

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CLAYTON ALLEN,)
)
 Petitioner,)
)
 vs.) Case No. 09-0343
)
 JEANINE BLOMBERG, AS)
 COMMISSIONER OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A final hearing was held in this case on April 17, 2009, before Carolyn S. Holifield, Administrative Law Judge of the Division of Administrative Hearings, by video teleconference at sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: Clayton R. Allen, pro se
1669 Jersey Drive
Fayetteville, North Carolina 28314

For Respondent: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for a Florida educator's certificate should be denied for the reasons set forth in the Notice of Reasons dated November 15, 2007.

PRELIMINARY STATEMENT

On November 15, 2007, Respondent, Jeanine Blomberg, then Commissioner of Education, issued a Notice of Reasons advising Petitioner, Clayton R. Allen ("Petitioner"), that the Department of Education ("Department") intended to deny his application for a Florida Educator's Certificate.¹ The Notice of Reasons indicates that the Department's intended denial was based on Petitioner's misappropriating chorus funds during the 2004-2005 school year, while he served as a chorus faculty advisor. The Notice of Reasons also stated that Petitioner's alleged conduct was evidenced by his: (1) forging the signatures of authorized signer(s) on chorus checks; (2) writing a check on the chorus account in excess of \$2,000.00 without sufficient funds available to cover the check²; (3) writing and cashing checks on the chorus account for his personal use; and (4) failing to maintain appropriate accounting records.

Based on the alleged conduct, the Notice of Reasons charged Petitioner with five statutory violations and three rule violations. Count 1 charges that Petitioner does not qualify for a Florida Educator's Certificate in that he does not have "good moral character" as required by Subsection 1012.56(2)(e), Florida Statutes (2007).³ Count 2 charges that Petitioner committed acts for which a teaching certificate can be revoked, and, thus, in accordance with Subsection 1012.56(11)(a), Florida

Statutes, is a basis for denying his application for certification.

Counts 3 and 4 set forth the statutorily proscribed acts with which Petitioner is charged. Count 3 charges that Petitioner violated Subsection 1012.795(1)(c), Florida Statutes, in that he has been found guilty of gross immorality or an act involving moral turpitude. Count 4 alleges that Petitioner violated Subsection 1012.795(1)(f), Florida Statutes, in that he has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

Count 5 charges that Petitioner is in violation of Subsection 1012.795(1)(i), Florida Statutes, in that he violated the Principles of Professional Conduct for the Education Profession ("Principles of Professional Conduct") prescribed by the State Board Rules. Counts 6, 7 and 8 charge Petitioner with specific rule violations of the Principles of Professional Conduct. Count 6 charges Petitioner with exploiting a relationship with a student for personal gain or advantage in violation of Florida Administrative Code Rule 6B-1.006(3)(h). Count 7 charges Petitioner with using his institutional privileges for personal gain or advantage in violation of Florida Administrative Code Rule 6B-1.006(4)(c). Finally, Count 8 charges Petitioner with failure to maintain honesty in

all professional dealings in violation of Florida Administrative Code Rule 6B-1.006(5)(a).

On January 18, 2008, Petitioner filed an Election of Rights form denying the allegations in the Notice of Reasons, seeking to discuss settlement of the case and requesting a formal hearing, if a settlement could not be reached. On January 20, 2009, Respondent transmitted the case to the Division of Administrative Hearings to conduct a formal hearing.

By notice issued February 12, 2009, the formal hearing in this case was scheduled for April 2, 2009. Pursuant to an Order issued March 26, 2009, Petitioner's request for a continuance was granted, and the hearing was rescheduled for April 17, 2009. The matter was transferred to the undersigned on April 14, 2009.

At hearing, Petitioner testified on his own behalf and offered and had nine exhibits received into evidence.⁴ Respondent called six witnesses and had two exhibits admitted into evidence.

The Transcript of the hearing was filed on May 4, 2009. At the conclusion of the hearing, proposed recommended orders were to be filed ten days after the Transcript was filed. Petitioner did not file any post-hearing submittals. Respondent timely filed its Proposed Recommended Order, which has been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Clayton R. Allen, began his teaching career when he was employed as a teacher by the Hillsborough County School Board for the 2003-2004 school year. Petitioner was assigned to Wharton High School, where he worked during the 2003-2004 school year and for most of the 2004-2005 school year. Petitioner's job performance for those two years was rated as satisfactory.

2. During the 2004-2005 school year, Petitioner worked as the director of the Wharton High School chorus and orchestra.

3. At all times relevant to this proceeding, the Wharton High School orchestra and the school's chorus each had a booster club. The Orchestra Booster Club and the Chorus Booster Club are composed of parents and volunteers who assist with the respective orchestra and chorus programs and help support fundraising activities.

4. The Orchestra Booster Club and the Chorus Booster Club are separate entities with separate checking accounts.

5. Laura Jean Raley, the parent of a student in the Wharton High School chorus, was the president and treasurer of the Chorus Booster Club during the 2004-2005 school year. During that time period, Ms. Raley, then known as Laura Bergen, was the only person authorized to write checks on the Chorus Booster Club checking account.⁵

6. The checks for the Chorus Booster Club were kept in the chorus/orchestra office at the school, which was used by Petitioner. Consequently, Petitioner had access to those checks.

7. At this proceeding, Ms. Raley, formerly Ms. Bergen,⁶ identified several checks from the 2004-2005 school year that were written on the Chorus Booster Club checking account. Even though her name was on the signature line of most of those checks, Ms. Raley testified credibly that she had not signed three of the above-referenced checks. The checks written on the Chorus Booster Club checking account which Ms. Raley, formerly Ms. Bergen, did not sign were Check Nos. 1123, 1127 and 1130. The first check (No. 1123), dated February 4, 2005, for \$184.00, was payable to Quality and Plus Cleaners; the memo section of the check indicates that the payment was for "chorus dresses." The second check (No. 1127), dated March 10, 2005, for \$40.00, was payable to the Florida Vocal Association. The third check (No. 1130), dated April 21, 2005, for \$300.00, was payable to Clayton Allen; the memo section of the check indicated that the payment was for a "refund."

8. Although not authorized to do so, Petitioner wrote and signed "L. Bergen" on each of the three checks on the Chorus Booster Club checking account described in paragraph 7. Check No. 1123 and Check No. 1127, payable to Quality and Plus

Cleaners and to the Florida Vocal Association, respectively, were for chorus-related expenses and appear to have been deposited into the accounts of those payees.⁷

9. Check No. 1130, for \$300.00, was written to and signed and endorsed by Petitioner. Although the check indicated the payment was for a "refund," no documentation or explanation was offered regarding the reason for the refund or if the \$300.00 was, in fact, for a refund.

10. Nancy Johnson was the president and/or treasurer of the Wharton Orchestra Booster Club in the 2003-2004 school year. During the 2003-2004 school year through about May 9, 2005, Ms. Johnson was the only person authorized to sign checks on the Orchestra Booster Club checking account.

11. At the end of the 2003-2004 school year, when Ms. Johnson's tenure as an officer in the Orchestra Booster Club ended, Ms. Johnson gave Petitioner all the checkbooks for the Orchestra Booster Club checking account.⁸

12. On or about May 9, 2005, both Petitioner and Ms. Johnson went to the bank to change the authorized signer on the Orchestra Booster Club checking account. At that time, Ms. Johnson was removed as the authorized signer on the Orchestra Booster Club checking account, and Petitioner was put on the account as the authorized signer.⁹

13. During the 2004-2005 school year, Petitioner had planned to take members of the orchestra on a field trip to Orlando, Florida, in the spring of 2005. Not long before the scheduled field trip, Petitioner determined that additional funds were needed for transportation to Orlando.¹⁰

14. During the 2004-2005 school year, B.F. was about 16 years old and a student at Wharton High School. B.F. was in the school's orchestra, in Petitioner's orchestra class, and was also Petitioner's student assistant for one class period a day.

15. Prior to the date the students were to go on the field trip, B.F. became aware that additional funds were needed in order for the orchestra members to go on the field trip. B.F. wanted to help out and, to that end, willingly gave Petitioner \$2,250.00 in cash, from his (B.F.'s) personal savings account, as a loan to help with the cost of the orchestra's field trip to Orlando.¹¹

16. Prior to giving Petitioner the \$2,250.00, B.F. never discussed or disclosed to his parents that he was providing the \$2,250.00 loan. B.F. wanted "to keep it [the loan] real discreet," because he knew his parents would not have approved.

17. On or about April 23, 2005, the night that the students returned from the field trip, Petitioner gave B.F. a check for \$2,250.00 as repayment for the loan. The check was written on the Wharton High School Orchestra Booster Club

account at AmSouth Bank and was made payable to B.F. On the signature line of the check, Petitioner signed the name "Nancy Johnson," because at that time, Ms. Johnson was the authorized signer of the account.

18. A few days after receiving the \$2,250.00 check from Petitioner, B.F. went to AmSouth Bank and presented the check for payment. However, when he presented the check, there were insufficient funds in the Orchestra Booster Club checking account to pay the check, so payment was declined.

19. In or about early May 2005, after B.F. was unable to cash the \$2,250.00 check, his parents became aware that he had made the loan to Petitioner. Soon thereafter, B.F.'s mother contacted George Gaffney, then principal of Wharton High School. B.F.'s mother complained that: (1) Petitioner had given B.F. a check as repayment for the \$2,250.00 loan to help cover the transportation cost of the field trip to Orlando; and (2) the check could not be cashed, because there were insufficient funds in the account on which the check had been written.

20. On or about May 2, 2005, Mr. Gaffney reported the complaint made by B.F.'s mother to Linda Kipley, the general manager of Professional Standards for the Hillsborough County School District ("School District"). Ms. Kipley then initiated an investigation of the complaint and assigned two School District investigators, Kamir Ode and Andrew Rouleau, to assist

with the investigation. That same day Ms. Kipley also began to work with Mr. Gaffney to remove Petitioner from his assigned classroom duties.

21. Ms. Kipley met with Petitioner on or about May 7, 2005, and informed him that she had initiated an investigation of the complaint made by B.F.'s mother. On or about this same day, Petitioner was no longer allowed to continue his teaching responsibilities at Wharton High School.

22. On May 11, 2005, Investigator Ode, the lead investigator in the case, interviewed Petitioner about the allegations related to the \$2,250.00 check. Investigator Rouleau was present during the entire interview and heard the questions asked by Investigator Ode, Petitioner's responses to those questions, and the admissions made by Petitioner.

23. During the May 11, 2005, interview, Petitioner made several admissions which substantiate the findings in paragraphs 15, 17 and 18 above. Petitioner also admitted that while employed at Wharton High School, he "borrowed" money from the booster club checking accounts for his personal expenses (i.e., to pay bills), but always repaid the money.¹² According to Petitioner, he was able to obtain the money by writing checks to himself on the booster club accounts.

24. Upon completion of the School District's investigation, a written investigative report was prepared and submitted to Ms. Kipley.

25. According to the investigative report, based on his findings, Investigator Ode referred the matter to local law enforcement officials. On May 23, 2005, the Hillsborough County Sheriff arrested Petitioner and charged him with the following: (1) four counts of forgery; (2) four counts of uttering a forged instrument; (3) one count of petty theft; and (4) one count of grand theft.

26. On May 23, 2005, after Petitioner was released from custody, he met with Ms. Kipley, who advised him that the School District was aware of his arrest and of the criminal charges against him. During that meeting, Petitioner resigned his position with the School District in lieu of being terminated.

27. During the School District's investigation of the complaint against Petitioner, Mr. Gaffney paid B.F. the \$2,250.00 he (B.F.) had loaned Petitioner for the field trip from the Wharton High School Internal Fund.

28. In State of Florida vs. Clayton Allen, Hillsborough County Criminal Division Case No.: 05-10057, Petitioner was charged with Forgery (four counts), Uttering a Forged Instrument (four counts), Petit Theft and Grand Theft.¹³

29. On or about April 17, 2006, Petitioner entered into a Pre-Trial Intervention Agreement ("Agreement") with the State Attorney in Hillsborough County, Florida ("State Attorney"). The Agreement related to the charges described in paragraph 25 above. Pursuant to the Agreement, by virtue of Petitioner's acceptance into the State Attorney's Pre-Trial Intervention Program, prosecution of the criminal case was deferred for 18 months.

30. On April 18, 2006, the day after Petitioner was accepted into the Pre-Trial Intervention Program, the State Attorney closed the file on all counts in Petitioner's criminal case.

31. Under the terms and conditions of the Agreement, Petitioner was required to do (among other things) the following: (1) pay restitution in the amount of \$2,250.00; (2) perform 50 hours of community service; and (3) be either gainfully employed or enrolled in school while in the Pre-Trial Intervention Program. Finally, according to the Agreement, "should the Defendant [Petitioner] fully meet the terms and conditions of this Agreement, the charges referred to herein shall be dismissed."

32. Petitioner was never prosecuted for or convicted of any of the offenses for which he was charged. Accordingly, it is reasonably found that Petitioner "fully [met] the terms and

conditions of [the] Agreement," including: (1) paying restitution in the amount of \$2,250.00; and (2) enrolling in school.

33. With regard to the restitution, it is reasonably found that the restitution was paid to Wharton High School since B.F. had been previously paid the \$2,250.00 from the school's internal fund.

34. In accordance with the education or employment requirement in the Agreement, while in the Pre-Trial Intervention Program, Petitioner earned his master's degree in music from the University of South Florida.

35. In or about the summer of 2008, Petitioner enlisted in the U.S. Army and, at the time of this proceeding, was on active duty.

36. Except for the above-referenced charges and arrest, Petitioner has had no criminal record and has not been charged or convicted of any criminal offense.

37. At no time during this proceeding did Petitioner address or explain his conduct as it relates to: (1) his forging the names of authorized signers on the booster checking accounts; (2) his writing a check to B.F. for \$2,250.00 on the Orchestra Booster Club account when there were insufficient funds in the account; and (3) his admission during an interview with School District investigators (i.e., that he "borrowed"

money from the booster club accounts to pay personal bills). In fact, during cross-examination of Petitioner by Respondent's counsel, Petitioner's responses to questions regarding the above issues were either evasive or not credible.

38. Despite the conduct in which Petitioner engaged and to which he admitted during the School District investigation, Petitioner never accepted responsibility or expressed remorse for his conduct.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. See § 120.57(1), Fla. Stat. (2008).

40. Section 1012.56, Florida Statutes, governs the issuance of teaching certificates and provides, in pertinent part, that to be eligible to seek certification, a person must, among other things, be of "good moral character." See § 1012.56(2)(e), Fla. Stat.

41. Subsection 1012.56(11), Florida Statutes, specifies the grounds upon which the Department of Education may deny an applicant a teaching certificate and provides, in part:

(11) DENIAL OF CERTIFICATE -

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the

Education Practices Commission would be authorized to revoke a teaching certificate.

42. Pursuant to Subsection 1012.795(1), Florida Statutes, the Education Practices Commission may revoke an educator's certificate where it can be shown that the person:

(c) Has been guilty of gross immorality or an act involving moral turpitude.

* * *

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

* * *

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

43. The terms "gross immorality" and "moral turpitude" are not defined in the referenced statute. § 1012.795, Fla. Stat. However, the definitions in Florida Administrative Code Rule 6B-4.009, which relate to the suspension and dismissal of teachers by school districts, are instructive.

44. Florida Administrative Code Rule 6B-4.009(2)¹⁴ defines "immorality" as follows:

Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or

disrespect and impair the individual's service in the community.

45. Florida Administrative Code Rule 6B-4.009(6),¹⁵ also applicable to suspensions and dismissals of instructional personnel, defines "moral turpitude" as follows:

Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

46. Florida Administrative Code Rule 6B-1.006¹⁶ contains the Principles of Professional Conduct and provides, in pertinent part, the following:

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

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

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

* * *

(h) Shall not exploit a relationship with a student for personal gain or advantage.

* * *

(4) Obligation to the public requires that the individual:

* * *

(c) Shall not use institutional privileges for personal gain or advantage.

* * *

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

(a) Shall maintain honesty in all professional dealings. . . .

47. As the party seeking the certification, Petitioner has the burden of proving by a preponderance of evidence that he satisfies the statutory requirements for a teaching certificate. Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). However, Respondent has the burden of establishing, by a preponderance of the evidence that the statutory and rule violations alleged in the Notice of Reasons are sufficient to warrant denial of the applications. Osborne Stern & Co., 670 So. 2d at 934.

48. In the instant case, the only eligibility criterion at issue is the requirement of "good moral character." Thus, to prevail, Petitioner must establish that he has good moral character. Petitioner has failed to meet this burden.

49. The preponderance of the evidence established that Petitioner's forged the authorized signer's names on booster club checks, "borrowed" money from those accounts, and wrote a

check for \$2,250.00 on the Orchestra Booster Club account when insufficient funds were in the account to pay the check. Such conduct clearly falls below accepted standards.

50. The Notice of Reasons charges Petitioner with specific statutory and rule violations which are the basis for denying Petitioner's application for an educator's certificate. The Department has met its burden with respect to those charges.

51. The preponderance of evidence established that Petitioner engaged in the conduct described in paragraph 49. By doing so, Petitioner is guilty of an act involving moral turpitude. See § 1012.795(1)(c), Fla. Stat.

52. The preponderance of evidence established that Petitioner's conduct involved forgery and misappropriation of funds belonging to organizations. Such dishonest conduct by Petitioner seriously reduces his effectiveness as a school board employee. See § 1012.795(1)(g), Fla. Stat.

53. The evidence established that Petitioner used his institutional privileges for personal gain or advantage in violation of Florida Administrative Code Rule 6B-1.006(4)(c).

54. The preponderance of evidence established that by forging his name on the school's booster club checking accounts and misappropriating funds from the booster club accounts, Petitioner violated Florida Administrative Code Rule

6B-1.006(5)(a) in that he failed to maintain honesty in all professional dealings.

55. The remaining charge in the Notice of Reasons alleging that Petitioner violated of Florida Administrative Code Rule 6B-1.006(3)(h) is not a proper basis for denying Petitioner's application because that violation was not sufficiently charged.

56. Although the Notice of Reasons made reference to the foregoing rule provision, it contained no specific factual allegations to support the alleged rule violations. See Trevisani v. Department of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Cottrill v. Department of Insurance, 685 So. 2d 1371 (Fla. 1st DCA 1996). Thus, the charge that Petitioner exploited a relationship with a student for personal gain or advantage in violation of Florida Administrative Code Rule 6B-1.006(3)(h), should be dismissed.

57. Petitioner failed to establish his good moral character by a preponderance of the evidence.

58. Respondent established by a preponderance of the evidence that Petitioner lacks "good moral character" required for certification as a teacher; that Petitioner committed acts, for which the Education Practices Commission would be authorized to revoke a teaching certificate; that Petitioner has been guilty of an act involving moral turpitude; that Petitioner has been guilty of personal conduct which seriously reduces his

effectiveness as an employee of the school board; and that Petitioner has violated the Principles of Professional Conduct, in that he used his institutional privileges for personal gain or advantage and also failed to maintain honesty in his professional dealings.

59. The standard of conduct to which prospective teachers are held is a high one. Teachers hold a position of great trust and are entrusted with the custody of children to educate and prepare them for life. Tomerlin v. Dade County School Board, 318 So. 2d 159, 160 (Fla. 1st DCA 1975). To fulfill this trust, the teacher must be of good moral character; to do otherwise would jeopardize the future of our children. Id. In this case, Petitioner failed to prove that he meets the "good moral character" criterion required for applicants seeking teacher certification.

60. Here, where the applicant fails to meet his burden of proving entitlement to certification, the Education Practices Commission:

[S]hall enter a final order . . . 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.

§ 1012.796(7), Fla. Stat.

61. Respondent's proposed penalty is to permanently bar Petitioner from applying for a teaching certificate. The rationale for recommending this most severe penalty is unclear as there are no aggravating circumstances present that warrant the recommended penalty.

62. No specific guidelines are provided concerning when, and if, applicants, who are denied educator's certificates, may reapply. However, the disciplinary guidelines established for certified educator's certification by the Commission and set forth in Florida Administrative Code Rule 6B-11.007 are instructive in determining the appropriate penalty in this case.¹⁷

63. Applying the factors set forth in Florida Administrative Code Rule 6B-11.007, an appropriate penalty in this case is denial of Petitioner's application for a teaching certificate with the provision that he may reapply for certification in three years.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusion of Law, it is

RECOMMENDED that the Education Practices Commission enter a final order:

(1) denying Petitioner's application for a teaching certificate; and

(2) allowing Petitioner to reapply for certification in three years.

DONE AND ENTERED this 31st day of July, 2009, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 2009.

ENDNOTES

^{1/} Neither the case file, nor the record in this proceeding, includes information or evidence regarding the date that Petitioner filed his application for a Florida educator's certificate. However, in light of the date the Notice of

Reasons was issued, the application for certification had to have been filed some time prior to November 15, 2007.

^{2/} This allegation mistakenly refers to "a check [written] on the chorus account," instead of correctly referring to a check as being written on the Orchestra Booster Club account. However, this inadvertent error is not fatal. The reason is that only one check in excess of a \$2,000.00 is at issue in this case, and there is no dispute that the subject check was written on the Orchestra Booster Club.

^{3/} All statutory references are to Florida Statutes (2007), unless otherwise noted.

^{4/} At hearing, the Department's Exhibit 2, the School District's Investigative Report, was accepted as a business record. Upon further consideration and review of the document, the undersigned has determined that Respondent's Exhibit 2 is not a business record within the meaning of Subsection 90.803(6)(a), Florida Statute (2008).

^{5/} There is no dispute that in 2004-2005, Laura Raley's name was Laura Bergen.

^{6/} See Endnote 5.

^{7/} During the course of the School District investigation, Petitioner indicated that he signed the check to Quality and Plus Cleaners, because he could not reach Ms. Bergen.

^{8/} According to statements in the School District's Investigative Report referenced in paragraphs 24 of the Findings of Fact, at the end of the 2003-2004 school year, when Ms. Johnson's tenure as an officer of the Orchestra Booster Club ended, she signed several blank checks for Petitioner to use for orchestra expenses until another signer was designated for the account.

^{9/} The School District's Investigative Report indicates that Petitioner stated that Ms. Johnson's name had remained on the account because he could not find anyone to replace her. The Investigative Report also indicates that the principal was aware of this situation.

^{10/} The School District's Investigative Report indicates that during its subsequent investigation, Petitioner stated that the additional funds were necessary because he had mistakenly

thought that school buses could be used for the trip, but later learned that charter buses would have to be used for the trip. The cost of the charter buses was over \$3,000.00, more than the cost of using school buses.

^{11/} B.F. testified that he "felt like it [lending the money] was an opportunity given to [him] from . . . chance or karma or whatever, just to do the right thing." Finally, B.F. testified that he had "faith and trust" in Petitioner's word and gave the money "willingly," because he "wanted to help out."

^{12/} No records or complete audit of the accounts were presented by either party to verify how many checks Petitioner wrote to himself on the booster club accounts, the amount of each check, and if, or when, the funds were repaid.

^{13/} State of Florida vs. Clayton Allen, Case Number:05-10057, In the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, Criminal Justice Division.

^{14/} The rulemaking authority for this rule is Subsection 1012.79, Florida Statutes.

^{15/} See Endnote 14.

^{16/} See Endnote 14.

^{17/} Florida Administrative Code Rule 6B-11.007(3)(a) through (t) states:

(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.

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.