8, 2013, and determined that there was no probable cause to support a charge of battery. However, the letter stated, "[l]et this correspondence serve as reprimand that any future violation of the Code of Ethics and Principles of Professional Conduct of the Education Profession will result in a recommendation for further disciplinary action up to and including termination."^{2/}

13. Mr. Richardson successfully filed a grievance regarding the letter of reprimand imposed by the District. By letter dated March 26, 2014, Mr. Lorenzo Calhoun, employee and labor relations specialist of the District, advised the Broward Teachers Union, "[I]t has been determined that the written reprimand issued to the grievant be rescinded."

14. On April 16, 2014, Mr. Richardson completed a "GC-10R Renewal Application Form rev 06/10 Legal Disclosure 1 - District Version" to initiate renewal of his Florida Educator Certificate, which was due to expire on June 30, 2014. Instructions on the bottom of the form direct the applicant to provide additional detailed information on a Legal Disclosure Supplement if any of the preceding 21 questions on the page are answered affirmatively. Mr. Richardson, having correctly answered "no" to 20 of these questions that deal with sealed records, criminal records, and license sanctions, but "yes" to the single question that asks if there is a "current investigative action" pending, turned to the supplementary page, "GC10R Application Form rev 06/10 Legal Disclosure 2 - District Version."

15. Other than the applicant's name, however, the supplementary form solicited information about only three topics, each in its own section: "Sealed or Expunged Records"; "Criminal Offense Records"; and "Professional License or

Certificate Sanctions." Mr. Richardson had no sealed or expunged records and so could not provide any supplementary information in response to the questions in that section. He had no criminal offense records and thus similarly could not provide responses to the questions in that section. He had no professional license or certificate sanctions and so could not answer those questions either. There were no questions pertaining to ongoing investigations. He logically left the supplementary page blank, and submitted the renewal application to the District's office, which was authorized to reissue the certificate. On the application, he made full disclosure of the pending investigation, complete with a handwritten notation indicating that there was no decision as of yet and including the investigation case number for easy reference (he volunteered this, for remarkably there is no question or blank space to include this information anywhere on the forms).

16. The renewal application was reviewed on behalf of the District by Ms. Sheila Gipson, a certification specialist for the District. Ms. Gipson, dutifully implementing the policy reflected in the form's directions to complete the supplemental disclosure, refused to process the renewal application, deeming it incomplete. On April 23, 2014, Ms. Gipson sent an e-mail to Mr. Richardson illogically repeating the instruction on the form that if any question on page 4 was answered in the affirmative,

that page 5 (the supplement) must be completed, and directed him to do so.

17. If Mr. Richardson—eager to have his license renewed—was baffled by Ms. Gipson's e-mail and nonplussed at the impossible guidance it contained, his bewilderment might be excused. As previously noted, he had already provided complete details about the ongoing investigation to the District and could provide absolutely no information responsive to any of the supplemental questions.

18. In any event, it is clear that strict enforcement of this "catch-22"^{3/} has the practical effect of preventing anyone under investigation but awaiting determination from completing an application at all. It is not clear if this structure results from accident or disingenuous design.

19. Mr. Richardson testified that he telephoned Ms. Gipson and explained his dilemma. According to Mr. Richardson, Ms. Gipson concluded that he should not have said "yes" to the investigation question if no sanctions had been imposed, again explaining to him that any "yes" response meant that the application could not be processed without sanctions information. He testified that she directed him to change his answer on page 4 and resubmit the application so it could be considered complete. Mr. Richardson's testimony as to what Ms. Gipson told him was unrefuted. Ms. Gipson's instruction to

Mr. Richardson did not make sense, any more than the form itself did.

20. Mr. Richardson did as Ms. Gipson had instructed and filled out a second application form, which he dated April 26, 2014, indicating no "current investigative action pending" as he was told to do. He executed the Affidavit, which in bold print states: "Giving false information in order to obtain or renew a Florida Educator's Certificate is a criminal offense under Florida law. Anyone giving false information on this affidavit is subject to criminal prosecution, as well as disciplinary action by the Education Practices Commission."^{4/}

21. On or about April 23, 2014, notice had been sent to both Mr. Richardson and his attorney that the DOE's preliminary investigation was completed and available for review. An Informal Conference was scheduled for May 22, 2014. Both Mr. Richardson and his attorney acknowledged receipt of the notice on April 28, 2014.

22. After some delays, reflected in e-mail communications, Mr. Richardson hand-delivered the second application to Ms. Gipson, who received it on May 2, 2014.

23. The Commissioner has failed to show that Mr. Richardson gave false information with the intent to deceive or defraud the District or DOE. Mr. Richardson's alternative explanation of his intent is plausible given the irrational

structure of the application form and the fact that he had already fully disclosed the existence of the investigation to the District in the earlier application dated April 16, 2014. His insistence that his only intent was to break the bureaucratic logjam and allow his application to be considered complete, as the District's certification specialist, Ms. Gipson, advised him to do, is plausible.

24. Mr. Richardson's testimony that Ms. Gipson advised him to fill out the second application as he did was not a new assertion: he had said so nearly two years prior to the hearing in his deposition. The Commissioner did not list Ms. Gipson as a witness, and she did not testify. Mr. Richardson's testimony regarding the April 26, 2014, application was unrefuted. The Commissioner failed to prove fraudulent intent.

25. There was no competent evidence presented at hearing that Mr. Richardson ever used profanity in the classroom.

26. Although there was considerable testimony at hearing about a clinic pass associated with an injury to Student [REDACTED] on an occasion when Mr. Richardson's class was engaged in "indoor P.E.," it was not shown that Mr. Richardson in any way caused that injury, and he was not charged with doing so in the Administrative Complaint. There was no competent evidence that Mr. Richardson or any other person ever threw a book at Student [REDACTED], as was charged.

27. Mr. Richardson has been employed by the District for almost 21 years. He has never before had any discipline imposed against his license. He has taught successfully at Challenger Elementary School for almost five years after the 2012-2013 school year, without incident.

28. Ms. Kalima Carson testified that she co-taught with Mr. Richardson. As she testified, he was a good classroom manager. Ms. Carson also credibly testified that he was a good teacher and that his students showed tremendous academic gains. As Ms. Diane Velasco-Ortiz credibly testified, Mr. Richardson was good at motivating his students, and he did well with students who faced challenges at home.

CONCLUSIONS OF LAW

29. DOAH has jurisdiction over the parties and subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

30. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional personnel. § 1012.796(6), Fla. Stat.

31. Petitioner seeks to take action against Respondent's educator certificate as provided in section 1012.795. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Administrative Complaint by clear and

convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

32. The Florida Supreme Court has stated that the clear and convincing standard requires that:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

33. Before considering the individual counts against Respondent, preliminary issues related to the wording of the Administrative Complaint are addressed. First, the Administrative Complaint alleged that Respondent grabbed and shook "fifth grade" students, disciplined his "fifth grade" students by yelling in their faces, and threw a book at a "fifth grade" student, █████, striking her. However, evidence at hearing indicated that Student █████ was actually in Respondent's fourth-grade class during the 2012-2013 school year, and the evidence introduced to show these other alleged facts similarly involved fourth graders.^{5/} While Student █████—who testified

that Respondent was yelling while perched atop a desk in her class—was a fifth grader during the 2012-2013 school year, it was not clear how her testimony related to any of the allegations of the Administrative Complaint.

34. However, Petitioner's failure to show that the students were fifth graders does not mean that none of these charges in the Administrative Complaint were clearly proved. While including the school grade of the students might help identify the students involved, it was not an essential element of any of the charged offenses. Even in criminal cases, failure to prove specific facts alleged in a charging document is permitted so long as those facts are not essential elements. Mitchell v. State, 888 So. 2d 665, 668 (Fla. 1st DCA 2004) (conviction affirmed because language identifying a specific means by which a victim was put in fear was not an essential element, so that proof of fear by another means was sufficient); Ingleton v. State, 700 So. 2d 735 (Fla. 5th DCA 1997) (conviction was affirmed although the language charged that defendant had been murdered "by strangling" when evidence showed that murder was actually committed through a cocaine overdose, because the method by which the murder was committed was surplusage); In the Interest of W.M., 491 So. 2d 1263 (Fla. 4th DCA 1986) (conviction for aggravated assault was affirmed on proof that the defendant used a BB gun, despite the charge of

using a handgun, because the type of weapon used was not an essential element). An administrative hearing does not require more. The grade level of the students alleged in the Administrative Complaint was unnecessary surplusage. It was not necessary for Petitioner to prove the students' grade level.

35. Respondent notes that contrary to the wording of the allegations in the Administrative Complaint, it is uncontroverted that: (1) Respondent did not submit his renewal application to DOE, but instead to the District (which was purportedly authorized to renew applications on behalf of the State of Florida); and (2) the renewal application at issue was in fact submitted on April 26, 2014, not April 26, 2013.

36. Again, however, these errors in the Administrative Complaint reflect careless preparation and drafting rather than legitimate failures of proof at hearing. It is well-settled that an administrative complaint need not be cast with that degree of "technical nicety" required in a criminal prosecution. Libby Investigations v. Dep't of State, 685 So. 2d 69 (Fla. 1st DCA 996). An administrative complaint need only set out the acts complained of with sufficient specificity to allow a respondent a fair chance to prepare a defense. Davis v. Dep't of Prof'l Reg., 457 So. 2d 1074 (Fla. 1st DCA 1984). It was not suggested at hearing, and it is not found, that Respondent was in any way surprised by Petitioner's evidence.

The parties agreed on both the fact that the renewal application had been filed with the District and the actual date on which it had been filed in their Joint Prehearing Stipulation; there was no objection at hearing to the evidence offered on either of these points; and Respondent proceeded with a full understanding of the nature and substance of the charges against him.

Respondent was not prejudiced in his defense by these discrepancies in the Administrative Complaint.

Count 1

37. Petitioner alleges in Count 1 that Respondent is in violation of section 1012.795(1)(a), which in April 2014 provided that the Education Practices Commission could impose penalties if a person obtained, or attempted to obtain, an educator certificate by fraudulent means.

38. The Administrative Complaint alleges that Petitioner's April 26, 2014, application was fraudulent because he gave a false answer to the question, "Do you have any current investigative action pending in this state or in any other state against a professional license or certificate or against an application for a professional license or certificate?" While Petitioner proved that a false answer was given, this does not end the analysis.

39. "Fraudulent" is not defined by the statute or by rule. The parties did not cite, and research did not reveal, any cases interpreting the term in this context. The dictionary definition of "fraudulent" is "done to trick someone for the purpose of getting something valuable." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/fraudulent>.

40. A fraudulent act requires deliberative intent. As stated in Ocean Bank of Miami v. Inv-Uni Investment Corporation, 599 So. 2d 694, 697 (Fla. 3d DCA 1992):

To prove fraud a plaintiff must establish that the defendant made a deliberate and knowing misrepresentation which was designed to cause detrimental reliance.

41. It is not at all clear that Respondent's misrepresentation was designed to trick the District into giving him his license by concealing the ongoing investigation. Respondent's unrefuted testimony was that he was only complying with instructions from Ms. Gipson, the certification specialist employed by the District, in order to have the application processed. This version of events is plausible given that it is clear from the evidence that he had already fully disclosed the fact of the investigation to the District ten days earlier in the application dated April 16, 2013. There was also no evidence to suggest that Respondent had any reason to believe

that simply being under investigation was grounds for denial of a renewal application.

42. Respondent's contention that it was Ms. Gipson who told him to fill out the second application as he did was not a new assertion at hearing. He had given this version of events in his deposition taken nearly two years before the hearing. Petitioner did not list Ms. Gipson as a witness or call her to testify at hearing.

43. Contrary to Petitioner's assertion in her Proposed Recommended Order, Respondent's testimony as to what Ms. Gipson told him was not hearsay. It was not offered to prove the truth of the content of Ms. Gipson's admittedly unsound communications to Respondent. Rather, it was offered only to show that the statement was made, as evidence of Respondent's intent in subsequently making a false statement on his second application, a critical issue in this case. See, e.g., King v. State, 684 So. 2d 1388, 1389-90 (Fla. 1st DCA 1996) (an out-of-court statement offered for a purpose other than proving the truth of its contents is not hearsay and is admissible when otherwise relevant to a material issue in the case). Even if it had been hearsay, it would have come under the exception for party admissions under section 90.803(18) (d), Florida Statutes.

44. Petitioner did not show that Respondent had any intent other than to overcome the bureaucratic impasse preventing the

legitimate processing of his application. Petitioner failed to prove by clear and convincing evidence that Respondent attempted to obtain a renewed educator certificate by fraudulent means, in violation of section 1012.795(1) (a).

Count 2

45. Count 2 alleges that Respondent is in violation of section 1012.795(1) (j), in that he has violated the Principles of Professional Conduct for the Education Profession. Counts 3 through 6 go on to allege specific violations of these principles. Count 2 does not constitute a distinct disciplinary violation.

Count 3

46. Count 3 alleges that Respondent violated Florida Administrative Code Rule 6B-1.006(3) (a),^{6/} which from August to December of 2012 provided that an educator:

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.

47. Petitioner showed that Respondent yelled at misbehaving students, with his face in close proximity to theirs, and that he grabbed them by the shoulders and shook them. In these actions, Respondent failed to make reasonable effort to protect his students from conditions harmful to their mental health.

48. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(3) (a).

Count 4

49. Count 4 alleges that Respondent violated rule 6B-1.006(3) (e), which from August to December 2012 provided that an educator shall not intentionally expose a student to unnecessary embarrassment or disparagement.

50. While Respondent has authority for the control and discipline of students, his specific actions were somewhat excessive and intentionally exposed students to unnecessary embarrassment and disparagement.

51. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(3) (e).

Count 5

52. Petitioner alleges in Count 5 that Respondent violated Florida Administrative Code Rule 6A-10.081(5) (a), which in April 2014 provided that an individual shall maintain honesty in all professional dealings.

53. Dishonesty is defined as: (1) "lack of honesty or integrity: disposition to defraud or deceive"; (2) "a dishonest act: fraud." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/dishonesty>.

54. It is quite clear that filing for renewal is within the scope of an applicant's professional dealings and that under

most circumstances, making a false statement on the application constitutes dishonesty.

55. Here, however, while it was stipulated that Respondent falsely answered "No" on his April 26, 2014, application, viewing this second application in isolation, out of the context of its submission, would be simplistic and unfair. The first application had already provided full disclosure of the investigation. Respondent's action, and the "complicity" of Ms. Gipson, was not to deceive the District to obtain some undeserved benefit,^{7/} but only to obtain the review of the application to which Respondent was entitled. Under the unique circumstances here, it cannot be said that Respondent's representations, when considered as a whole, were dishonest or intended to deceive.

56. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6A-10.081(5)(a).

Count 6

57. Count 6 alleges that Respondent violated rule 6A-10.081(5)(h), which on April 26, 2014, provided that an individual:

Shall not submit fraudulent information on any document in connection with professional activities.

58. As discussed above, there was no proof that Respondent's submission was fraudulent. It was never alleged or

shown that the District could decline to process a renewal application solely because an investigation had been initiated or that Respondent submitted the information to cause any detrimental reliance by the District. The clear evidence instead showed that the District's representative was fully informed that an investigation was pending. Respondent's testimony that Ms. Gipson instructed him to fill out the application as he did in an attempt to further the appropriate processing of the application, given that no sanctions had been imposed, was unrefuted.

59. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6A-10.081(5)(h).

Penalty

60. The Education Practices Commission adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.795 in Florida Administrative Code Rule 6B-11.007.

61. Rule 6B-11.007(2)(i)16. provided that probation to revocation was the appropriate range of penalty for "[f]ailure to protect or supervise students in violation of paragraph 6B-1.006(3)(a), F.A.C."

62. Rule 6B-11.007(2)(i)22. provided that probation to revocation was the appropriate range of penalty for other violations of the Principles of Professional Conduct.

63. Rule 6B-11.007(2) provided that in addition to penalties listed in the disciplinary guidelines, each should be interpreted to include "probation," "Recovery Network Program," "letter of reprimand," "restrict scope of practice," "fine," and "administrative fees and/or costs" as additional penalty provisions.

64. Rule 6B-11.007(3) provided:

(3) Based upon consideration of aggravating and mitigating factors present in an individual case, the Commission may deviate from the penalties recommended in subsection (2). The Commission may consider the following as aggravating or mitigating factors:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (e) The number of times the educator has been previously disciplined by the Commission;
- (f) The length of time the educator has practiced and the contribution as an educator;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty upon the educator's livelihood;

- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;
- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;
- (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (o) Actual negligence of the educator pertaining to any violation;
- (p) Penalties imposed for related offenses under subsection (2) above;
- (q) Pecuniary benefit or self-gain inuring to the educator;
- (r) Degree of physical and mental harm to a student or a child;
- (s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
- (t) Any other relevant mitigating or aggravating factors under the circumstances.

65. Without minimizing any mental harm to a student, there are significant factors in this case that dictate that the penalty be set at the low end of the range established by the guidelines. The events took place four and one-half years ago. Respondent engaged in inappropriate, but nevertheless relatively moderate behaviors in order to discipline misbehaving students

and had an excellent record of improving the performance of even the most challenged students. There is no evidence that Respondent caused, or intended to cause, physical harm to any student. Further, the District returned Respondent to the classroom, and his subsequent performance at Challenger Elementary School has been effective. There is no indication of other discipline over a period of nearly 21 years, either before or after these events. There is no evidence of a long pattern of discipline that might otherwise justify sanctions uniquely available to the Education Practices Commission in fulfilling its statewide responsibilities under section 1012.795, such as suspension or revocation of Respondent's teaching certificate.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Education Practices Commission enter a final order finding Mr. Elijah Mark Richardson in violation of section 1012.795(1)(j), Florida Statutes, through his violation of Florida Administrative Code Rules 6B-1.006(3)(a) and 6B-1.006(3)(e); issuing him a letter of reprimand; and placing him on probation for a period of one employment year.

DONE AND ENTERED this 16th day of April, 2018, in
Tallahassee, Leon County, Florida.

F. Scott Boyd

F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of April, 2018.

ENDNOTES

^{1/} All references to Florida Statutes or administrative rules are to the versions in effect during the 2012-2013 school year, except as otherwise indicated.

^{2/} Though not directly implicated in this case, it should be noted that the wording of the letter, signed by the Chief of Police, is somewhat confusing, seeming to indicate at one point that it represents the Professional Standards Committee's recommendation to the Superintendent and at another point that it is itself a letter of reprimand. It is not clear from the record whether procedures set forth in Broward County School Board Policy 4.9 were followed, or other procedures.

^{3/} A catch-22 is a paradoxical situation from which an individual cannot escape because of contradictory rules. The term was coined by Joseph Heller in his 1961 novel of the same name.

^{4/} This warning on the form is an oversimplification of the law, as explored further in the Conclusions of Law.

^{5/} Some confusion as to the students' grade in school may stem from the fact that several written statements taken by the DOE

investigator were dated in November 2013 and indicate that the students are in the fifth grade. However, the statements themselves show that the events they were recounting had taken place during the preceding academic year, when they were in the fourth grade.

^{6/} Petitioner actually cited Florida Administrative Code Rule 6A-10.081(3)(a), yet again failing to correctly identify the rule number in effect at the time of alleged misconduct. The rule was not renumbered until January 11, 2013; the testimony referred to events which allegedly took place prior to December 17, 2012. However, the text of the rule was set out in the Administrative Complaint, and Respondent was not prejudiced by this error.

^{7/} Cf., Gootee v. Sch. Bd., 201 So. 3d 115, 118 (Fla. 3d DCA 2015) (submission of falsified time records to obtain unearned pay was a dishonest professional act notwithstanding that supervisor approved and condoned it).

COPIES FURNISHED:

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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.

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

PAM STEWART,
as COMMISSIONER OF EDUCATION,

Petitioner,

vs.

EPC NO.. 123-2574
DOAH Case No. 17-6388PL

ELIJAH MARK RICHARDSON,

Respondent.

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER AND PENALTY
&
RESPONDENT'S RESPONSE TO
PETITIONER'S EXCEPTION TO RECOMMENDED PENALTY

Respondent, ELIJAH MARK RICHARDSON, by and through his undersigned attorney, and pursuant to Section 120.57(1), Florida Statutes and Rule 28-106.217(1), Florida Administrative Code, files the following exceptions to Administrative Law Judge (ALJ), F. Scott Boyd's Recommended Order (RO) filed on April 16, 2018 in the above-styled cause; and **Response to Petitioner's Exceptions to the Recommended Penalty** filed on April 27, 2018; and states as follows:

Respondent's Introductory Statement

The Education Practices Commission (EPC) is vested by the laws of Florida with the authority to interpret and apply such laws, rules, and policies as are applicable to programs within its regulatory sphere. The EPC may reject or modify an Administrative Law Judge's Recommended Order as provided in section 120.57(1)(l), Florida Statutes, which states in relevant part:

(1) The agency may adopt the recommended order as the final order of the agency. The agency in its final order **may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.** When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and **must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. The agency may accept the recommended penalty** in a recommended order, but **may not reduce** or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action. (**emphasis added**)

Respondent's Exceptions to RO

Exception No. 1 (Count 3)

1. In Count 3 of the RO (page 19 paragraphs 46- 48), the ALJ erroneously concludes that Respondent violated Rule 6B-1.006(3)a), Florida Administrative Code, in that:

47. Petitioner showed that Respondent yelled at misbehaving students, with his face in close proximity to theirs, and that he grabbed them by the shoulders and shook them. In these actions, Respondent failed to make reasonable effort to protect his students from conditions harmful to their mental health.

2. The ALJ's conclusion of law in Paragraph 47 is inconsistent with his Finding of Facts, which state in relevant part:

- a. 5. ...Mr. Richardson would **sometimes scream at students who were not behaving, but did not scream at the well-behaved students.** (RO page 4, paragraph 5).
- b. 8. ... if a student "wouldn't do like the work or behaved bad, he [Mr. Richardson] would grab them by their shoulders and yell at them and shake them." ... "I mean not that bad, but like to get ahold." (RO page 5 paragraph 8).
- c. 9. ... Mr. Richardson would shake students who were being bad, ... "[w]hen he shook [sic] kids he would shake them by the shoulders, **on a scale from 0 to 5 he would shake kids like about a 2.**" (RO page 5-6, paragraph 9). (**emphasis added**)

- d. 25. There was no competent evidence presented at hearing that Mr. Richardson ever used profanity in the classroom. (RO page 11, paragraph 25).
- e. 26. ... it was not shown that Mr. Richardson in any way caused ... injury, and he was not charged with doing so in the Administrative Complaint. There was no competent evidence that Mr. Richardson or any other person ever threw a book ... as was charged. (RO page 11, paragraph 26).
- f. 27. Mr. Richardson has been employed by the District for almost 21 years. ...never before had any discipline imposed against his license. He has taught successfully at Challenger Elementary School for almost five years after the 2012-2013 school year, without incident. (RO page 12, paragraph 27).
- g. 28. ... Mr. Richardson ... was **a good classroom manager. ... a good teacher** and ... **his students showed tremendous academic gains. ... Mr. Richardson was good at motivating his students, and he did well with students who faced challenges at home.** (RO page 12, paragraph 28). **(emphasis added)**

3. Since no testimony was offered by any of the misbehaving students, the ALJ could only speculate that they were exposed to conditions harmful to learning and/or to their mental health.

4. The ALJ's Findings of Fact, (in paragraph 2.g., above: that

28. ... Mr. Richardson ... was a good classroom manager. ... a good teacher and ... his students showed tremendous academic gains. ... Mr. Richardson was good at motivating his students, and he did well with students who faced challenges at home. (RO page 12, paragraph 28)

is inconsistent with a conclusion that his students were exposed to conditions harmful to learning and/or to their mental health.

5. The EPC can and should more reasonably conclude that Mr. Richardson did not violate the cited rule.

6. Students, particularly misbehaving students have no right not to be touched or redirected; and teachers have a duty to manage classroom behavior.

7. Section 1003.32, Florida Statutes, provides:

1003.32 Authority of teacher; responsibility for control of students; district school board and principal duties.—

Subject to law and to the rules of the district school board, each teacher or other member of the staff of any school shall have such authority for the control and discipline of students as may be assigned to him or her by the principal or the principal's designated representative and shall keep good order in the classroom and in other places in which he or she is assigned to be in charge of students.

- (1) In accordance with this section and within the framework of the district school board's code of student conduct, teachers and other instructional personnel shall have the authority to undertake any of the following actions in managing student behavior and ensuring the safety of all students in their classes and school and their opportunity to learn in an orderly and disciplined classroom:

* * *

8. Citing multiple authorities, the First DCA stated in *Morris v. State*, 2017 WL 4448687

(Oct. 6, 2017), stated:

... Teaching personnel stand *in loco parentis* “in the place of a parent” with respect to students in their classrooms who they must supervise and control. (citations omitted). They owe “a general duty of supervision to the students placed within (their) care *Rupp v. Bryant*, 417 So.2w 658, 666 (Fla. 1982).

9. In *Dep't of Education v. Brennan*, (DOAH Case No. 86-4936; 1987), the EPC adopted

a DOAH Recommended Order in which the Administrative Law Judge found as

follows:

45. Exposing a student to discipline may be embarrassing and even disparaging, but it is an affirmative obligation of teachers and staff to maintain discipline as a part of an environment conducive to teaching and learning. It is not a violation of the students' legal rights to impose discipline.

(emphasis added)

46. Students have no special right not to be touched. Like other members of society, certain touchings are not actionable. Similarly, there

are no special privileges granted teachers to touch students. To the extent that the law recognizes differences in the limits on teachers vis a vis students, society recognizes that teachers have a special responsibility and relationship with students. In this capacity they may be called upon to reassure, comfort, direct, or discipline children in their classes. In doing these things which are part of being a teacher, if not teaching, they would be severely limited if they were precluded from touching children.

10. As the EPC concluded in *Stewart v. Lillie Williams-Graham*, (DOAH Case No. 17-5526; Recommended Order Dismissing Administrative Complaint Adopted in toto by EPC Final Order, April 20, 2018), Mr. Richardson's intent was not to harm students, 'but to redirect them, encourage more positive behavior, and to get the students attention and keep them on track.' *Stewart v. Lillie Williams-Graham*, paragraphs 75-76, *supra* (**attached for ease of reference as Appendix A**).
11. In *Lillie Williams-Graham* (paragraph 4), in a school known for misbehaving students, much like West Hollywood Elementary where Mr. Richardson taught, the EPC agreed with the ALJ that, when Ms. Williams-Graham grabbed a student's face and asked him to look at her when she was talking to him in from of his classmates (paragraph 73), she did not intend to cause mental harm to the student.
12. Likewise, the Findings of Fact in this case support the EPC in making a more reasonable conclusion that Mr. Richardson did not intend to cause mental harm to any student.
13. As did Ms. Williams-Graham, Mr. Richardson did not neglect supervision of her entire classroom to correct misbehaving students as she stood close by them while doing so. She in fact touched a student's face to direct them to look at her. Here, Mr. Williams touched a shoulder and spoke firmly to them. And while his communication was labeled screaming and yelling, there is no evidence in the record indicating that any

student witness could recall having heard anything that Mr. Richardson said to the misbehaving students. The evidence was clear however that he did not use profanity.

Exception No. 2 (Count 4)

14. In Count 4 of the RO, the ALJ erroneously concludes that Mr. Richardson violated Rule 6B-1.006(3)(e), Florida Administrative Code (RO page 20, paragraphs 49-51), in that

50. While Respondent has authority for the control and discipline of students, **his specific actions were somewhat excessive and intentionally exposed students to unnecessary embarrassment and disparagement.**
(emphasis added)

15. Respondent herein incorporates his Exception No. 1, above, and maintains that the EPC can and should more reasonably conclude that his actions did not violate the cited rule.

16. Mr. Richardson's "tremendous gains," and effective motivation and performance with challenging students militates against a conclusion that he intentionally exposed students to unnecessary embarrassment or disparagement.

17. As did Ms. Williams-Graham, *supra* at *Paragraphs 85-86*, where the educator even grasped a student's face and turned it so that he would look at her, Mr. Richardson stood close by and touched the shoulders of misbehaving students as he corrected them. As in *Williams-Graham, supra*, Mr. Richardson's intent was **not** to subject his students to unnecessary embarrassment or disparagement; the EPC should more reasonably so conclude.

Exception 3: Penalty

18. After speculating that there was “any mental harm to a student,” the ALJ recommends that the EPC *set a penalty at the low range of the guidelines*; and suggests *a letter of reprimand and one-year probation*. (RO page 24, paragraph 65).

19. Addressing mitigating factors, as authorized by the cited EPC guidelines, the ALJ observes that the events at issue took place more than four and a half years ago and were

...relatively moderate behaviors in order to discipline misbehaving students, with whom, even with the most challenged students, Mr. Richardson has an excellent record of improving performance. (RO pages 24-25, paragraph 60). (emphasis added)

20. What more can we expect of a good teacher: a good classroom manager?

21. As did the EPC in *Williams-Graham, Id.*, Respondent moves the EPC to substitute its conclusion of law, which is as or more reasonable than that of the ALJ; reduce the recommended penalty; and dismiss the Administrative Complaint. *Barfield v. Dep't of Health*, 805 So. 2d 1008 (Fla. 1st DCA 2001).

[I]t is a primary function of professional disciplinary boards to determine the appropriate punishment of the misconduct of the professionals it regulates. As long as the statute under which a professional agency operates provides guidelines for imposing penalties, the agency complies with section 120.57(1)(1), and the increased penalty falls within the

guidelines established by its statute, a professional board or agency has the discretion to increase

or reduce the recommended penalty. *Criminal Justice Standards & Training Commission v. Bradley*, 596 So. 2d 661, 663 (Fla. 1992); Section 120.57(1)(l), Florida Statutes.

22. Mr. Richardson had no prior discipline (RO paragraph 27); and he prevailed in his challenge of the District effort to impose a letter of reprimand based on these same facts. As a result, the District rescinded its proposed discipline. (RO page 7, paragraph 13).
23. One of the three students who testified in this case thought that Mr. Richardson's discipline of misbehaving students was appropriate (TR 44, 46-47). Another student did not think it was "that bad." RO paragraph 8.
24. The ALJ denied official recognition, as not relevant, of an article in The Hechniger Report, that Respondent offered which commented on "... reasons why African American teachers become frustrated with their profession." (RO, page 3). Emmanuel Felton, *The Reason so many black teachers leave the job early*, The Hechniger Report (November 3, 2016).
25. The article, however, memorializes a concern that Respondent raises with this proposed discipline: administrators have a tendency to assign a disproportionate percentage of students with behavior issues to minority educators. As a result, these teachers, as is Mr. Richardson here, are then exposed to disciplinary penalties despite their *tremendous gains* with these students.

26. With or without the support of the article, Mr. Richardson finds himself having been placed in this frustrating position by his administrators. In addition, should any penalty be imposed, Mr. Richardson, though, an award winning and conscientious educator (Resp Ex 1, p.22), who is ranked among Florida's Best Teachers by the Department of Education. (Resp Ex 5; Testimony of Respondent TR 147, line 10- TR 148. Line 25), will suffer loss of his unblemished career; and may suffer loss of his National Board Certification and associated income: all factors to be considered under the EPC Guidelines. (TR 139, line 18; Resp Ex. 1, pp 1-15; Resp Ex 3; Pet Ex 8, p. 15).

27. Recognized as the "gold standard" in teacher certification, National Board Certification guidelines provide that

... Your state teaching ... license must have been **unencumbered** (e.g., not suspended or revoked) while you were employed as a teacher Guide to National Board Certification (pages 5, 11). (**emphasis added**)

doe.sd.gov/nationalboard/documents/NBC-Guide.pdf

28. Upon inquiry on behalf of Respondent, however, the Board advises:

-----Original Message-----

From: NB Customer Support <nbcustomersupport@pearson.com>

Sent: Wednesday, March 28, 2018 9:01 AM

To: Moore, Emily <emily.moore1@floridaea.org>

Subject: RE: National Board Case: 00141557: teaching license unencumbered [ref:_00D36rBJo._50036T8Az6:ref]

Hello Emily,

Thank you for taking the time to reach out to us; we're happy to help. **It would depend on the reason the license has been sanctioned.** If you, or a colleague, has a sanctioned license, we recommend submitting the details to us so that we can review and make a determination. (**emphasis added**)

Best regards,
Elizabeth
National Board Customer Support
1-800-22TEACH

Response to Petitioner's Exception to Penalty

29. The EPC should deny Petitioner's Exception to increase the penalty and resolve this case just as it did for Lillie Williams-Graham.
30. The EPC should not allow Petitioner to shift the burden of proof on any issue in this matter, as Petitioner suggests in her Exceptions (at page 3, paragraph 7). If Petitioner had cause to make additional allegations, so as to preclude the ALJ from relying on Mr. Richardson's uncontroverted testimony that he has taught over the past five years without incident, Petitioner could certainly have amended the Administrative Complaint in this case or filed another, as she so often does.
31. The EPC should more reasonably conclude that neither statute nor rule violation occurred in this matter and dismiss the Administrative Complaint.

Conclusion

WHEREFORE, based on the foregoing argument, Respondent requests that the EPC grant Respondent's Exceptions to the Recommended Order and Penalty; deny Petitioner's Exceptions to the Recommended Penalty; and dismiss the Administrative Complaint.

Respectfully submitted this 1st day of May 2018.



EMILY MOORE, Esq.
Attorney for Respondent
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850/224-7818 Fax 850/224-0447
Florida Bar No. 376477

**STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION**

PAM STEWART, AS COMMISSIONER
OF EDUCATION,

Petitioner,

EPC NO. 123-2574
DOAH CASE NO: 17-6355PL

vs.

ELIJAH RICHARDSON,

Respondent.

PETITIONER'S EXCEPTION TO THE RECOMMENDED PENALTY

The Petitioner, PAM STEWART, as Commissioner of Education (hereinafter referred to as "Petitioner" or "COE"), by and through her undersigned counsel, Charles T. Whitelock, P.A., files this Exception to the Recommended Penalty contained in the Recommended Order dated April 16, 2018, and states as follows:

1. The Recommended Order issued by Administrative Law Judge F. Scott Boyd ("ALJ") recommended the following penalty:

 "...that the Education Practices Commission enter a final order finding Respondent in violation of Florida Statute Section 1012.795(1)(j), through his violation of Florida Administrative Code Rules 6B-1.006(3)(a) and 6B-1.006(3)(e); issuing him a letter of reprimand; and placing him on probation for a period of one employment year."

2. Section 120.57(1)(l) states in part:

 "...The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action."

3. The ALJ correctly listed the range of the penalty for the noted violations from probation to revocation. However, the Petitioner considers the recommended penalty too lenient in light of the findings.

4. Three students testified at the hearing as noted by the ALJ. All were deemed credible and verified Respondent's mistreatment of his students. The ALJ noted that the written statements of eight other students supplemented their testimony (Px.#8).

The following are the excerpts from their statements:

█ (R96-97) Respondent threatened to use Mr. Pow-Pow, a yard stick;
threw a book at █
used profanity
grabbed his arm/screamed in his face
screams so loud/he scares people

█ (R98-99) when mad/Respondent would scream
grabbed his arm/left nail marks
threw him against wall for talking

█ (R100) yells in our face
threatens the students
threatened to hit █ in the head with a teacher's
guide(dumb question)
got angry and jumped on a table

█ (R105) mean/slammed stapler on desk
yelled in students' faces

█ (R106) grabbed her left wrist/left mark
yelled in students' faces

█ (R107) yelled at people when angry
got angry and jumped on a desk

█ (R108) Respondent had "anger issues".

5. █ testified that the Respondent's yelling was unnecessary to maintain control of the classroom, and that while other teachers yelled from time to time, but never

to that extreme (T.#35-40). [REDACTED] testified that Respondent's yelling scared or frightened him and was fearful that the Respondent's outbursts would cause him to hurt someone (T.#51/2-25;T.#52/9-11).

6. This type of behavior warrants a much stricter penalty. His pattern of behavior over the school year indicates a lack of classroom control, not to say anything about his own lack of self-restraint in physically dealing with elementary school children.

7. The ALJ's reliance upon the finding that he has taught without incident over the past five years is unsupported by the record. To the contrary, the Petitioner is precluded from presenting any evidence of a misconduct allegation unless it is contained in the administrative complaint. Further the ALJ's ruling on the application issue is misguided. The testimony of Respondent's purported conversation with Gipson is rank hearsay. Further it isn't the responsibility of the Petitioner to list and call the Respondent's witness. Although there is a legitimate legal basis for an exception to his issue, Petitioner has decided to forego filing an exception.

8. Instead, Petitioner requests an appropriate penalty be issued to include a Letter of Reprimand, three (3) years probation with the standard conditions. In addition, the Respondent should be required to attend and complete two (2) college level course in Ethics and Anger Management with a grade B or higher. A fine not less than \$750 should be levied and paid through the first year of probation.

WHEREFORE, Petitioner requests the exception be granted and impose the Petitioner's recommended penalty.

Respectfully Submitted,

CHARLES T. WHITELOCK, P.A.
Counsel for Commissioner of Education
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316
Telephone: (954) 463-2001
Facsimile: (954) 463-0410

/s/Charles T. Whitelock
CHARLES T. WHITELOCK
Florida Bar No.: 166020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to: Emily Moore, Esq., Florida Education Association, 213 South Adams Street, Tallahassee, FL 32301, e-mail: emily.moore1@floridaea.org and Gretchen Brantley, Education Practices Commission, 325 West Gaines Street, Suite 224-E, Turlington Building, Tallahassee, Florida 32399-0400, e-mail: gretchen.brantley@fldoc.org, and Education Practices Commission, e-mail: epc@fldoc.org, this 27th day of April, 2018.

/s/Charles T. Whitelock
CHARLES T. WHITELOCK

**STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION**

PAM STEWART, AS COMMISSIONER
OF EDUCATION,

Petitioner,

EPC NO. 123-2574
DOAH CASE NO: 17-6355PL

vs.

ELIJAH RICHARDSON,

Respondent.

_____ /

**PETITIONER’S RESPONSE TO RESPONDENT’S EXCEPTIONS TO THE
RECOMMENDED ORDER AND PENALTY**

The Petitioner, PAM STEWART, as Commissioner of Education (hereinafter referred to as "Petitioner" or "COE"), by and through her undersigned counsel, Charles T. Whitelock, P.A., files this Response to Respondent’s Exceptions to the Recommended Order and Penalty, and states as follows:

The Respondent has chosen not to file any exceptions to the Findings of Fact (“FOF”) in the Recommended Order (“RO”). Therefore, the FOF in the RO are deemed admitted for purposes of his review. Instead the Respondent has filed three exceptions; two to the Conclusions of Law (“COL”) and one to the Recommended Penalty.

EXCEPTION #1 (COUNT 3)

The Respondent claims he has the right to manage “misbehaving” students by grabbing and shaking them; screaming in their faces and yelling loudly. As noted in the Petitioner’s exception, three students testified credibly and eight others provided written statements detailing the Respondent’s unprofessional behavior. The judge noted these students testified credibly and

the written statements serve to supplement their testimony. This evidence served to form the basis for the FOF, which are unchallenged by the Respondent. These actions created harmful conditions to the students' mental health and as one student noted-fearful someone would get hurt. The exception should be denied.

EXCEPTION #2 (COUNT 4)

Once again, the Respondent seeks to argue that the above described actions are permissible and do not serve to unnecessarily embarrass or disparage a student. The FOF support the judge's conclusion that the Respondent violated this ethical provision. The exception should be denied.

EXCEPTION #3 (PENALTY)

The Respondent partially bases his argument to reduce the penalty or dismiss the administrative complaint based on evidence that was admittedly precluded by the judge at the hearing (See: paragraph 24). The Respondent further introduces additional information as evidence that wasn't even offered at the hearing. This constitutes evidence from outside the record and violates the Petitioner's due process rights. Both parties are required to list their evidence and witnesses in response to the judge's Prehearing Instructions.

Not only does the Respondent impermissibly cite evidence that was excluded by the judge at the hearing, but also introduces recently acquired information in March, 2018, which the Respondent never provided to Petitioner or her counsel prior to filing this exception (See: paragraphs 27-28). The Respondent's intentional actions were submitted to prevent the Petitioner from challenging this "evidence" before its publication. The Respondent and his counsel's blatant attempt to circumvent the adversary process is not only unprofessional, but more importantly, unethical on part of the Respondent's counsel. The exception should be denied.

WHEREFORE, Petitioner requests the Respondent's exceptions be denied, and impose the Petitioner's recommended penalty.

Respectfully Submitted,

CHARLES T. WHITELOCK, P.A.
Counsel for Commissioner of Education
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316
Telephone: (954) 463-2001
Facsimile: (954) 463-0410

/s/Charles T. Whitelock
CHARLES T. WHITELOCK
Florida Bar No.: 166020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to: Emily Moore, Esq., Florida Education Association, 213 South Adams Street, Tallahassee, FL 32301, e-mail: emily.moore1@floridaea.org and Gretchen Brantley, Education Practices Commission, 325 West Gaines Street, Suite 224-E, Turlington Building, Tallahassee, Florida 32399-0400, e-mail: gretchen.brantley@fldoe.org, and Education Practices Commission, e-mail: epc@fldoe.org, this day of May 8th, 2018.

/s/Charles T. Whitelock
CHARLES T. WHITELOCK

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

PAM STEWART,
as COMMISSIONER OF EDUCATION,

Petitioner,

vs.

EPC NO.. 123-2574
DOAH Case No. 17-6388PL

ELIJAH MARK RICHARDSON,

Respondent.

_____ /

RESPONDENT'S RESPONSE (WITH CORRECTION)
TO PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS

Respondent, ELIJAH MARK RICHARDSON, by and through his undersigned attorney, Emily Moore, Esq., and pursuant to Section 120.57(1), Florida Statutes; and Rules 28-106.217(1) and (3), Florida Administrative Code, files this Response and Correction to Petitioner's Response to Respondent's Exceptions to the Recommended Order and Penalty; and states as follows:

1. Respondent maintains his Exceptions to the Recommended Order and Penalty as filed on May 1, 2018, with the following two corrections.
2. The undersigned erred in including reference, in Respondent's Exception #3 (Penalty), to the Article to which the ALJ denied official recognition. Upon further review and consultation, the undersigned stands corrected: the mention of the article in the record and transmittal of it to the EPC does not make it a part of the record for review by the Commission; only the transcript and admitted exhibits are to be considered by this Commission.

3. Thus, the undersigned withdraws from consideration by this Commission Paragraph #24 of Respondent's Exception to Penalty filed on May 1, 2018.
4. Concluding, as the undersigned already stated (Paragraph #26), that the Article was not critical to Respondent's position, Respondent does not Except to the ALJ's denial of official recognition.
5. Secondly, as Mr. Whitelock points out, the undersigned erred in submitting evidence of having inquired of the National Board after the hearing concerning the effect of sanctions on Respondent's Certificate; Respondent's Exceptions Paragraph #28.
6. The undersigned should have presumed the Commission to know that National Board status would be affected by sanctions issued by this Commission. Respondent is a NBCT; consideration of this status as mitigation does not rest on the information acquired from the NCBT in March 2018. Respondent, therefore, withdraws from consideration by the Commission, Respondent's Exceptions, Paragraph #28.
7. Though admittedly in error, the undersigned's efforts to inform were neither an effort nor a desire to circumvent or deprive the Commissioner of due process or to intentionally violate any ethical rule. As stated, the challenged materials are not critical to the Commission's consideration of Respondent's position.
8. The undersigned has given voicemail notice to Mr. Whitelock both regarding the correction of her errors and the filing of this Response.

Conclusion

WHEREFORE, based on the foregoing argument, and resting upon the Commission's action in *Stewart v. Lillie Williams-Graham*, (DOAH Case No. 17-5526; Recommended Order Dismissing Administrative Complaint Adopted in toto by EPC Final Order, April 20, 2018), Respondent requests that the EPC grant the foregoing Corrections; grant Respondent's Exceptions to the Recommended Order and Penalty; deny Petitioner's Exceptions to the Recommended Penalty; and dismiss the Administrative Complaint.

Respectfully submitted this 10th day of May 2018.



EMILY MOORE, Esq.
Attorney for Respondent
213 South Adams Street
Tallahassee, Florida 32301
850/224-7818 Fax 850/224-0447
Florida Bar No. 376477

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was sent **via email** this 10th of May 2018, to: Charles Whitelock, Esq.; April Kadel; and Gretchen Brantley, Executive Director, Education Practices Commission.



EMILY MOORE, Esq.



EDUCATION PRACTICES COMMISSION
STATE OF FLORIDA

GRETCHEN KELLEY BRANTLEY

Executive Director

LEE ANN GUSTAFSON

Legal Counsel

LISA FORBESS

Clerk of Court

CHRISTIE GOLD

Chairperson

NICHOLAS PIETKIEWICZ

Co-Chairperson

June 28, 2018

Elijah Richardson

[REDACTED]

Fort Lauderdale, Florida 33311

Re: Pam Stewart vs. Elijah Richardson

EPC No.: 16-0022-RT; DOE No.: 696450

Dear Mr. Richardson:

As you know, the teacher panel of the Education Practices Commission reviewed the matter pending against you. The panel concluded that you violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules and hereby reprimands you for the conduct alleged in the Recommended Order which is incorporated herein.

This panel, which includes fellow educators, believes that, as a teacher, you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession and have diminished your position as an educational leader. The profession cannot condone your actions, nor can the public who employ us.

The Education Practices Commission sincerely hopes it is your intention never to violate any professional obligation in fulfilling your responsibilities as an educator. To violate the standards of the profession will surely result in further action.

This letter of reprimand is being placed in your state certification file, and a copy is being sent to the Broward County School Board for placement in your personnel file.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. Pietkiewicz".

Nicholas Pietkiewicz
Presiding Officer