



## Before the Education Practices Commission of the State of Florida

PAM STEWART,  
Commissioner of Education,

Petitioner,

vs.

VIRGINIA I. YOUNG,

Respondent.

---



EPC CASE N° 17-0412-RT  
DOAH CASE N° 17-4828PL  
PPS N° 156-3051  
CERTIFICATE N° 624273  
INDEX N°: 18-306-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 LYNNE A. QUIMBY-PENNOCK, Administrative Law Judge. Respondent was present and represented. Petitioner was represented by Darby G. Shaw, Esq. Attached hereto as Exhibit A is a copy of Respondent's Exceptions to the Recommended Penalty.

### Ruling on Exceptions

Respondent 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's Florida educator's certificate is hereby suspended for a period of 18 months from the date of this Final Order.
2. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on 2 employment years 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 29<sup>th</sup> 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 VIRGINIA I. YOUNG, [REDACTED], Bartow, FL 33830 and Mark Herdman, Esq., 29605 U.S. Highway 19 North, Suite 110, Clearwater, FL 33761 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 Ron Weaver, Esq., Post Office Box 770088, Ocala, Florida 34477 on this 29<sup>th</sup> day of June, 2018.



---

Lisa Forbess, Clerk  
Education Practices Commission

### COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

Superintendent  
Polk County Schools  
P.O. Box 391  
Bartow, FL 338310391

Director, Employee Relations  
Polk County Schools  
P.O. Box 391  
Bartow, FL 338310391  
Lee Ann Gustafson  
Senior Assistant Attorney General

LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings

1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

Claudia Llado, Clerk  
Division of Administrative Hearings

Probation

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 17-4828PL

VIRGINIA YOUNG,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On December 14, 2017, Administrative Law Judge (ALJ) Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division) conducted a disputed-fact hearing in this case in Bartow, Florida.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
Post Office Box 770088  
Ocala, Florida 34477-0088

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

STATEMENT OF THE ISSUES

The issues to be determined are whether Virginia Young (Respondent or Ms. Young) violated: section 1012.795(1)(g) Florida Statutes (being found guilty of personal conduct, which

seriously reduces effectiveness as an employee of the school board); section 1012.795(1)(j) Florida Statutes (violating the Principles of Professional Conduct for the Education Profession as prescribed by the State Board of Education rules); Florida Administrative Code Rule 6A-10.081(2)(a)1. (failure to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety); and Florida Administrative Code Rule 6A-10.081(3)(e) (intentionally exposing a student to unnecessary embarrassment or disparagement)<sup>1/</sup>; and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

In May 2017, Pam Stewart, as Commissioner of the Department of Education (Petitioner or Commissioner), filed an Administrative Complaint (AC) against Respondent. The AC alleged that in December 2015, Respondent gave █████, a first-grade student with a tree nut allergy, a holiday treat (a Christmas-tree shaped brownie). The box containing the brownies listed tree nuts as a possible ingredient. The AC charged Respondent with violating section 1012.795(1)(j) for violating the Principles of Professional Conduct for the Education Profession, and rule 6A-10.081(2)(a)1. for failing "to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or

safety." Respondent disputed the allegations and asked for a hearing.

On October 31, 2017, Petitioner filed a motion to amend the AC and to continue the final hearing. The amendment was to include a case that had been closed by the Division in July 2016. The additional allegations included that during the 2013-2014 school year, Respondent used inappropriate language or terminology in front of her students, and she inappropriately prevented pregnant students from going to the bathroom. The Amended Administrative Complaint (AAC) additionally charged Respondent with violating section 1012.795(1)(g) for being found guilty of personal conduct that seriously reduces effectiveness as a teacher, and rule 6A-10.081(3)(e) "in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement." The motions were granted.

In mid-November 2017 Petitioner filed an unopposed motion to allow several witnesses to appear via telephone or video. The motion was granted.

On December 5, 2017, the parties filed a Joint Pre-hearing Stipulation. There were two uncontested facts listed in the stipulation, and to the extent relevant, they may be found below.

At the final hearing, Petitioner called as witnesses: [REDACTED], Respondent's former student and currently home-schooled student; [REDACTED], a former student; [REDACTED], mother of [REDACTED];

██████████, father of ██████████; Donna Nicolodi, a former administrator at Polk County Virtual School (PVS); and Devyani Balladin, a former school counselor at PVS.

Petitioner's Exhibits 1 through 5, 7 through 29, 31, and 32<sup>2/</sup> were admitted in evidence, with the reminder that hearsay could not support findings of fact alone. Respondent testified and called Iola Jones, a former paraprofessional at Traviss Technical Center (Traviss), to testify on her behalf. Respondent did not offer any exhibits.

The Transcript was filed with the Division on January 22, 2018.<sup>3/</sup> On January 30, Respondent filed an unopposed motion for an extension of time in which to file the proposed recommended orders (PROs). The motion was granted. Both parties timely filed a PRO, and each has been considered in the preparation of this Recommended Order.

Since the AAC alleges conduct during the 2013-2014 and 2015-2016 school years, the statutes and rules in effect at the time of the allegations will apply, unless otherwise specified. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013).

#### FINDINGS OF FACT

1. The Commissioner is the state agent responsible for investigating and prosecuting allegations of misconduct against individuals holding educator certificates.

2. Respondent holds Florida Educator Certificate 624273 in the areas of: Educational Media Specialist; English; Elementary Education; English for Speakers of Other Languages; Guidance and Counseling; Physical Education; Social Science; Business Education; Family and Consumer Science; and Exceptional Student Education. Respondent's certification is valid through June 30, 2017. Respondent is also certified in Middle Grades Integrated Curriculum, which is valid through June 30, 2017.

3. Respondent taught in the Polk County School District (PCSD) for eight years and retired two years ago. At all times material to these allegations, Respondent was employed as a social studies teacher at Traviss or as an elementary combination teacher at PVS in the PCSD.

BATHROOM HALL PASS 2013-2014 School Year

4. For the 2013-2014 school year, Respondent taught tenth-grade English and World History at Traviss. Her classroom was a portable building in the school's parking lot. Although there was a bathroom in the portable, it had been disassembled and was unusable. When a student needed to use the bathroom, the student obtained a bathroom pass to leave the portable and go to another building where there was a functioning bathroom.

5. Respondent's policy for any student (pregnant or not) to obtain a bathroom pass was simple: the student had to sign in, find their assigned seat, write down the "SMART Board question"

of the day, and go to the classroom aide (or paraprofessional) to obtain a bathroom/hall pass. Each student had an agenda book, and the aide would mark the time of the bathroom pass. If the student was gone too long, the aide would try to find them. Respondent never denied a student's request for a bathroom pass although she had, on occasion, asked a student if they could wait "five minutes" because Respondent was starting a clip and was concerned she could not replay the clip. Respondent never signed a bathroom pass, but had her paraprofessional or classroom aide handle the passes.

6. There was no evidence adduced by any former student, pregnant or not, who was denied a bathroom pass. ■■■■ testified there were "students" in her class who were pregnant and, with the assistance of counsel, she confirmed one student's identity, ■■■■. However, ■■■■ did not testify that she was pregnant and ■■■■ did not testify that she was denied the opportunity to use the restroom. ■■■■ heard Respondent deny "those students'" request to go to the restroom on a "few occasions." ■■■■'s testimony was unpersuasive.

7. Petitioner's Exhibit 29 is a verbal warning with a written confirmation regarding Respondent's alleged denial of pregnant students' rights to use the restroom when asked. The undersigned acknowledges this warning; however, the non-hearsay testimony at hearing failed to support such a finding.

INAPPROPRIATE LANGUAGE 2013-2014 School Year

8. As part of the English curriculum, Respondent taught literature. Each year she used the novel To Kill a Mockingbird, by Harper Lee, which was on the approved reading list in her tenth-grade, English 2 class. In that novel, the "n" word is used once or twice. Respondent does not use the "n" word.

9. [REDACTED] and Ms. [REDACTED] were questioned about inappropriate language used during their class. Ms. [REDACTED] thought she was in Respondent's eleventh or twelfth grade English class, yet she did not recall if the class was discussing a book or a movie when she claimed to have heard the "n" word used. [REDACTED] knew Respondent was her English teacher, but could not recall if the class had been discussing the book when the "n" word may have been used. Both students' testimony was vague and unpersuasive.

TREE NUT ISSUE 2015-2016 School Year

10. Respondent moved to PVS for the 2014-2015 and 2015-2016 school years. At PVS she taught grades kindergarten through fifth grade. Respondent had multiple preparations for the different classes she taught at PVS.

11. Elementary students are young, and in addition to the virtual teaching time, each grade level is brought into the "brick and mortar" school once a month for a two-hour "face-to-face" class. This is to ensure that each PVS student is progressing appropriately and to ensure that each student is not

being unduly assisted by their "learning coach," an adult or other person.

12. At PVS, teachers were expected to contact each student's parent(s) prior to the school year starting. This "welcome call" was to introduce themselves, provide a course overview, and to chat about the individual student who would be in Respondent's class.

13. During the 2015-2016 school year, Respondent taught PVS's first-grade virtual class in addition to other grades. ■■■■ was in Respondent's first-grade class.

14. ■■■■ is now an eight-year-old student residing and attending school out of Florida. While residing in Florida, ■■■■ was home schooled for the kindergarten school year. ■■■■ attended PVS as a first-grade student during the 2015-2016 school year. The following year ■■■■ attended PVS for second grade. ■■■■ has an allergy to tree nuts.

15. Prior to the start of ■■■■'s first-grade year, Respondent called and spoke with ■■■■'s mother. During that telephone call, Respondent explained that she incorporated food in her classroom. At this mention, ■■■■'s mother first raised ■■■■'s severe tree nut and sesame seed allergy. ■■■■'s mother advised Respondent that ■■■■ would probably stay home if the parents were told walnuts were going to be used in the face-to-

face classroom exercise. ██████'s mother offered to bring in other equivalent materials when food was to be used in the classroom.

16. In September 2015, at the first face-to-face classroom meeting, ██████'s parents spoke with Respondent, and reaffirmed ██████'s tree nut allergy. ██████'s parents renewed their offer to supply equivalent things for ██████ to use when food was to be used in the classroom curriculum.

17. On October 6, 2015, Respondent entered school counselor Balladin's office and noticed an EpiPen. In her discussion with Ms. Balladin, when told the EpiPen was ██████'s, Respondent said the EpiPen could not be ██████'s because it was an adult, expired EpiPen. Ms. Balladin directed Respondent to telephone ██████'s mother about the EpiPen left in Ms. Balladin's office. Respondent confirmed she spoke with ██████'s mother as directed. Respondent recorded the conversation in the PVS computer system as "[Respondent] called ██████ to inform that they [██████'s parents] had left [██████'s] peanut allergy pen in Ms. Balladin's office. Mom said she had a spare and would pick it up on Friday morning."

18. On December 8, 2015, ██████ and one other student were the only two students to participate in the face-to-face first-grade class at PVS. Towards the end of the class, Respondent provided each student with a "Christmas tree brownie still in the wrapper on the plate." Respondent told the students not to eat

the brownie until they checked with their respective mothers as it was close to lunch time.

19. Respondent walked the two students to the front office area of the school. When ██████'s mother saw ██████, she noticed that ██████ had a partially eaten brownie. ██████'s mother noticed there was no wrapper to the brownie and she asked Respondent about it. ██████'s mother wanted to know the brand to purchase it. Respondent admitted that she read the label of ingredients on the box before she purchased the brownie treats, and she did not think it would harm ██████.

20. ██████'s family left PVS to drive home, which was an hour or more away from PVS. Shortly after the family left PVS, ██████ became ill, frequently vomiting into a bucket on the way home. ██████'s parents reported the illness to PVS.

21. The brownie given to ██████ came from a box labeled "Christmas Tree Brownies [by] Little Debbie." The brownies were Christmas tree shaped with green icing and small edible "candy toppers" on top. The box contained a list of more than 15 ingredients and also contained the following:

ALLERGY INFORMATION: CONTAINS WHEAT, SOY,  
MILK, EGG.  
MAY ALSO BE PRESENT IN THIS PRODUCT:  
PEANUTS, TREE NUTS.

22. Respondent thought the brownie was safe for ██████ It was not. Respondent initially testified that she did not receive

any training from the school about how to deal with students' allergies, but then immediately claimed she obtained allergy training three months after this December 8 event. The source of that training was unclear.

23. The evidence regarding the tree nut allergy issue was established through clear and convincing evidence: Respondent provided a food product that contained tree nuts to ██████, a student who was known to have a tree nut allergy.

#### CONCLUSIONS OF LAW

24. The Division has jurisdiction over the subject matter of and the parties to this action pursuant to sections 120.569 and 120.57(1), Florida Statutes.

25. The Education Practices Commission (EPC) certifies and disciplines teachers in Florida. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

26. Clear and convincing evidence has been said to require:

[T]hat the 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)).

27. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); see Camejo v. Dep't of Bus. & Prof'l Reg., 812 So. 2d 583, 583-84 (Fla. 3d DCA 2002); McClung v. Crim. Just. Stds. & Training Comm'n, 458 So. 2d 887, 888 (Fla. 5th DCA 1984) ("[W]here a statute provides for revocation of a license the grounds must be strictly construed because the statute is penal in nature. No conduct is to be regarded as included within a penal statute that is not reasonably proscribed by it; if there are any ambiguities included, they must be construed in favor of the licensee." (citing State v. Pattishall, 126 So. 147 (Fla. 1930))).

28. The grounds proven in support of Petitioner's assertion that Respondent's license should be disciplined must be those specifically alleged in the AAC. See e.g., Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Cottrill v. Dep't of Ins., 685 So. 2d 1371 (Fla. 1st DCA 1996); Kinney v. Dep't of State, 501 So. 2d 129 (Fla. 5th DCA 1987); Hunter v. Dep't of

Prof'l Reg., 458 So. 2d 842 (Fla. 2d DCA 1984). Due process prohibits Petitioner from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instruments, unless those matters have been tried by consent. See Shore Vill. Prop. Owners' Ass'n, Inc. v. Dep't of Env'tl. Prot., 824 So. 2d 208, 210 (Fla. 4th DCA 2002); Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

29. Count 1 of the AAC seeks to discipline Respondent on charges that she violated section 1012.795(1)(g) for having been found guilty of personal conduct that seriously reduced her effectiveness as an employee of the district school board. Petitioner failed to produce clear and convincing evidence that Respondent was guilty of Count 1. Based on the testimony, Respondent taught at Traviss during the 2013-2014 school years, and then transferred to PVS for the 2014-2015 and 2015-2016 school years. At the end of the 2015-2016 school year, Respondent retired.

30. Count 2 of the AAC alleges that Respondent violated section 1012.795(1)(j) for violating Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules. Count 2 is derivative of the rule violations charged in Counts 3 and 4.

31. Count 3 of the AAC alleges a violation of Florida Administrative Code Rule 6A-10.081(2)(a)1, for failure to "make

reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety." Petitioner proved by clear and convincing evidence that Respondent provided a food product that contained tree nuts to █████, a student who was known to have a tree nut allergy.

32. Count 4 of the AAC alleges Respondent violated Florida Administrative Code Rule 6A-10.081(3)(e) by intentionally exposing a student to unnecessary embarrassment or disparagement. Petitioner failed to produce clear and convincing evidence that any student was exposed to unnecessary embarrassment or disparagement.

33. Section 1012.795 provides in pertinent part the following:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right

to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

\* \* \*

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

34. Rule 6A-10.081 provides in pertinent part the following:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

\* \* \*

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

(a) 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.

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

35. Section 1012.796 provides in pertinent part the following:

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. 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.
2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.
4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
5. Satisfactorily perform his or her assigned duties in a competent, professional manner.
6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

36. Florida Administrative Code Rule 6B-11.007(1) and (2) sets out the penalty guidelines for statutory and rule violations. Each penalty specified in the guidelines also includes "probation," "Recovery Network Program," "letter of reprimand," "restrict scope of practice," "fine," and "administrative fees and/or costs" with applicable terms thereof as additional penalty provisions. The most appropriate range of discipline for Respondent's conduct is set out in rule 6B-11.007(2)(i)22: probation to revocation for "Other violations of the Principles of Professional Conduct and the F.A.C."

37. Petitioner contends, based on a finding that Respondent was guilty of all four counts in the AAC, that a "five-year

suspension to be followed by a two-year period of probation" with terms and conditions set by the Education Practices Commission is the appropriate discipline. Petitioner asserts that the "five-day suspension, verbal warning and written reprimand, and previous Education Practices Commission sanctions," are in Respondent's record. Further, Petitioner points to an aggravating factor that Respondent "refuses to acknowledge her misconduct and is unapologetic . . . [and] places blame on everyone else and simply is not credible."

38. Rule 6B-11.007(3) authorizes the EPC to deviate from the routine range of penalties upon consideration of aggravating and mitigating factors listed (a) through (t). It must be noted that subsection (e) considers the number of times the educator has been disciplined by the Commission, which in this instance is once.<sup>4/</sup> The five-day suspension, verbal warning, and written reprimand were administered from either the PCSD or the individual school at which Respondent was serving at the time. As such, consideration of one prior Commission discipline is appropriate. Respondent is found guilty of Count 3, as it relates solely to her having provided the brownie to [REDACTED] and, in turn, Count 2.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission

enter a final order finding Respondent guilty of Counts 2 and 3 in the Amended Administrative Complaint, suspending her educator certificate for 18 months, placing her on probation for two years with conditions to be determined by the Education Practices Commission, and dismissing Counts 1 and 4.

DONE AND ENTERED this 20th day of February, 2018, in Tallahassee, Leon County, Florida.



---

LYNNE A. QUIMBY-PENNOCK  
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 20th day of February, 2018.

ENDNOTES

<sup>1/</sup> In the Amended Administrative Complaint (AAC), Count 4, Petitioner cited rule 6A-10.081(3)(e) with the following description: "in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement." The numbered citation is incorrect: the correct citation is rule 6A-10.081(2)(a)5., however the language used put Respondent on actual notice of the charge against her. Respondent did not object to the prior rule language being used in either the Administrative Complaint (AC), the AAC, or at the hearing.

<sup>2/</sup> Exhibits 6 and 30 were initially entered into evidence; however, during the course of the hearing Petitioner withdrew these two exhibits.

At hearing Respondent provided the actual box that the brownie treat came in, and it was admitted as Petitioner's Exhibit 32.

Petitioner's PRO reflects Exhibits 35A and 35B were admitted. This is in error as 35A and 35B reflect the additional page numbers to composite Exhibit 19.

<sup>3/</sup> On January 24, 2018, the deposition transcript of Virginia Irene Young was filed with the Division. A thorough review of the hearing transcript reflects that this deposition transcript was not admitted into evidence either during the hearing or as a late-filed exhibit. On January 30, the court reporter who filed the deposition, advised that it had been filed in error. The deposition has not been reviewed.

<sup>4/</sup> The EPC's Final Order reflects Respondent Virginia Bryan Martin. The underlying Recommended Order, at paragraph one of the Findings of Facts, reflects Ms. Young's certificate No. 624273, the only indication that Ms. Martin and Ms. Young are the person.

COPIES FURNISHED:

Gretchen Kelley Brantley, Executive Director  
Education Practices Commission  
Department of Education  
Turlington Building, Suite 316  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

Mark Herdman, Esquire  
Herdman & Sakellarides, P.A.  
Suite 110  
29605 U.S. Highway 19 North  
Clearwater, Florida 33761  
(eServed)

Ron Weaver, Esquire  
Post Office Box 770088  
Ocala, Florida 34477-0088  
(eServed)

Matthew Mears, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

Marian Lambeth, Bureau Chief  
Bureau of Professional  
Practices Services  
Department of Education  
Turlington Building, Suite 224-E  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

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  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, as Commissioner  
of Education,

Petitioner,

vs.

Case No.: 17-4828PL

VIRGINIA YOUNG,

Respondent.

---

**RESPONDENT'S EXCEPTION TO THE RECOMMENDED PENALTY**

The Respondent takes Exception to the Recommended Penalty set forth in the Recommended Order. The recommended disposition of an eighteen month suspension followed by two years of probation is excessive, and inconsistent with prior actions taken by EPC for similar situations.

Respectfully submitted,

/s/ Mark Herdman

Mark Herdman  
Herdman & Sakellarides, P.A.  
29605 U.S. Hwy 19 North, Suite 110  
Clearwater, Florida 33761  
(727) 785-1228  
(727) 786-4107 (Fax)  
Florida Bar No.: 602566  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent via email to Ron Weaver, Esq., this 7<sup>th</sup> day of March, 2018.

/s/ Mark Herdman