STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD, Petitioner, vs. SHERRY HARRIS, Respondent.	)	Case No. 10-10094TTS

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was conducted by video teleconference at sites in Tallahassee and Lauderdale Lakes, Florida, on September 19 and 20, 2011, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Mark A. Emanuele, Esquire
Panza, Maurer & Maynard, P.A.
Bank of America Building, Third Floor
3600 North Federal Highway
Fort Lauderdale, Florida 33308

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether just cause exists to terminate Respondent's employment for misconduct in office and immorality, as alleged in the Administrative Complaint.

PRELIMINARY STATEMENT

On October 25, 2010, the Broward County Superintendent of Schools issued an Administrative Complaint recommending that the Broward County School Board (School Board) terminate Respondent from her teaching position based on the following administrative charges:

> 6. Respondent, Sherry Harris, engaged in inappropriate conduct by disrupting the administration of Florida's Comprehensive Assessment Test ("FCAT") at Lauderhill Middle School on or around March 11, 2010. Such inappropriate conduct includes, but is not limited to, failure to start the FCAT on time or in accordance with procedures, having a demeaning conversation with a student during the administration of the FCAT, making personal telephone calls and sending inappropriate emails during the administration of the FCAT, refusing to follow the instructions of her superiors, violating other test security or administration rules, and engaging in other inappropriate conduct that was disruptive and detrimental to the students' ability to take the FCAT in an appropriate testing environment.
>
> 7. Additionally, Ms. Harris engaged in inappropriate conduct by emailing and communicating with other School Board employees about the FCAT who were out of the chain of command, and by making false and disparaging statements about the School Board and School Board employees in those communications. Ms. Harris' inappropriate conduct also included, but is not limited to, communicating false and disparaging information about the School Board and School Board employees to non-School Board employees, contacting parents of students and communicating false and disparaging

> information about the School Board, and by going to the homes of students and telling the students' parents that the principal [of Lauderhill Middle School] was covering up cheating on the FCAT, and requesting that the parents go to the school and confront the principal.

According to the Administrative Complaint, Respondent's alleged behavior, as described above, amounted to misconduct in office and immorality, in violation of section 1012.33, Florida Statutes, and Florida Administrative Code Rules 6B-1.001, 6B-1.006, and 6B-4.009. Respondent timely requested a formal hearing to contest the allegations, and, on November 10, 2010, the matter was referred to DOAH for further proceedings.

As noted above, the final hearing in the instant case was held on September 19 and 20, 2011, during which Petitioner called the following witnesses: Jeannie Floyd, Cindy Pluim, Janet Jackson, Shalonda Griggs, Carlos Vignau, Ronald Bryant, Leslie Pullum, Johanna Davidson, and Richard Mijon. Petitioner's Exhibits 1, 8, 14, 15, 16, 17, 29, 30, 53, 60, and 61 were received in evidence. Respondent did not appear for the final hearing on either date.[1/]

The final hearing transcript was filed on October 31, 2011. Petitioner timely submitted a Proposed Recommended Order, which the undersigned has considered. Respondent did not file a proposed recommended order.[2/]

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged misconduct.

FINDINGS OF FACT

A. The Parties

1. The Broward County School Board, Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Broward County Public School System.

2. At all times pertinent hereto, Respondent was employed as a teacher at Lauderhill Middle School ("Lauderhill"), which is a public school in Broward County.

B. The Events of March 11, 2010

3. On March 11, 2010, Respondent was scheduled to administer the science portion of the Florida Comprehensive Assessment Test ("FCAT") to a first-period class at Lauderhill.

4. The FCAT is a significant test in that students' performance on the examination influences the letter grades (A through F) awarded annually to Florida's public schools, which in turn impacts the level of funding school districts receive from the state.

5. Prior to March 11, 2010, and during the same school year, Respondent——as well as all other personnel who planned to administer the FCAT——were required to read the FCAT Test Administration Manual ("FCAT manual") and attend in-service

training. Pertinent to the instant case and consistent with the FCAT manual, Respondent and her colleagues were specifically instructed during training that electronic devices, including cell phones, could not be used during testing.

6. The testing schedule for March 11, 2010, contemplated that Respondent and the other teachers administering the FCAT would report to the office of Shalonda Griggs (one of Lauderhill's guidance counselors) at approximately 8:25 a.m. to pick up the testing materials for their respective first period students. Prior to leaving Ms. Griggs' office, each teacher was expected to examine the test booklets and ensure that the materials were intact——i.e., confirm that none of the seals on the test books were broken. It was further anticipated that each teacher would begin the FCAT at 8:30 a.m.

7. On the morning of the examination, Respondent timely reported to Ms. Griggs' office and signed for the testing materials. Respondent reported no issues with the test booklets and proceeded to her classroom.

8. At approximately 8:30 a.m., guidance counselor Janet Jackson——who was monitoring teachers in the area of the school where Respondent's classroom was located——observed Respondent, who had not started the FCAT, engaged in a verbal altercation with a student (C.H.).

9. Ms. Jackson promptly advised Lauderhill's principal, Jeannie Floyd, of the situation, at which point Ms. Floyd and Ms. Griggs responded to the classroom and instructed Respondent to cease her inappropriate dialogue with C.H. and to begin the FCAT immediately. Before she returned to the front office, Ms. Floyd spoke briefly with C.H.——who was visibly upset——and advised her that she could take the FCAT on the following day.

10. Approximately 35 minutes later, Assistant Principal Cindy Pluim proceeded to Respondent's classroom to monitor the testing procedures. Upon her arrival, Ms. Pluim observed Respondent, who had yet to begin administering the test, conversing on a cell phone in front of the class.

11. Although Ms. Pluim ordered Respondent to end the telephone call and exit the classroom so that another member of the faculty could administer the test, Respondent refused and advised that she was speaking with her lawyer. Respondent further remarked that the seals of the test booklets had been prematurely broken——i.e., that the booklets had been unsealed prior to Respondent taking possession of them in Ms. Griggs' office. During the final hearing, Ms. Pluim credibly testified that contrary to Respondent's statement, the test booklets in question had not been unsealed.

12. Between 9:15 and 9:20 a.m., Ms. Pluim returned to the front office and informed Ms. Floyd that Respondent had refused to comply with her directives. At that point, Ms. Floyd and Ms. Pluim proceeded to Respondent's classroom and observed that she had yet to end the telephone call. According to Ms. Pluim, whose testimony the undersigned credits fully, the students appeared nervous and upset by Respondent's conduct.

13. In an effort to avoid any unpleasantness in the students' presence, Ms. Floyd stood in the doorway and repeatedly gestured for Respondent to exit the classroom. Undeterred, Respondent ignored Ms. Floyd and continued with her telephone conversation. After she waited fruitlessly for nearly five minutes in the hope that Respondent would comply, Ms. Floyd returned to the front office and requested assistance from the School Board's special investigative unit (SIU).

14. At 9:44 a.m., Respondent——who was still in her classroom——sent an e-mail to: James Notter, the Superintendent of Schools for Broward County; the Commissioner of Education for the State of Florida; Paul Houchens, the Director of Assessment for the Broward County School District; and Ms. Floyd. The e-mail reads, in pertinent part:

> Mrs. Floyd you forgot to sign the security checklist the three times you entered my classroom even though I did ask you to.
>
> * * *

> Now I have students complaining that their tests have been tampered with and had to listen to complaints.
>
> I don't know what is going on, but testing is a serious matter and not to be taken lightly.
>
> I have already reported this information to others.
>
> Ms. Floyd, as you are aware my daughter attends this school and testing effects [sic] her. What is going on is a travesty and what is going on now isn't right.

15. At approximately 10:15 a.m., several SIU officers (and an officer with the Lauderhill Police Department) arrived at Lauderhill, removed Respondent (who still had not started the FCAT) from her classroom, and later escorted her from the campus.

C. Subsequent Events

16. On a Saturday morning during late March or early April 2010, Respondent appeared unannounced at the residence of Ronald Bryant, whose daughter attended Lauderhill. During the visit——which irritated Mr. Bryant due to the early hour and lack of advance notice——Respondent stated that Ms. Floyd was attempting to "cover-up" cheating on the FCAT. Respondent further indicated that she wished for Mr. Bryant to contact the Broward County School Board and lodge a complaint. Although Mr. Bryant did not believe that the allegations were any of his business,

he later went to Lauderhill——in an effort to determine why Respondent had come to his home——and spoke with Ms. Floyd.

17. On another occasion following the events of March 11, 2010, Respondent contacted (by telephone) a second parent, Leslie Pullum. During the phone conversation, Respondent attempted to convince Ms. Pullum that Ms. Floyd was using her (Ms. Pullum's) daughter as part of a conspiracy to get Respondent fired. Ms. Pullum, unconvinced and upset by Respondent's remarks, subsequently complained to Ms. Floyd about Respondent's behavior.

18. During the final hearing, Petitioner elicited no evidence concerning the veracity of Respondent's allegations regarding Ms. Floyd.

CONCLUSIONS OF LAW

A. Jurisdiction

19. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 1012.33, 120.569, and 120.57(1), Florida Statutes.

B. The Burden and Standard of Proof

20. Petitioner seeks to terminate Respondent's employment. In order to do so, Petitioner must prove by a preponderance of the evidence that Respondent committed the violations as alleged in the Administrative Complaint. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Allen v. Sch. Bd. of

Dade Cnty., 571 So. 2d 568, 569 (Fla. 3d DCA 1990).

21. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000); see also Williams v. Eau Claire Pub. Sch., 397 F.3d 441, 446 (6th Cir. 2005)(holding trial court properly defined the preponderance of the evidence standard as "such evidence as, when considered and compared with that opposed to it, has more convincing force and produces . . . [a] belief that what is sought to be proved is more likely true than not true").

C. Grounds for Termination

22. Pursuant to section 1012.33(6)(a), Florida Statutes, the School Board is authorized to suspend or dismiss:

> Any member of the instructional staff . . . at any time during the term of [her teaching] contract for just cause . . . . The district school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid.

(Emphasis added). The term "just cause":

> [I]ncludes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or

> entering a plea to, regardless of adjudication of guilt, any crime involving moral turpitude.

§ 1012.33(1)(a), Fla. Stat.

23. In its Administrative Complaint, Petitioner advances alternative grounds for dismissing Respondent: "misconduct in office" (Count A) and "immorality" (Count B). Whether Respondent is guilty of these charges, both of which are discussed separately below, is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

D. Misconduct in Office

24. As noted above, Petitioner first contends that Respondent has committed "misconduct in office," which is defined by the State Board of Education as a:

> [V]iolation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

Fla. Admin. Code R. 6B-4.009(3).

25. "As shown by a careful reading of rule 6B-4.009, the offense of misconduct in office consists of three elements: (1) A serious violation of a specific rule that (2) causes (3)

an impairment of the employee's effectiveness in the school system." Miami-Dade Cnty. Sch. Bd. v. Regueira, Case No. 06-4752, 2007 Fla. Div. Adm. Hear. LEXIS 208 (Fla. DOAH Apr. 11, 2007). To elaborate a bit, rule 6B-4.009:

> [P]lainly requires that a violation of both the Ethics Code and the Principles of Professional Education be shown, not merely a violation of one or the other. The precepts set forth in the Ethics Code, however, are so general and so obviously aspirational as to be of little practical use in defining normative behavior. It is one thing to say, for example, that teachers must "strive for professional growth." See Fla. Admin. Code R. 6B-1.001(2). It is quite another to define the behavior which constitutes such striving in a way that puts teachers on notice concerning what conduct is forbidden. The Principles of Professional Conduct accomplish the latter goal, enumerating specific "dos" and "don'ts." Thus, it is concluded that that while any violation of one of the Principles would also be a violation of the Code of Ethics . . . .

Id. (Underline added; emphasis in original omitted).

26. As underlying infractions on which to base the charge of misconduct in office, Petitioner contends that Respondent's behavior on March 11, 2010, and her subsequent statements to Mr. Bryant and Ms. Pullum resulted in the following violations of the Principles of Professional Conduct:

> 6B-1.006 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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

* * *

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

* * *

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

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

* * *

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

(a) Shall maintain honesty in all professional dealings.

* * *

(d) Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance

> of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.
>
> (e) Shall not make malicious or intentionally false statements about a colleague.

27. Of the eight rule violations quoted above, Petitioner has met its burden of proof as to four: rule 6B-1.006(3)(a), (3)(e), (4)(b), and (5)(a).[3/]

28. Beginning with rule 6B-1.006(3)(a), Respondent failed to make reasonable effort to protect her students from conditions harmful to learning and/or their mental health when she improperly and substantially delayed the administration of the FCAT——which agitated and upset Respondent's class and culminated in her removal from the classroom by law enforcement officers——and engaged in a verbal altercation with C.H., which so upset C.H. that Lauderhill's principal authorized her to take the examination the next day. See Horne v. Hayes, Case No. 04-477, 2004 Fla. Div. Adm. Hear. LEXIS 1876 (Fla. DOAH June 10, 2004)(finding that educator failed to protect student from conditions harmful to learning and mental by engaging in a verbal altercation with the student at a school basketball game).

29. Respondent's verbal altercation with C.H. also constitutes a violation of rule 6B-1.006(3)(e), which prohibits an educator from intentionally subjecting a student to unnecessary embarrassment or disparagement. See id.

30. Finally, by falsely informing the assistant principal that the integrity of the testing booklets had been compromised, Respondent violated rule 6B-1.006(4)(b), which provides that an educator shall not intentionally misrepresent facts concerning an educational matter in public expression, as well as rule 6B-1.006(5)(a), which requires an educator to maintain honesty in all professional dealings. See Gallagher v. Desjarlais, Case No. 00-2767, 2000 Fla. Div. Adm. Hear. LEXIS 5435 (Fla. DOAH Oct. 31, 2000)(finding that teacher failed to maintain honesty in professional dealings by lying to his administrator about the cause of a vehicle fire in the school parking lot); see also Smith v. Brown, Case No. 10-10515, 2011 Fla. Div. Adm. Hear. LEXIS 134 (Fla. DOAH May 31, 2011).

31. Next, it must be determined whether Respondent's violations of the foregoing Principles of Professional Conduct impaired her effectiveness in the school system. Although Petitioner adduced no specific evidence of impairment, it is well-settled that:

> "[M]isconduct in office" may be established, even in the absence of "specific" or "independent" evidence of impairment, where

> the conduct engaged in by the teacher is of such a nature that it "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. In such cases, proof that the teacher engaged in the conduct is also proof of impaired effectiveness.

Miami-Dade Cnty. Sch. Bd. v. Grey, Case No. 10-9324, 2011 Fla. Div. Adm. Hear. LEXIS 18, *33 (Fla. DOAH Mar. 8, 2011); Purvis v. Marion Cty. Sch. Bd., 766 So. 2d 492, 498 (Fla. 5th DCA 2000)(holding impaired effectiveness could be inferred by nature of misconduct, which included resisting arrest and testifying falsely under oath during a criminal trial; "[t]his is a level of misconduct which would support the inference that Purvis' effectiveness as a teacher has been impaired, even though no parent, student or co-worker was called as a witness to say so"); Walker v. Highlands Cty. Sch. Bd., 752 So. 2d 127, 128 (Fla. 2d DCA 2000)(holding that teacher's misconduct, which resulted in "loss of control" in classroom, permitted an inference of ineffectiveness); Brevard Cnty. Sch. Bd. v. Jones, Case No. 06-1033, 2006 Fla. Div. Adm. Hear. LEXIS 287, *17 (Fla. DOAH June 30, 2006)("[T]he need to demonstrate 'impaired effectiveness' is not necessary in instances where the misconduct by a teacher speaks for itself, or it can be inferred from the conduct in question"); Miami-Dade Cnty. Sch. Bd. v. Lefkowitz, No. 03-0186, 2003 Fla. Div. Adm. Hear. LEXIS 675, *23-24 (Fla. DOAH July 31, 2003)("The School Board failed to

prove by a preponderance of the direct evidence that Mr. Lefkowitz's actions were so serious that they impaired his effectiveness as a teacher. Nonetheless, based on the findings of fact herein, it may be inferred that Mr. Lefkowitz's conduct impaired his effectiveness as a teacher in the Miami-Dade County public school system")(citation omitted).

32. It is concluded that Respondent's bizarre conduct—— engaging in a verbal altercation with a student, inexplicably delaying the FCAT for over ninety minutes until her removal from the classroom, and lying to the assistant principal concerning the integrity of the testing booklets——was of such severity that an impairment of her effectiveness in the school district should be inferred. See Gallagher v. Desjarlais, Case No. 00-2767, 2000 Fla. Div. Adm. Hear. LEXIS 5435 (Fla. DOAH Oct. 31, 2000) ("Petitioner proved by clear and convincing evidence that Respondent is guilty of personal conduct that seriously reduces his effectiveness as a school board employee. Trust is an important component of the relationship that must exist among teachers and between administrators and a teacher. Respondent's dishonesty seriously undermines this trust"); see also Miami-Dade Cnty. Sch. Bd. v. Spivey, Case No. 06-1073, 2007 Fla. Div. Adm. Hear. LEXIS 126 (Fla. DOAH Feb. 28, 2007)(inferring impaired effectiveness where educator engaged in "deceitful or dishonest conduct" in connection with his professional duties);

Broward Cnty. Sch. Bd. v. Sapp, Case No. 01-3803, 2002 Fla. Div. Adm. Hear. LEXIS 1574 (Fla. DOAH Sept. 24, 2002)("[A]s a teacher and coach, Sapp was required to be a role model for his students. To be effective in this position of trust and confidence, he needed to maintain a high degree of trustworthiness, honesty, judgment, and discretion"). Accordingly, Respondent is guilty of misconduct in office, as charged in Count A of the Administrative Complaint, and just cause therefore exists to terminate her employment.

E. Immorality

33. Petitioner further alleges, in Count B, that just cause also exists to terminate Respondent's employment based upon her commission of an act of "immorality," which is defined as:

> [C]onduct 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.

Fla. Admin. Code R. 6B-4.009(2) (emphasis added).

34. Pursuant to the foregoing definition, Petitioner must demonstrate——in order to dismiss Respondent for immoral conduct——that she engaged in behavior "inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to [1] disgrace the

teaching profession *and* [2] impair [Respondent's] service in the community." McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996)(italics in original).

35. In the instant case, Petitioner presented no evidence establishing the applicable "standards of public conscience and good morals." Fla. Admin. Code R. 6B-4.009(2); McNeill, 678 So. 2d at 477. As a result, the undersigned cannot determine whether Respondent violated such public standards, and must therefore conclude that Petitioner has failed to meet its burden of proof with respect to this charge. See Miami-Dade Cnty. Sch. Bd. v. Eskridge, Case No. 10-9326, 2011 Fla. Div. Adm. Hear. LEXIS 62, *28-29 (Fla. DOAH Apr. 6, 2011)(finding school security monitor not guilty of immorality where school board presented no evidence establishing the applicable standards of public conscience and good morals); Broward Cnty. Sch. Bd. v. Deering, Case No. 05-2842, 2006 Fla. Div. Adm. Hear. LEXIS 367, *12 (Fla. DOAH July 31, 2006)(finding educator not guilty of immorality where school board "did not offer any persuasive evidence establishing the applicable 'standards of public conscience and good morals'").

36. Although the evidence did not establish that Respondent committed an act of immorality, just cause nevertheless exists to terminate her employment based upon the conclusion that Respondent is guilty of misconduct in office.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order: (1) finding Respondent guilty of misconduct in office; (2) finding Respondent not guilty of immorality; and (3) terminating Respondent's employment as a teacher with the School Board.

DONE AND ENTERED this 23rd day of November, 2011, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of November, 2011.

ENDNOTES

[1/] Petitioner and Respondent were provided written notice on April 12, 2011, that the final hearing would be held on September 19, 20, and 21, 2011, at 9:00 a.m. On the first day of the proceedings, the undersigned delayed the start of the final hearing for approximately 35 minutes in an unsuccessful effort to contact Respondent. Subsequently, at 1:20 p.m. (after Petitioner had presented most of its case), Respondent left a voicemail——the only message received at any time from Respondent

regarding her absence——with the undersigned's assistant, in which Respondent claimed that she was "stranded" in Miami and requested an immediate return call. Multiple, timely attempts (two of which were on record) were thereafter made to contact Respondent on her cellular phone, without success.

Although Petitioner completed the presentation of its case during the afternoon of September 19, the undersigned decided, in an abundance of caution, to reconvene at 9:00 a.m. on September 20. Respondent again failed to appear, and the undersigned closed the hearing at 9:20 a.m. To date, Respondent has provided no explanation (other than the brief voicemail message on September 19, which was received over four hours after the start of the proceedings) for her non-appearance at the final hearing.

[2/] Following the final hearing, an Order of Post-Hearing Instructions was entered that: (1) directed Petitioner to provide Respondent with copies of all exhibits that were introduced into evidence; (2) advised Petitioner and Respondent that proposed recommended orders were due no later than 20 days after the transcript of the final hearing was filed with DOAH; (3) cautioned the parties to monitor the transcript filing date by accessing DOAH's website or contacting the clerk's office; and (4) provided Respondent with the court reporter's contact information.

[3/] While Respondent's statements concerning Ms. Floyd——i.e., that Ms. Floyd was covering up cheating on the FCAT and engaging in a "conspiracy" to fire Respondent——are no doubt incredible on their face, the undersigned cannot conclude that Respondent violated rule 6B-1.006(5)(e) where no evidence was elicited regarding the veracity of the allegations. This could easily have been accomplished during Ms. Floyd's direct examination by asking her to deny the allegations. Petitioner also failed to meet its burden with respect to rules 6B-1.006(3)(b), 6B-1.006(4)(a), and 6B-1.006(5)(d).

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.