

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH,)
AS COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-3006PL
)
RELLEN HOUSTON CLARK,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On August 17, 2009, a duly-noticed hearing was held in Starke, Florida, before Lisa Shearer Nelson, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154

For Respondent: Rellen Houston Clark, pro se
Post Office Box 177
Lawtey, Florida 32058

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent committed the acts alleged in the Administrative Complaint and if so, what penalties should be imposed?

PRELIMINARY STATEMENT

On June 3, 2009, Dr. Eric Smith as Commissioner of Education filed an Administrative Complaint against Respondent, Rellen H. Clark, alleging violations of Section 1012.795(1)(d) and (j),

Florida Statutes (2006); Florida Administrative Code Rule 6B-1.006(3)(a), (d), and (f); and Florida Administrative Code Rule 6B-1.006(5)(a) and (h). Respondent disputed the allegations and requested a hearing pursuant to Section 120.57(1), Florida Statutes. On June 3, 2009, the matter was referred to the Division of Administrative Hearings for assignment of an administrative law judge.

On June 17, 2009, a Notice of Hearing was issued scheduling the case for August 17, 2009. On August 10, 2009, Respondent filed a Request to Dismiss Administrative Complaint. On August 12, 2009, Petitioner filed a Motion Requesting that Witness, Karl E. Wendell Testify at a Later Date. At hearing, Respondent's Motion to dismiss was considered and Respondent was advised that, while the Administrative Law Judge could make a recommendation to the Education Practices Commission, she did not have the authority to dismiss the Administrative Complaint. Respondent was also advised that the factual assertions in her motion would need to be supported by evidence presented at hearing. After review of the evidence presented at hearing, Respondent's Motion to Dismiss Administrative Complaint is denied.

Petitioner presented the testimony of Richard Ezzell, Barbara Johns, Verdell Long, and Dr. Vivian Haynes. Petitioner's Exhibits 1A, 1B, and 2 were admitted into evidence. Respondent

testified on her own behalf and Respondent's Exhibit 1 was marked and received.

Petitioner elected not to present the testimony of Karl Wendell, the subject of the Petitioner's motion, noted above. Respondent had also wished to call Mr. Wendell, who was unable to appear due to a job interview in Orlando, Florida. The record was left open for ten days in order to allow the parties to file a Status Report regarding whether there was a stipulation relating to Karl E. Wendell or if the parties needed to take his deposition to preserve his testimony. Respondent also requested, at the close of evidence, to make statements regarding matters that were not the subject of testimony or documentary evidence presented at hearing. Respondent was reminded that the opportunity to present testimony was at the hearing.

On August 25, 2009, Respondent filed a Motion Requesting Acceptance of Statements Pertaining to Witness Karl E. Wendell for the Hearing dated August 17, 2009. On August 26, 2009, Petitioner filed a Response to Respondent's Motion Requesting Acceptance of Statements Pertaining to Witness Karl E. Wendell and a Motion to Strike. On August 26, 2009, the undersigned issued an Order denying Respondent's motion because it contained statements regarding matters involving Karl Wendell, as opposed to an affidavit by Mr. Wendell or stipulation of fact between the parties. Furthermore, the motion had attached to it several documents not presented at the hearing. On August 26, 2009,

Respondent also filed a letter confirming LEA for Believer's School of Learning was filed.

On September 4, 2009, Petitioner filed a Continuing Objection to Respondent's Post-hearing Submissions and Motion to Strike. That same day, Respondent filed a Motion to Set Aside Order Denying Respondent's Request to Accept the Statement Pertaining to Karl Wendell for Hearing August 17, 2009. Respondent's Motion to Set Aside is denied. The documentation submitted post hearing has not been considered in the preparation of this Recommended Order.

On September 8, 2009, Respondent filed a Motion Requesting a New Administrative Law Judge. The motion requested an administrative law judge who has the authority to dismiss the case against her. By Order dated September 29, 2009, the motion was denied as untimely. See § 120.665, Fla. Stat. Moreover, as stated in the Order, all administrative law judges at the Division, not simply this administrative law judge, have recommended order authority as opposed to final order authority with respect to disciplinary cases prosecuted by Petitioner. § 120.57(1), Fla. Stat.

The proceedings were recorded and the Transcript was filed with the Division on August 28, 2009. At the request of the parties, the time for submission of proposed recommended orders was extended to September 30, 2009. Both parties timely submitted post-hearing proposals, and they have been carefully

considered in the preparation of this Recommended Order. All references to the Florida Statutes are to the 2005 codification unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner is the head of the state agency responsible for certifying and regulating public school teachers in the State of Florida.

2. At all times relevant to these proceedings, Respondent has been licensed in the fields of elementary education and exceptional student education. Her Florida education certificate number is 840291. Her certificate expires on June 30, 2010.

3. Respondent was employed by the Bradford County School District from 1994 to 1996, from 1998 to 2001, and finally from 2004 to 2007. She has worked as a substitute teacher, a parent specialist, and a teacher of varying exceptionalities. At the time of the events alleged in the Administrative Complaint, Respondent was the principal and teacher at Believer's School of Learning (Believer's School) in Bradford County School District.

4. Believer's School was a charter school, for grades K-3, meant to give alternatives to traditional public school. Charter schools fulfill various purposes such as improving student learning and increasing learning opportunities. With respect to the Believer's School, a special emphasis was placed on low-performing students and reading.

5. An "exceptional student" is defined by Section 1003.01(3)(a), Florida Statutes, as:

[A]ny student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e).

6. Respondent had Exceptional Student Education (ESE) students in her school.

7. Believer's School was required to follow federal and state guidelines with respect to ESE students. Those requirements include keeping complete, current and accurate records with respect to exceptional education students. These recordkeeping requirements are required by federal and state law and are necessary for the school system of Bradford County, of which Believer's School was a part, to remain eligible for federal and state funds allocated to pay costs associated with educating exceptional students.

8. In accordance with Florida Administrative Code Rule 6A-6.03028(3), Respondent was required to prepare an Individual Education Plan (IEP) for each ESE student attending Believer's school. Rule 6A-6.03028(3) states:

(3) IEP Requirements. An IEP or individual family support plan (IFSP) must be developed, reviewed, and revised for each eligible student or child with a disability served by a school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, in accordance with this rule. Parents are partners with schools and school district personnel in developing, reviewing, and revising the IEP for their student.

9. An IEP is necessary to evaluate the student's educational level, to establish short and long-term educational objectives, to develop alternative ways to accomplish those objectives, and to record the progress of the plan and establish a means for review of the student's educational progress.

10. The proper preparation and maintenance of an IEP is a basic responsibility of the Respondent for exceptional education students at Believer's School. An improperly prepared IEP is potentially harmful to the learning of an ESE student because services and accommodations must be listed on the student's IEP before they can be provided.

11. IEP's are created by an IEP Team during a meeting involving the parties as set out in Florida Administrative Code Rule 6A-6.03028(3)(c) as follows:

(c) IEP Team participants. The IEP Team, with a reasonable number of participants, shall include:

1. The parents of the student;
2. Not less than one (1) regular education teacher of a student with a disability...
3. Not less than one (1) special education teacher of the student, or where appropriate, not less than one special education provider of the student;
4. A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district. . .
5. An individual who can interpret the instructional implications of evaluation results who may be a member of the IEP Team as described in subparagraphs (3)(c)3., or (3)(c)4., of this rule; . . .

12. Upon completion, the IEP is signed by the regular education teacher, the ESE teacher, the local education agency (LEA), and the parent or guardian of the student.

13. The LEA is ultimately responsible for what goes into the IEP. If something is in the IEP it is because the LEA determined that it was feasible to carry out.

14. The ESE teacher examines the psycho-educational reports and the specialized needs of the student. He or she often provides strategies to the regular education teacher to use with the ESE student.

15. The regular education teacher is the most familiar with the curriculum being used for the student's grade level. He or she provides insight as to how that curriculum can be adapted for the ESE student.

16. Members of the IEP Team for an ESE student are supposed to be teachers and individuals associated with the student's current grade level and involved in the student's education, in order to provide accurate curriculum and services for the student.

17. The IEP Team is supposed to review the child's test scores or have access to the child, know about the curriculum being used, and what types of accommodations an ESE student of the particular grade level would need.

18. By signing the IEP, the individual team members are stating they met to discuss the ESE student, to develop goals and objectives and services for the student, and that they will follow up on making sure those goals and objectives are met.

19. IEP's are updated on an annual basis. The annual IEP conference is mandatory, and failure to provide such a conference is a violation of federal, state, and School Board rules and policies. Failure to hold such a conference deprives the parents of the exceptional student any meaningful participation in determining the student's educational goals and may deprive the child of the assistance to which he or she is entitled. It also

jeopardizes continued state and federal funding of the School Board's exceptional education program.

20. Respondent was instructed, as were other teachers of exceptional students in the school district, that every IEP must be reviewed at least once a year through an annual IEP conference. Respondent was trained in how to prepare IEPs by the Bradford County School District on July 19, 20, and 21, 2005.

21. Florida Administrative Code Rule 6A-6.03028(3)(b) requires that the school notify parents of an ESE student that an IEP meeting is scheduled prior to the IEP Team Meeting taking place. This notification is more than a formality; it is meant to insure meaningful participation by parents or guardians in the IEP process. Rule 6A-6.03028(3)(b) states as follows:

(b) Parental participation in meetings. Each school district shall establish procedures that provide the opportunity for one or both of the student's parents to participate in meetings and decisions concerning the IEP for the student. Parents of each student with a disability must be members of any group that makes decisions on the educational placement of their student. Procedures to ensure participation in meetings shall include the following:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.
3. A written notice of the meeting must be provided to the parents and must indicate the purpose, time, and location of the meeting, and who, by title or position, will be attending. . . .

* * *

6. A meeting may be conducted without a parent in attendance if the school district is unable to obtain the attendance of the parents. In this case, the district must have a record of its attempts to arrange a mutually agreed on time and place, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to the parents and any responses received; and
- c. Detailed records of visits made to the parents' home or place of employment and the results of those visits.

22. To comply with Rule 6A-6.03028(3)(b), it is Bradford County School District's policy to send out a Parent Notification Form 10 days prior to an IEP team meeting. A few days after the first notification was sent, a second notification is sent to the parent. After the two written notifications are sent, a phone call is made to the parent of the ESE student.

23. Student S.B. began school in the Bradford County School District when she was in pre-K. She was identified as a student with developmental disabilities. In 2005, she was living in Richmond, Virginia, and found to be eligible for exceptional education services as a student with a developmental disability. Upon return to Florida, S.B. was enrolled in Southside Elementary on March 17, 2005. In May 2005, an IEP team met, determined that S.B. was a student with specific learning disabilities, and developed an IEP outlining the services required for S.B. Without those services, S.B. would not receive a free appropriate public education as contemplated under the Individuals with

Disabilities Education Act (IDEA), or Florida law regarding the provision of exceptional education.

24. IEPs for exceptional education students are required to be completed every year before the prior year's IEP expires. S.B.'s next IEP was due on May 17, 2006.

25. On February 13, 2006, S.B. enrolled in Respondent's charter school, Believer's School of Learning, approximately three months before S.B.'s next IEP was due. There was apparently some delay in providing S.B.'s May 2005 IEP to Respondent, but the length of the delay is unclear.

26. In order for a school district to receive the extra funding for its ESE students all the ESE students' IEP's must be current by "FTE week." FTE week is when the schools determine a final head count of all the students that are in attendance.

27. The FTE week for Bradford County School District in 2006 was October 13, 2006. All the ESE students within the school district had to have their IEPs in by that date or the schools would not receive the extra funding associated with that student. If S.B.'s IEP was not turned in before October 13, 2006, Believer's School would have only received its normal funding only instead of the additional ESE funding.

28. As of the last week of September 2006, Respondent had not completed the IEP for S.B. In late September, Respondent called Verdell Long, and asked for some assistance in preparing an IEP for a third grader. On September 28, 2006, Respondent met

with Verdell Long, at Bradford County High School, during Ms. Long's lunch break, for assistance with preparing an IEP for a third grader at her charter school.

29. Verdell Long was a high school teacher at Bradford County High School who had worked with ESE students, with a focus on mental retardation from grades K-12. She had assisted Respondent with IEPs in the past. She understood that she was assisting with a "sample" IEP to be used as a model. However, it was Respondent's intention to use the product created as an IEP for the student S.B.

30. The day of the meeting Verdell Long's computer was not working so she could not access the IEPs she had on file. She asked another high school teacher, Dr. Vivian Haynes to assist in the meeting.

31. Dr. Haynes was an ESE teacher at Bradford County High School in September 2006. She was very experienced with preparing and writing IEPs, having just completed a doctoral dissertation which included copies of third and fifth grade IEPs. Dr. Haynes had not previously met Respondent.

32. Dr. Haynes brought several blank "dummy" IEPs with her to the meeting in order to have examples to show Respondent.

33. The IEP prepared at the meeting included the various components of an IEP, such as the measurable goals and objectives for a third grader, but did not include the demographic

information on any student. The document prepared at the meeting did not have a student's name or test scores on it anywhere.

34. Respondent did not bring the student S.B. or her test scores with her to the meeting. However, neither Ms. Long nor Dr. Haynes expected to see individualized information because they did not understand that an IEP for an actual child was being prepared.

35. Verdell Long signed the IEP as the ESE teacher, Dr. Vivian Haynes signed as the LEA, and Respondent signed as the regular education teacher.

36. Neither Verdell Long nor Dr. Vivian Haynes was contracted with Believer's School by the Bradford County School District to provide services as an LEA representative or an ESE teacher.

37. Both Verdell Long and Dr. Vivian Haynes believed the purpose of the meeting was to construct a model IEP in order to assist Respondent with properly preparing an IEP for an ESE student. Neither expected the document created at their meeting to be submitted as an actual IEP for S.B., or any other student, and neither considered the meeting to be an IEP team meeting.

38. Neither Verdell Long nor Dr. Vivian Haynes was shown a Parent Notification Form indicating that their meeting was to be an IEP team meeting. Neither would have signed the IEP if they had seen such a form because they did not believe that an IEP team meeting was being conducted.

39. After the meeting on September 28, 2006, Respondent took the IEP form prepared with the help of Ms. Long and Dr. Haynes, and inserted information specific to S.B. She then submitted the form as S.B.'s IEP and turned in to the Bradford County School District.

40. Submitted with the IEP form was a document which purported to be the Notification of Meeting Form for the IEP team meeting. Only one notification is referenced. The form was dated September 15, 2006, and identified Dr. Vivian Haynes and Verdell Long as participants in the meeting, notwithstanding Respondent's acknowledgement that she did not meet Dr. Haynes until September 28, 2006, and did not know until that time that Dr. Haynes would be participating in the meeting. The form also indicated that the IEP meeting would take place at the Believer's School, as opposed to the Bradford County High School, where the meeting between Respondent, Ms. Long and Dr. Haynes took place. There is no other indication of other attempts of notification. The signature line reserved for a parent or legal guardian is signed by a Rudolph Williams and dated September 29, 2006, the day after the meeting took place. Respondent claims that Mr. Williams is S.B.'s stepfather. However, there is nothing in the Bradford County School District's records to indicate that Mr. Williams is a parent or legal guardian of S.B., and school district officials were not aware of anyone by that name living in the home.

41. By her own admission, Respondent did not keep "official records" for any of her students, including ESE students. She was not particularly concerned with who signed the IEP, because she apparently considered it to be simply a matter of paperwork to be filed with the School District. In her view, the person responsible for ensuring that a child is receiving the appropriate education is her teacher, regardless of the directives in the IEP. She felt that some of the things identified as required simply could not be done at a school her size. She did not consider the role of the LEA and the ESE teacher on the IEP to be all that important. To her, the real responsibility for the child's education lay with the teacher who worked with her on a daily basis.

42. S.B. was later withdrawn from Believer's School and now attends Starke Elementary School. Believer's School has since closed and is no longer operating as a charter school.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2009).

44. Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v.

Osborne Sterne & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

45. Clear and convincing evidence:

requires that 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 lacking in confusion as to the facts at issue. The evidence must be of such a 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. 797, 800 (Fla. 4th DCA 1983).

46. Section 1012.795(1), Florida Statutes, gives the Education Practices Commission the power to suspend or revoke the teaching certificate of any person, or to impose any penalty provided by law, if he or she is guilty of certain specified acts.

47. The Administrative Complaint alleges the following facts:

3. In or around October 2006, the Respondent intentionally submitted a false or fraudulent Individualized Education Plan (IEP) for an exceptional student education (ESE) student without conducting a proper assessment or IEP meeting.

48. Clear and convincing evidence was presented to demonstrate Respondent met at Bradford County High school on September 28, 2006, with teachers Verdell Long and Dr. Vivian Haynes to prepare a mock IEP in relation to S.B., an ESE student

at Believer's School. Clear and convincing evidence was presented to demonstrate neither Verdell Long nor Dr. Vivian Haynes intended the IEP prepared at the meeting to be an actual IEP for student S.B. Furthermore, clear and convincing evidence was presented that neither Verdell Long nor Dr. Vivian Haynes had ever seen the Parent Notification Form indicating that their meeting was an IEP meeting, and neither would have signed the IEP if the Parent Notification Form had been shown to them at the meeting. Neither instructor believed that she was part of an IEP Team for an actual student. Finally, clear and convincing evidence was presented that a failure to properly prepare an IEP for a student could result in harm to the student's learning.

49. The Administrative Complaint alleges in Counts One and Two that Respondent's conduct violates Subsections 1012.795(1)(d) and (j), Florida Statutes, which provide:

(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:

* * *

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

* * *

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

50. Immorality and moral turpitude are both defined in Florida Administrative Code Rule 6B-4.009:

(2) 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 to the community.

(6) 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.

51. The Supreme Court of Florida has also defined moral turpitude as "anything done contrary to justice, honesty, principle, or good morals, although it often involves the

question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660, 661 (1933).

52. As the Department of Education has defined moral turpitude in terms of criminal behavior, no further examination of the facts are necessary to determine that the actions here do not constitute acts of moral turpitude. No criminal behavior is alleged or proven. Neither do the acts proven justify the conclusion that Respondent committed an act of gross immorality. Here, Respondent represented that the IEP created during the lunch meeting on September 28, 2006, was a mock IEP not intended for submission to the Bradford County School District. Altering the document to include the specific demographic information for student S.B. and then submitting it to the School District, while wrong and immoral, is not conduct "sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service to the community." See Rule 6B-4.009(2). Indeed, no evidence was presented to indicate Respondent's behavior impaired her service to the community or brought public disgrace or disrespect to the education profession. Count One has not been established.

53. Whether Count Two of the Administrative Complaint has been proven depends on whether any of the rule violations alleged in Counts Three to Seven has been established.

54. Counts Three, Four, and Five of the Administrative Complaint allege violations of Florida Administrative Code Rule 6B-1.006(3)(a), (d), and (f), which provide:

(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 provided by law.

(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.

* * *

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic placement.

* * *

(f) Shall not intentionally violate or deny a student's legal rights.

55. A student with a disability is granted the legal right to free, appropriate public education pursuant to the IDEA, 20 U.S.C. § 1400, and Section 1000.05(2), Florida Statutes. Section 1000.05(2), provides in pertinent part:

(2)(a) ...No person in this state shall, on the basis of race, ethnicity, national origin, gender, disability, of marital status, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any public K-20 education program or activity...

* * *

(c) All public K-20 education classes shall be available to all students without regard to race, ethnicity, national origin, gender, disability, or marital status; however, this is not intended to eliminate the provision of programs designed to meet the needs of students with limited proficiency in English, gifted students, or students with disabilities or programs tailored to students with specialized talents or skills.

56. A child with a disability must have an IEP developed in accordance with the Federal Individuals with Disabilities Education Act, 20 U.S.C. § 1414, and with Florida Administrative Code Rule 6A-6.03028. .

57. In order to determine if Rule 6B-1.006(3)(a) has been violated as charged in Count Three, one must consider if the untimely and/or improper filing of an IEP for an ESE student creates a condition harmful to a student's learning. Here, S.B. was missing an IEP from May 17, 2006, until September 29, 2006, when the IEP relating to these events was filed with the Bradford County School District. During the intervening months from May to September, S.B. may not have been receiving the type and quality of education that she was entitled to as an ESE student. Failure to receive the services and accommodations she required could have a negative impact on her learning. Likewise, an improperly prepared IEP could prevent an ESE student from obtaining the proper services and accommodations necessary for

the ESE student and could prevent the involvement of the LEA and ESE teacher as required by Rule 6A-6.03028. While no evidence was presented from which S.B.'s educational progress during this time could be evaluated, the failure to have a proper IEP in place is not only a violation of state and federal law, but is an indication that appropriate benchmarks were not being observed. The late and improper filing of the IEP created a condition harmful to the learning of the student, S.B. Count Three has been established in this case.

58. A violation of Rule 6B-1.006(3)(d) as charged in Count Four has occurred if Respondent intentionally suppressed or distorted subject matter related to the student's academic program. Respondent took a mock IEP created on September 28, 2006, and altered it to serve as an actual IEP for one of her students. During the meeting no demographic information, such as the student's name or test scores, was included in the mock IEP. Afterwards, this information was added and then submitted to the Bradford County School District as the actual IEP for the student, S.B. In submitting the IEP to the School District, Respondent represented that the individual signatories listed on the IEP were involved with S.B.'s academic program and would be fulfilling the roles for which they signed, and represented that an actual IEP team meeting to discuss the individual student, S.B., had taken place. Neither Ms. Long nor Dr. Haynes had the intention of fulfilling those roles. Claiming that members of

the IEP Team were involved with S.B.'s education when they were not is a distortion of the subject matter relating to a student's education. Count Four has been established in this case.

59. A violation of Rule 6B-1.006(3)(f) requires a determination that Respondent intentionally violated or denied S.B.'s rights as a student. Respondent intentionally submitted the improper IEP, which violated S.B.'s right to have a properly prepared IEP in place. Count Five has been established by clear and convincing evidence.

60. Counts Six and Seven of the Administrative Complaint allege violations of Florida Administrative Code Rule 6B-1.006(5)(a) and (h), which provide:

- (5) Obligation to the profession of education requires that the individual:
 - (a) Shall maintain honesty in all professional dealings.

* * *

- (h) Shall not submit fraudulent information on any document in connection with professional activities.

61. Rule 6B-1.006(5)(a) requires Respondent to maintain honesty in all professional dealings. Here, Respondent asked for assistance in preparing an IEP for a student of hers which led to the meeting on September 28, 2006. During the meeting it was clear that a mock IEP was being made in order to assist Respondent in how to create an IEP for a third grade ESE student. By failing to inform the other two individuals that she intended to use the mock IEP as a real IEP for S.B., and submitting the

IEP prepared as the work product of an IEP meeting that never actually took place, Respondent did not maintain honesty in all her professional dealings. Count Six is established in this case.

62. For a violation of Rule 6B-1.006(5)(h) as charged in Count Seven, Petitioner must demonstrate that Respondent submitted fraudulent information on any document in connection with professional activities. For the reasons expressed with respect to Count Four, Count Seven is established in this case.

63. Because Petitioner has demonstrated by clear and convincing evidence the violations alleged in Counts Three through Seven, it has also demonstrated that Respondent has violated Count Two.

64. Based on the foregoing, Respondent is guilty of Counts Two through Seven, but not guilty of Count One. Section 1012.796(7), Florida Statutes, provides the range of lawful penalties for violations of Section 1012.795:

(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. . . .

(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 . . . on probation and subject to such conditions as the commission may specify . . .

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

(f) Reprimand of the teacher . . . 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, . . . to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

65. The Education Practices Commission's Disciplinary Guidelines listed in Florida Administrative Code Rule 6B-11.007(i)(22), provide that the recommended punishment for Respondent's violations ranges from probation to revocation of her education certificate. In determining the appropriate penalty for Respondent, the undersigned has taken into consideration whether Respondent had any intention to harm the student involved and concludes that she had no such intent. However, her view that the IEP is simply a matter of necessary paperwork demonstrates that Respondent does not understand the gravity of her actions and should not be in a position where she

is working as independently as she did while running a charter school. She needs to work, at least for a while, in a supervised setting where she can participate in the education of students in the manner contemplated by the IDEA. The penalty suggested by Petitioner is overly harsh, especially in light of the fact that the conditions giving rise to the facts in this case no longer exist. A shorter suspension, followed by probation, is the logical penalty because it recognizes the seriousness of the violations proven and provides for Respondent the type of structure that was lacking during the period described in the Administrative Complaint.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered finding Respondent to be guilty of the violations alleged in Counts Two through Seven and dismissing Count One of the Administrative Complaint; imposing a fine of \$500; suspending her certificate for one year and placing Respondent on probation for a period of three years.

DONE AND ENTERED this 22nd day of October, 2009, in
Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of October, 2009.

ENDNOTE

^{1/} The rule identifies the violation as §456.072(1)(gg), Fla. Stat. However, the violation was renumbered in § 456.072 as (hh) in 2006. §2, Ch. 2006-207, Laws of Fla. The rule has not been amended since that time.

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.