



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

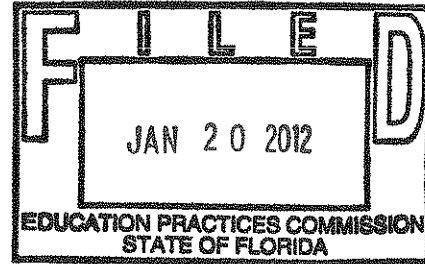
DR. ERIC J. SMITH,  
Commissioner of Education,

Petitioner,

vs.

JANA LANTZ

Respondent.



EPC CASE N° 11-0117-RT  
DOAH CASE N° 11-1592PL  
INDEX N° 12-006-FOF  
PPS N° 090-2464  
CERTIFICATE N° 725822

### Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on December 8, 2011, in Tallahassee, Florida, for consideration of the Recommended Order entered in this case by Robert E. Meale, Administrative Law Judge dated August 31, 2011. Petitioner was present.

Petitioner filed Exceptions to the Recommended Order. A copy of those Exceptions is attached to and incorporated by reference. After reviewing the complete record accompanying the Recommended Order, the Recommended Order, the Exceptions, and being fully advised in the premises, the Commission accepted exception 1, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on the Petitioner's written arguments attached and incorporated herein. The Commission accepted exception 2, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended

Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 3, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 4, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 5, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 6, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 7, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission accepted exception 8, finding that there is not competent and substantial evidence to support the findings of fact in the Recommended Order based on Petitioner's written argument attached and incorporated herein. The Commission rejected accepted exception 9, finding that the requested conclusions of law were more reasonable than the administrative law judge's conclusion based on Petitioner's written argument attached and incorporated herein.

The Panel hereby adopts the material allegations in the Administrative Complaint attached hereto as its findings of fact. The Panel adopts the conclusions of law, (paragraphs 24-28) from the Recommended Order which is attached and so incorporated

in part. The recommendation is modified herein based on the Petitioner's exceptions to the Recommended Order.

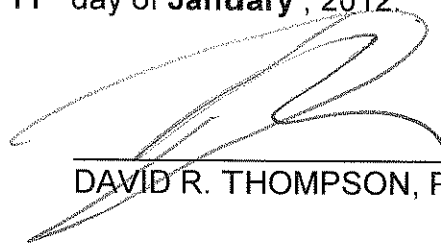
It is therefore **ORDERED** that:

1. Respondent is hereby issued a letter of reprimand.
2. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on 2 employment years of probation with the conditions that during that period, Respondent shall:
  - A. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.
  - B. Have the Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
  - C. Pay to the Commission during the first 6 months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.
  - D. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
  - E. Satisfactorily perform all assigned duties in a competent, professional manner.
  - F. Bear all costs of complying with the terms of a final order entered by the Commission.
  - G. Provide a certified college transcript to verify successful (a grade of "pass" or a letter grade no lower than a "B") completion of 3 hours of college level course-work in the area of Conflict Resolution, which may be taken online.
  - H. Pay an administrative fine of \$500.00 within the first year of probation.

This order shall become effective upon filing with the Clerk of the Commission.

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

**DONE AND ORDERED**, this 11<sup>th</sup> day of **January**, 2012



DAVID R. THOMPSON, Presiding Officer

COPIES FURNISHED TO:

Bureau of Professional Practices

Bureau of Teacher Certification

*Florida Administrative Law Reports*

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Assistant Attorney General

Robert E. Meale  
Administrative Law Judge  
Division of Administrative Hearings  
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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

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

Final Order  
Jana Lantz  
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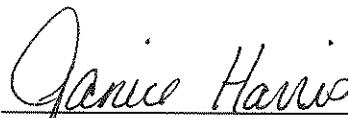
Tallahassee, FL 32399-1550

Claudia Llado, Clerk  
Division of Administrative Hearings

Probation

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to Jana Lantz, P.O. Box 813853, Hollywood, Florida 33081-3853 by Certified U.S. Mail and by electronic mail to Margaret O'Sullivan Parker, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400, and to Charles Whitelock, Esquire, 300 SE 13<sup>th</sup> Street, Fort Lauderdale, Florida 33316 this **20<sup>th</sup>** day of **January**, 2012.



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Janice Harris,  
Education Practices Commission

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-1592PL  
 )  
JANA MARIE LANTZ, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on June 21, 2011. The parties, attorney for Petitioner, witnesses, and court reporter participated by videoconference in Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Charles J. Whitelock  
Charles J. Whitelock, P.A.  
300 Southeast Thirteenth Street  
Fort Lauderdale, Florida 33316

For Respondent: Jana Marie Lantz, pro se  
Post Office Box 813853  
Hollywood, Florida 33081

STATEMENT OF THE ISSUE

The issue is whether Respondent's educator certificate should be disciplined for a confrontation, in the presence of students, that she had with a colleague and an administrator.

PRELIMINARY STATEMENT

By Administrative Complaint dated December 13, 2010, Petitioner alleged that, on March 11, 2010, Respondent displayed inappropriate conduct and acted unprofessionally toward a colleague and a school administrator. The Administrative Complaint alleges that, when a reading coach assigned to Respondent's classroom had rearranged the desks, Respondent became upset and, in the presence of students, yelled at the teacher in a menacing manner. Respondent allegedly stood in the other reading coach's face, pointed a finger at her, and yelled, "Go! Be gone! Go away! By the way, you don't do anything!" When an assistant principal appeared and told Respondent to refrain from further action in front of students, Respondent allegedly told him, "I will deal with you later."

The Administrative Complaint alleges that this behavior violates section 1012.795(1)(d), Florida Statutes, which prohibits gross immorality or an act of moral turpitude; section 1012.795(1)(g), which prohibits personal conduct that seriously reduces one's effectiveness as an employee of a school board; and section 1012.795(1)(j), which incorporates the Rules of

Professional Conduct--specifically, rule 6B-1.006(3)(a), Florida Administrative Code, which requires a reasonable effort to protect a student from conditions harmful to learning or a student's mental health, physical health, or safety; rule 6B-1.006(3)(e), which prohibits the intentional exposure of a student to unnecessary embarrassment or disparagement; and rule 6B-1.006(5)(d), which prohibits harassment or discriminatory conduct that unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or that creates a hostile, intimidating, abusive, offensive, or oppressive environment, and requires that a reasonable effort be made to assure that each individual is protected from such harassment or discrimination.

At the hearing, Petitioner called four witnesses and offered into evidence 23 exhibits: Petitioner Exhibits 1-23. Respondent called one witness, herself, and offered into evidence 27 exhibits. The exhibits were admitted, except for Petitioner Exhibits 6-11 and 18-23 and Respondent Exhibits 5.f., 5.g., 5.h., 5.i., 11, 12.a., 12.d., 12.e., 12.f., and 13-19. All exhibits not admitted were proffered. The Administrative Law Judge gave Petitioner until July 1, 2011, to file Petitioner Exhibits 22 and 23; Petitioner failed to do so, and they are deemed withdrawn. The Administrative Law Judge gave Respondent



until July 15, 2011, to file an errata sheet to her deposition transcript; she failed to do so.

The court reporter filed the Transcript on July 13, 2011. Each party filed a Proposed Recommended Order by August 16, 2011.

#### FINDINGS OF FACT

1. Respondent holds Florida educator certificate number 725822. She has been employed as a teacher with the Miami-Dade County School Board for 17 years. During the 2010-11 school year, Respondent taught sixth-grade science at Thomas Jefferson Middle School, which is operated by the Miami-Dade County School Board. At the time of the hearing, Respondent stood at 63 inches and weighed 145 pounds.

2. Marie Wallace is a reading coach. She has 11 years' experience in education, including seven years as a reading coach at Thomas Jefferson Middle School, where she also worked during the 2010-11 school year. At the time of the hearing, Ms. Wallace stood at 60 inches and weighed 140 pounds.

3. Patrick Lacouty is an assistant principal at Thomas Jefferson Middle School. He has been employed in various professional capacities by the Miami-Dade County School Board for 15 years. Given his limited role in the confrontation between Respondent and Ms. Wallace, described infra, Mr. Lacouty's size is irrelevant.

4. On March 11, 2010, FCAT testing was taking place at Thomas Jefferson Middle School. Respondent's science classes were scheduled for first, third, and fifth periods on that day. The fifth period class started around 2:00 pm.

5. The administration had selected Respondent's classroom as a location for FCAT testing. This testing proceeded without incident at all times that Respondent's classroom actually hosted testing. The confrontation between Respondent and Ms. Wallace arose after FCAT testing had been completed on March 11.

6. After being informed that her classroom would be used for FCAT testing during first and third periods on March 11, Respondent planned alternative locations for these classes. Respondent took her first-period class to the auditorium and her smaller second-period class to the science lab. Respondent was informed that her classroom would be available for her fifth-period class.

7. Third period immediately preceded lunch. Either during class or lunch, Respondent checked her classroom and found Ms. Wallace packing up her materials. Respondent asked her if she was done with the classroom, and Ms. Wallace replied that she was and that she would send some students to rearrange the desks and tables to their normal classroom configuration.

8. When Respondent returned to the classroom shortly prior to the start of fifth period, she was displeased to find that the desks and tables were not back in their normal places. Respondent instructed a few waiting students to move the furniture and told the rest to remain in the hallway.

9. Ms. Wallace returned to the classroom at this time, and Respondent complained loudly that Ms. Wallace had not rearranged the room, as she had promised and as she had found it. According to Ms. Wallace, her behavior at all times during this incident was exemplary. However, her testimony to this effect is not credited for the reasons set forth below.

10. Ms. Wallace testified that it was normal for a teacher not to rearrange a classroom, essentially admitting that she had not returned the classroom furniture to its original configuration. Ms. Wallace's testimony that it is normal for a teacher not to rearrange a classroom is not credited. Ms. Wallace appears to have an imperfect understanding as to customary practices concerning the temporary uses of classrooms. Ms. Wallace complained that Respondent had locked up some supplies, also contrary to custom, but Respondent explained persuasively that she had locked up those supplies because she had purchased them with her own money and, from time to time, they were removed without authorization by persons unknown to her.

11. Respondent and Ms. Wallace briefly disagreed over the location of the furniture in the classroom and whose job it was to restore the original configuration. The situation was exacerbated by a mutual feeling of disrespect that each employee had for the other.

12. In her statement, Ms. Wallace eagerly described incidents taking place at undetermined times prior to the incident. She clearly has determined that Respondent has behaved unprofessionally for a long time. As is obvious from what Respondent said to Ms. Wallace, discussed infra, it is equally plain that Respondent does not hold Ms. Wallace in high regard either.

13. Some tension may have developed between the two employees given Respondent's role as a steward in the teachers' union and Ms. Wallace's selection by the district office to serve as its professional liaison to the classroom teachers.

14. According to her statement and testimony, Ms. Wallace recounts only three things said by Respondent during the confrontation. The first was a directive to her students to remain outside the classroom. The second was directed at Ms. Wallace: "Go! Be gone, go away! By the way, you don't do anything. You don't have a clue." The third was an invitation from Respondent to Ms. Wallace to return the next morning so

Respondent could show her how to test students without moving any classroom furniture.

15. Around the time that Respondent told Ms. Wallace to leave the classroom, Mr. Lacouty appeared. He told Respondent not to misbehave in front of the students. Respondent held out her hands in front of her and said, "I will deal with you later," as she returned to her classroom to set it up for her waiting class. Mr. Lacouty instructed her students to go inside the classroom and left the area.

16. Ms. Wallace has characterized Respondent as "ranting and raving" and "deranged," but has only recounted the statements set forth supra as to the contents of Respondent's ranting. However, Respondent's directive to her students to remain outside the classroom and her demand for Ms. Wallace to leave the classroom so she could do what Ms. Wallace had agreed to do and get to work teaching her class were not irrational. A parenthetical observation followed by an invitation to return the following day do not suggest the ravings of someone deranged. Ms. Wallace's characterization of Respondent as "ranting and raving" and "deranged" is not credited.

17. Ms. Wallace's credibility also suffers in her description of her feelings during this confrontation. In her statement, Ms. Wallace reported, "I felt that my safety along with the safety of the student who witnesses this entire display

was threatened by [Respondent's] irrational behavior."

Ms. Wallace added: "In addition, as a larger built woman, I felt that she was using her size . . . to instigate a fight in the presence of the students." Questioning during the hearing clarified this statement to mean that Respondent, not Ms. Wallace, the reading coach, was the larger-built woman. But as noted supra, the women are of approximate equal size. Ms. Wallace's statement about her safety being threatened is entirely disingenuous. She testified at the hearing that she was unafraid of Respondent, who does not impress as a woman capable of inflicting physical injury on another adult.

18. The disingenuous statement of Ms. Wallace about her safety is linked with her statement about her fear for the students' safety. This statement is also disingenuous. At hearing, when asked about the reaction of the students to the exchange between the two employees, Ms. Wallace testified that she based her conclusory opinion that the students were "terrified" on the facts that she could see the faces of the students sitting along the outside wall of the classroom and that the students were seated "timidly."

19. But other facts speak more loudly than Ms. Wallace's conclusory testimony concerning the impact of this confrontation on the students. First, not a single student testified at the hearing. Second, as noted supra, Mr. Lacouty formed his own

opinion as to the safety of Respondent's students when, after witnessing the incident, he merely instructed them to return to Respondent's classroom. If Respondent had posed a risk to her students' safety, Mr. Lacouty would have relieved Respondent of her duties that afternoon and assigned another teacher to the class. At hearing, Mr. Lacouty failed to provide any details of students' reaction to whatever part of this relatively brief exchange they may have witnessed. Third, the principal testified that Ms. Wallace reported to her only that the students were staring, wondering what was going to happen. Fourth, Respondent testified that instruction proceeded in normal fashion for this class for the rest of the term. On these facts, there is no basis to find any impact to the students who may have witnessed all or part of a frustrated exchange between two teachers during the week of FCAT testing.

20. Just a few months later, the school principal assigned Respondent and Ms. Wallace to attend a summer workshop together in Orlando that summer. This decision suggests that the confrontation between the two employees was not as significant as Petitioner alleges.

21. Respondent and Ms. Wallace are examples of different kinds of nonresponsive witnesses. Repeatedly, Respondent would not answer simple questions; instead, she answered questions that she wanted to answer. She was evasive and stubborn.

22. Ms. Wallace was nonresponsive in a different way. Answering the question posed to her, she would then enthusiastically answer what she anticipated would be the next several questions. She was less a witness than a prosecutorial assistant, who seized the opportunity to obtain justice for years of what she perceived to be Respondent's unprofessional behavior.

23. The credibility of Respondent was further undermined by repeated inconsistencies in her testimony and statements. Not to be undone, though, Ms. Wallace's credibility, at least as to her claim that she never lost her composure, was undermined by her repeated losses of composure while testifying. Because Ms. Wallace became agitated in the controlled environment of an administrative hearing, it is very likely that she also become agitated during the confrontation itself, especially given her longstanding list of grievances concerning Respondent.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

25. Section 1012.795(1), Florida Statutes, provide in relevant part:

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.

\* \* \*

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

\* \* \*

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

26. Florida Administrative Code Rule 6B-1.006(3)(a)

and (e) provides:

Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

\* \* \*

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

27. Florida Administrative Code Rule 6B-1.006(5)(d)

provides:

Obligation to the profession of education requires that the individual:

(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.

28. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

29. Petitioner has failed to prove that Respondent is guilty of gross immorality or an act of moral turpitude. This issue requires no discussion.

30. Petitioner has failed to prove that Respondent is guilty of personal conduct that seriously reduces her effectiveness as a school board employee. The incident was neither as intense as Ms. Wallace described it, nor was Ms. Wallace as free of responsibility for causing the incident, or escalating the exchange, as Ms. Wallace described it. Respondent's dismissive response to Mr. Lacouty's one-sided intervention was insubstantial. As noted supra, Mr. Lacouty did not observe anything that required immediate intervention by the administration. The insubstantiality of the incident is reinforced by the principal's assignment of both parties to a conference in Orlando just a few months later. Also, the fifth-grade class proceeded through the remainder of the class material without incident.

31. For largely the same reasons, Petitioner has failed to prove that whatever the students witnessed of the confrontation between Respondent and Ms. Wallace, or the dismissive treatment by Respondent of Mr. Lacouty, rose to the level of a condition harmful to learning or to the student's mental or physical health or safety, or that Respondent intentionally exposed her students to unnecessary embarrassment or disparagement.

Ms. Wallace candidly admitted to the principal, right after the incident, that the students were only staring, wondering what would happen next--a version of events far tamer than her later, embellished claim that the students were terrified.

32. Lastly, Petitioner failed to prove that Respondent harassed Ms. Wallace, so as to interfere unreasonably with her work or the orderly processes of education, or created a hostile, intimidating, abusive, offensive, or oppressive environment. The two employees had an unfortunate disagreement, more caused by Ms. Wallace than Respondent. Their brief exchange did not rise to the level of interfering with either employee's discharge of her professional responsibilities or creating a hostile, intimidating, abusive, offensive, or oppressive environment. This allegation does not appear to apply to Respondent's dismissive treatment of Mr. Lacouty, but, if it did, the facts would not support it.

#### RECOMMENDATION

It is

RECOMMENDED that Petitioner dismiss the Administrative Complaint against Respondent.

DONE AND ENTERED this 31st day of August, 2011, in  
Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of August, 2011.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA  
EDUCATION PRACTICES COMMISSION

DR. ERIC J. SMITH, as Commissioner  
of Education,

DOAH CASE NO: 11-1592PL  
EPC CASE NO: 090-2464

Petitioner,

vs.

JANA MARIE LANTZ,

Respondent.

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**PETITIONER'S EXCEPTIONS TO THE RECOMMENDED ORDER**

The Petitioner, DR. ERIC J. SMITH, as Commissioner of Education (hereinafter referred to as "Petitioner" or "COE"), by and through his undersigned counsel, Charles T. Whitelock, P.A., files the following exceptions to the Recommended Order issued by Administrative Law Judge Robert E. Meale ("ALJ") and in support thereof states as follows:

**PRELIMINARY STATEMENT**

This case focused on the Respondent's ("Lantz") unprofessional conduct on March 11, 2011 towards a reading coach ("Wallace") in the presence of students, which actions were witnessed and verified by two (2) other individuals. Lantz was also disrespectful to the assistant principal who attempted to diffuse the situation. The ALJ's factual findings bear no resemblance to the testimony and documentary evidence.

The law requires that findings of fact shall be based exclusively on the evidence of record and on matters officially recognized. Section 120.57(1)(j), Florida Statutes. The law further provides that:

“An agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the Order, **that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.**” Section 120.57(1)(l), Florida Statutes.

There is no competent or substantial evidence to support the ALJ’s Findings of Fact (“FOF”).

To the contrary, the evidence in the record had been miscited, misapplied or mislaid. A prime example is the ALJ’s failure to mention the testimony of the security guard (Quincy Carr) who witnessed the event. Another example is the role taken by the ALJ who acted more as Respondent’s advocate, constantly advising her of tactical strategy, conducting cross-examination of Petitioner’s witnesses, and even conducting on-line research for Respondent to prevent Petitioner’s use of testimony and documents regarding Respondent’s pattern of behavior, rather than as an objective and impartial fact finder.

Examples of the ALJ’s lack of impartiality include the following:

- Conducting the initial cross-examination of Wallace (T. #48-57);
- Advising Respondent on how to conduct her cross-examination of Wallace, “you’ve got to know when to hold them and when to fold them.” (T. #66/15-25);
- Advising Respondent to make a note to testify to the conflict in testimony (T. #67/2-6);
- Assisting Respondent’s cross-examination of Wallace regarding size and weight (T. #78/12-24);
- Admonishing the witness for her grammatical use (T. #78/20-21);
- Questioning both the witness and Respondent during this cross about their respective size (T. #80/14-22);
- Suggesting questions for Respondent to ask of a witness (T. #89/17-19);



- Advising Respondent how she can testify to overcome the witness' version (T. #89/24-25; T. #90/1-7);
- Instructing Respondent how to phrase an inquiry (T. #91/15-25; T. #92/1-11);
- Continuing to assist Respondent in conducting her cross-examination before completing it himself (T. #92/25; T. #93-95);
- Injecting comments during cross (T. #97/14-19);
- Interrupting witnesses during answer (T. #134/10-11);
- Preventing Petitioner's examination of witnesses, limiting the evidence to rebuttal rather than impeachment and then advising Respondent how to proceed on cross (T. #135/2-25; T. #136/1-13);<sup>1</sup>
- Rejecting Petitioner's Exhibits 6-11 without specific objection, yet recognizing they are hearsay which is permissible (See Fla. Stat. 120.57(1)(c)) (T. #149/18-25);
- Advising Respondent on cross-examination of witness even though no objection was made by Petitioner (T. #154/5-25; T. #155/1-9);
- Preventing Respondent from opening the door to Petitioner (T. #157/5-8);
- Assisting Respondent with her direct testimony (T. #183-184); at one point the ALJ stopped Respondent from mentioning the students statements (Px. #6-11; T. #187) and advised her not to testify about them;
- Stopping Respondent a second time from opening the door and advised her how to structure her testimony (T. #190/14-25; T. #191-196) before conducting the direct examination on her behalf.
- Permitting Respondent to introduce documentary evidence concerning her employment history over hearsay objection (T. #198-209);
- Interjecting into cross-examination of Respondent without objection (T. #211/1-9) who then answered the question only to be stopped by the ALJ (T. #211/10-25);

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<sup>1</sup>Section 120.57(1)(d) doesn't notice for evidence of acts or offenses which is used for impeachment or on rebuttal.

- Preventing Petitioner from following up testimony regarding “failing” students because it would allow Px. #6-11 being admitted into evidence (T. #247);
- Preventing the introduction of Petitioner’s evidence in support of 6B-11.007 to show Respondent’s pattern of defiance to authority (T. #257-261);
- Conducting legal research for Respondent regarding her contractual rights, and cites purported case law (T. #281-283) to deny Petitioner’s exhibits and testimony;<sup>2</sup>
- Advising Respondent not to bring up certain topics in her cross (T. #287/13-20).
- Takes over Respondent’s cross-examination of witness (T. #292);
- Taking official notice of union contract after parties had rested their case (T. #297).

**EXCEPTION NUMBER 1**

1. The ALJ in Findings of Fact Number 1 found “at the time of the hearing, Respondent stood at 63 inches and weighed 145 pounds. The ALJ in Findings of Fact Number 2 stated: “at the time of hearing, Wallace stood at 60 inches and weighted 140 pounds.

2. Although incorrect and unsupported by the evidence at the hearing (Lantz testified she weighted 165 pounds T. #80/1-19, while Wallace testified she weighted less than 140 pounds), it isn’t important what their weight was at the **time of the hearing**. Rather, it was Wallace’s perception of Respondent’s built at the **time of the incident**. Wallace wrote and testified that Respondent, as a “larger built” women was using her size and condescending tone to instigate a fight (Px. #2; T. #79/14-16; T. #80/14-22). She and other witnesses described Lantz’s actions as intimidating. This finding was not based on competent substantial evidence and should be rejected.

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<sup>2</sup>Contract isn’t exhibit in file. Parties are unaware which contract was referenced. Case was never cited in Recommended Order.

**EXCEPTION NUMBER 2**

3. The ALJ in Findings of Fact Number 23 refutes Wallace’s claim she never lost her composure during her encounter with Lantz because of her “repeated losses of composure” while testifying and because she “became agitated” at the hearing. Forgetting for the moment, Carr’s testimony that Wallace never acted in an unprofessional manner, never raised her voice or became confrontational in any manner (T. #112/1-8), and LaCouty’s testimony that Wallace was “standing calm,” “surprisingly calm” while Lantz was nose to nose screaming at her (T. #131/9-25; T. #132), there is no evidence to support this finding or the inference she suffered repeated losses of composure or became agitated at the hearing. Even during the ALJ’s cross-examination on behalf of Lantz, Wallace was polite and respectful. Nowhere in the transcribed record does Wallace act other than in a polite and professional manner. Rather, it was Lantz, as noted by the ALJ who was “evasive, stubborn and refused to answer simple questions” (FOF #21). There is no competent substantial evidence to support this finding. The portion referring to Wallace should be rejected or modified accordingly.

**EXCEPTION NUMBER 3**

4. The ALJ in Findings of Fact Number 22 states without any transcript reference that Wallace “enthusiastically answered” what she anticipated what would be the next several questions, characterizing her as a prosecutorial assistant seizing an opportunity to obtain justice for years of Respondent’s unprofessional behavior. The ALJ later described a “long standing list of (unspecified) grievances” by Wallace (FOF #23).

5. The testimony of Wallace and Lantz contradict this assertion. Wallace stated she had no previous experience with Lantz (T. #36/10-19), no previous occasion where Lantz would think

she had any issues (T. #37/21-23); no prior incident to warrant her behavior (T. #46/12-16); and no explanation for Lantz's erratic behavior (T. #47/10-18).

6. Further, Lantz herself admits her and Wallace had no problems for the entire five (5) years prior to this incident (Px. #1 pg. 30/22-24; 31/6-16). They didn't work with each other and only saw each other in passing (Px. #1 29/4-9).

7. The "longstanding list of grievances" were neither longstanding nor a grievance. Instead, Wallace listed three (3) items she personally witnessed as a prelude to her explanation of the March 11<sup>th</sup> incident (Px. #2). The previously-noted testimony of both Wallace and Lantz contradict this assertion and inference by the ALJ. In the absence of competent substantial evidence, this finding should be rejected.

#### **EXCEPTION NUMBER 4**

8. The ALJ in Findings of Fact Number 13 infers there was "some tension" with Wallace because of the Respondent's role as a union steward. The clear and unequivocal testimonial evidence depicts otherwise. Not only did Wallace testify that Lantz wasn't the designated union steward during the 09/10 school year (T. #73-74/1-3); Lantz also agreed with this statement (T. #74/12-13). Wallace was the PD Liaison who scheduled some classes for some teachers, but had no contact or conversation with Lantz (T. #69/13-20). There is no record evidence to support this finding, which should be rejected.

#### **EXCEPTION NUMBER 5**

9. The ALJ in Findings of Fact Number 17 and Number 18 opined that Wallace's claims of her fear for the safety of herself and her students were "disingenuous," meaning Wallace is deceitful or dishonest.

10. The evidence of record shows that because Wallace moved some desks for FCAT testing, Lantz began to scream at the top of her voice at Wallace, pointing her fingers in her face while making demeaning statements.<sup>3</sup> Lantz's face was so close that Wallace could smell her breath and feel the spit on her face while continuing to shout, with her eyes flaring and the veins popping in her face (the red face which will be addressed later).

11. Lantz's tirade continued even after Carr and LaCouty arrived on the scene (Px. #2; T. #33-37). Carr wrote a written statement (Px. #3) the day of the event where he described:

"...Lantz was yelling at Wallace in front of the students," "...Lantz was red-faced as she was yelling." "Wallace did not respond."

12. LaCouty, in his written statement (Px. #4), stated:

"As I was going up the stairs, I can hear Wallace yelling at someone."  
"At the top of the stairs, I can see Lantz yelling and pointing at Wallace."

13. In their hearing testimony, both Carr and LaCouty described Wallace as calm while Lantz was yelling at either Wallace or the students. All three (3) witnesses verified that the students witnessed the event.

14. Lantz, meanwhile gives several inconsistent accounts of the event, as noted by the ALJ in FOF #23.

15. The ALJ described Lantz as "evasive and stubborn," "refused to answer simple questions" and "instead answered only questions she wanted to answer" (FOF #21). The ALJ found that Lantz's credibility was undermined by her "repeated inconsistencies in her testimony and

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<sup>3</sup>Lantz gives several different accounts of the event, but claimed Wallace came screaming up the stairs because Lantz moved the desks used for testing back to their original position. Wallace stated the event occurred when she requested Lantz left the tables in their position for testing the next day.

statements” (FOF #13); yet he found Wallace disingenuous.

16. A comparative review of the transcribed testimony of Wallace and Lantz will clearly depict who is the less credible witness. It certainly isn't Wallace.

### LANTZ HEARING TESTIMONY

17. Lantz claims that during the lunch time following the third period she went to her classroom and engaged in a discussion about the use of the room. Wallace promised to send some students to move them and then left with her testing materials. (T. #184/18-25).

18. Lantz claims that at the start of the fifth period when Wallace didn't return with students to move the tables, she asked the first few boys to move the tables back to their original place. When the other students came to the class Lantz requested that they wait outside until the tables were in place. (T. #185/1-6). At this point, Lantz claims that Wallace came up the stairs screaming at her concerning kids running all over the place, that Respondent could not manage her class and that she did not care about kids. (T. #185/7-15). Lantz made no mention of the desks being moved or that Wallace complained about the movement of the desks for testing purposes during this portion of her testimony. Lantz provides no explanation why Wallace, as the Reading Coach, would be concerned about Lantz's class management.

19. Lantz then claims that she sent two (2) unidentified students to get the security monitor after Wallace repeatedly refused Respondent's request to leave the room. (T. #185/7-15). Lantz then sees the two (2) students coming back with Carr from the elevator. (A fact denied by Carr). Lantz requests Carr to escort Wallace back to her work area. (T. #185/16-23). Carr instead calls for "security" and Lantz claims that is when Carr shows up. (T. #185/24-25; T. #186/1). Lantz never explains how or why Carr would call himself on the radio or how he would show up twice to

the same location.

20. Lantz claims she then went into her room (although no previous explanation was given that she had left the room) whereupon Carr started yelling at the students, which caused them to go into the room. (T. #186/2-4). Lantz then testifies that “we” (her and the students) sat down and started to get to work. (T. #186/5).

21. Lantz then claims that she sees LaCouty through a “propped open door.” No explanation why Respondent wouldn’t shut the door after the students came into her classroom; especially if the I-95 traffic is so loud. LaCouty stopped to say a few words to Wallace who then leaves. (T. #186/8-10).

22. At this time, according to Lantz, LaCouty enters the classroom yelling at her in front of the students that she was unprofessional. Lantz claims that she repeatedly requested LaCouty to forego that type of discussion in the presence of students. LaCouty, in a huff, states “I’ll deal with you later” and leaves. (T. #186/18).

#### **LANTZ HEARING TESTIMONY (CROSS EXAMINATION)**

23. Lantz claims that she was in her classroom for five (5) minutes before Wallace came up the stairs. (T. #216/20-25). Lantz first claims that Wallace came up the stairs “screaming” at her. (T. #213/7-10) but then claims that Wallace was “speaking in derogatory terms.” (T. #214/21-22) before adding “loudly” (T. #214/23-25) to conclude that she was “speaking loudly” (T. #215/10-21). However, Lantz reverts back to the “screaming” accusation later in her testimony. (T. #219/7-10).

24. Lantz claims that Wallace came running up the stairs because Lantz had the students move the three (3) desks back to their original position. However, Lantz was unable to explain how Wallace, who was on the first floor, would have known what Lantz did in her classroom on the

second floor (T. #221/1-13; T. #223/10-21). Lantz then changes this version and claims that it was not about the tables, but because students were “running around.” (T. #224/4-17). This testimony directly conflicts with her sworn deposition testimony where she states “I was in my class getting ready to start class, and she (Wallace) came in screaming and yelling at me because there were like six (6) tables that she had moved and I had moved them back to where they were so I could conduct class.” (Px. #1 p. 13/11-15). Lantz, in her written statement dated April 6, 2010 (Px. #14), wrote that Wallace yelled at her for moving the desks. But when presented with the choice of her conflicting statements (i.e. moving desks or students running around), Lantz conveniently selects both. (T. #226/6-25).

25. Her reason for these different versions was the result of new information she just received. (T. #228/1-7), which was the witnesses hearing testimony (T. #228/8-19). Lantz “also forgot” her earlier factual version where Wallace purportedly crossed her arms, blocked Lantz’s entrance to the classroom and wouldn’t move despite her repeated requests. (T. #232/9-16). Lantz was also unable to explain why half of her students were in the hallway five (5) minutes after she had started class. (T. #234-235). Both Carr and LaCouty verified that her students were in the hallway when they observed Lantz yelling at Wallace.

#### **OTHER CONFLICTS**

26. Lantz’s explanation even concerning the movement of the desks lacks any credibility. In her direct testimony Lantz claims that Wallace came up the stairs screaming at her while she was having the students move the six (6) tables (T. #185/1-10). However, in her sworn deposition testimony Lantz claims that Wallace was yelling and screaming because Lantz had the students already move the six (6) tables back. (T. #232). Her written explanation (Px. #13) states that



Wallace promised her that she would have some students return to assist in moving the tables. When Wallace did not return, Lantz had some of her male students begin to move the tables. Wallace returned without any students and began yelling at her because she was going to be using the room the next day. These three (3) factual versions directly conflict with each other.

27. Lantz had testified at the hearing, in her deposition and in her written statement that Wallace had promised to return with some students to assist in moving the table. Lantz claims that Wallace came running up the stairs screaming at her because she had the tables moved but offers no explanation why Wallace would be angry over moving tables that she had promised to do herself. Why would Wallace be angry over something she had purportedly agreed to? This version defies all logic. Finally Lantz “speculates” for the first time that she came to the room because the kids were running around. (T. #223/19-21).

28. There is no competent substantial evidence to support the ALJ’s finding, which should be rejected or modified. Instead, there is competent substantial evidence to support the version of events by Wallace, Carr and LaCouty and the inference that Wallace’s concern for her and the students safety was reasonable considering the circumstances.

#### **EXCEPTION NUMBER 6**

29. The ALJ in the Findings of Fact Number 11 and Number 16 are contradicted by the evidence, including Lantz’s testimony. The ALJ stated that Lantz “complained loudly” that Wallace hadn’t rearranged the room. (FOF #9), and that they “briefly disagreed” over the desks (FOF #11) without any further description or explanation. Meanwhile, Lantz admitted yelling at Wallace because Wallace had been yelling at her (Px. #1 p. 22/21-25). Yet, Lantz claims in her written statement that she was unable to yell after having damaged her vocal chords by trying to talk over

my very large classes all year long. (Px. #14 p. 3), but describes herself as always having a loud voice.

30. The ALJ discounts Wallace's characterization of Lantz as "ranting and raving" and "deranged," but makes no findings of fact concerning Carr and LaCouty's factual description of Lantz's actions towards Wallace in their presence. The competent substantial evidence clearly demonstrates that Lantz's action were unprovoked and unprofessional.

#### **EXCEPTION NUMBER 7**

31. The ALJ in the Findings of Fact Number 16 and Number 19 discount any impact on the students through Lantz's actions. The evidence clearly shows that Lantz yelled both at the students and at Wallace in the presence of the students.

32. The ALJ ignored by omission the testimony of Carr, who after witnessing Lantz's yelling (T. #107/20-25) directed the students to go into the classroom. Lantz, raising her voice and with her face red from her anger, countermanded his action. (T. #109/20-25; T. #110/1-15).

33. The ALJ also ignored or omitted the testimony of LaCouty who viewed Lantz nose to nose, while yelling and making gestures at Wallace which he described as "very intimidating" (T. #129/9-16; T. #130/1-6; T. #131/18-19).

34. LaCouty told Lantz to refrain from her actions in front of the students. Lantz responded by stating Wallace disturbed her and she'd deal with him (LaCouty) later (T. #130-137). His concern was for the students who were witnessing their teacher act in an inappropriate manner. (T. #131/1-2).

35. There is no competent substantial evidence to support this finding, which should be modified to find that the students were impacted by Lantz's unprofessional actions and demeanor.

### EXCEPTION NUMBER 8

36. The ALJ in Finding of Fact Number 19 discounted the impact on the students because, in part, no students testified and LaCouty instructed the students to return to the classroom. First, the students' testimony is unnecessary. It is Lantz's inappropriate actions as an educator in the presence of the students, not their reaction, that is the focus. If, for example, Lantz had bludgeoned or shot Wallace in their presence, would the lack of their testimony eliminate her ethical responsibility? I trust not.

37. The second part of the Judge's findings is not supported by the evidence. LaCouty never instructed the students to do anything. Perhaps, the Judge had confused it with Carr's testimony, who had directed the students to go into the classroom but was rebuffed by Lantz (T. #109/20-25).

38. There is no competent substantial evidence to support this finding.

### CONCLUSION

1. The foregoing citations clearly depict that the Finding of Facts were not supported by competent substantial evidence and should be rejected or modified.

2. The Petitioner would request the material allegations in the Administrative Complaint be adopted as the Findings of Fact.

3. The Petitioner would request paragraphs 24 through 28 of the Recommended Order be adopted as the Conclusion of Law and in addition include a provision(s) that the Respondent's conduct violates the provisions of Counts 1 through 6 of the Administrative Complaint.

4. Petitioner would also request an appropriate sanction be administered against the Respondent's Florida Educator's Certificate in accordance with Florida Statute 1012.796(7) and 6B-11.007 F.A.C.

Respectfully Submitted,

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

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished via U.S. mail to: Jana Lantz, Post Office Box 813853, Hollywood, FL 33081, and Kathleen Richards, Educational Practices Commission, 325 West Gaines Street, Suite 224, Turlington Building, Tallahassee, Florida 32399-0400, this 16<sup>th</sup> day of September, 2011.

/s/Charles T. Whitelock  
CHARLES T. WHITELOCK



**EDUCATION PRACTICES COMMISSION**  
STATE OF FLORIDA

**KATHLEEN RICHARDS**  
Executive Director

**MARK STRAUSS**  
Chairperson

**DANIEL BIGGINS**  
Counsel

**DAVID THOMPSON**  
Co-Chairperson

January 11, 2012

Jana Lantz  
Post Office Box 813853  
Hollywood, Florida 33081-3853

Re: Dr. Eric J. Smith vs. Jana Lantz  
EPC No.: 11-0117-RT; DOE No.: 725822

Dear Ms. Lantz:

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

This panel, composed of your peers, believes that, as a teacher, you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession. The profession cannot condone your actions, nor can the public who employ us.

The Education Practices Commission sincerely hopes it is your intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibilities as an educator. To violate the standards of the profession will surely result in further action being taken against you.

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

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Thompson".

David R. Thompson  
Presiding Officer