

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GERARD ROBINSON, )  
AS COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-6380PL  
 )  
DEIDRA JUNIPER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A duly-noticed hearing was conducted by video teleconference with sites in Pensacola and Tallahassee On May 24 and 25, 2012, and concluded on June 18, 2012, in Pensacola, Florida, before Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. David Holder, Esquire  
J. David Holder, P.A.  
387 Lakeside Drive  
DeFuniak Springs, Florida 32435

For Respondent: Ronald G. Stowers, Esquire  
Levine and Stivers, LLC  
245 East Virginia Street  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated section 1012.795(1)(d) or (g), Florida Statutes (2009)<sup>1/</sup> and/or

Florida Administrative Code Rule 6B-1.006(3)(a) or (e), and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On September 27, 2011, Gerard Robinson as Commissioner of Education ("Petitioner" or "the Commissioner"), filed a four-count Administrative Complaint against Respondent, Deidra Juniper ("Respondent" or "Ms. Juniper"), alleging that she violated section 1012.795(1)(d) and (g), and rule 6B-1.006(3)(a) and (e), based on conduct occurring during the 2009-2010 and 2010-2011 school years. On October 13, 2011, Respondent filed an Election of Rights form disputing the allegations in the Administrative Complaint and requesting an administrative hearing pursuant to section 120.57(1), Florida Statutes. On December 14, 2011, the case was referred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge.

The case was originally scheduled for hearing February 22, 2012, in Pensacola, Florida. At the request of Respondent, the case was continued and rescheduled for April 5-6, 2012. At Petitioner's request, the hearing was again rescheduled for May 24-25, 2012, by video teleconference.

The hearing began as scheduled. However, it could not be completed within the time allotted, and was reconvened and completed in Pensacola on June 18, 2012.

Prior to hearing, the parties submitted a Joint Pre-Hearing Stipulation that contained a limited number of stipulated facts that have been incorporated into the findings of fact below. At hearing, Petitioner presented the testimony of S.J., D.L., M.H., K.L., T.R., G.H., D.R., K.J., M.W.,<sup>2/</sup> Megan Brees, Deborah Parker, Sharee Cagle, Alan Scott, Judy LaBounty, Te.R., Michelle Cox, and Troy Brown. Petitioner's Exhibits numbered 1-27 were admitted into evidence. Respondent testified on her own behalf and presented the testimony of K.S., Linda Mashon, Uadona Lobley, Theresa Delsignore, Holli Herron, Rebecca Hines, Jennifer Kemp, Ann Choat, D.V., Nancy Reese, Dr. Randi McDonald, and Rose Mary McGowen. Respondent's Exhibits numbered 1A, 1B, and 2-9 were admitted into evidence. The four-volume transcript was filed on July 5, 2012. The parties were given until July 27, 2012, to file their proposed recommended orders. Both parties have filed post-hearing submissions that have been carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is charged with the certification and regulation of professional educators in the state of Florida, pursuant to the provisions of section 20.15 and the Florida K-20 Education Code, chapters 1000-1013, Florida Statutes (2009).

2. Respondent, Deidra Juniper ("Respondent" or "Ms. Juniper"), holds Florida Educator's Certificate 317540, covering the area of elementary education, which is valid through June 30, 2016.

3. At all times material to the allegations in the Administrative Complaint, Respondent was employed as an elementary school teacher at Yniestra Elementary School ("Yniestra") in the Escambia County School District. Yniestra was a Title I school. Since the events in this case, Yniestra has closed.

4. During the 2009-2010 school year, Respondent taught fifth grade. She had taught at Yniestra since 2000.

5. At the beginning of the 2009-2010 school year, Yniestra received a new principal, Dr. Sharee Cagle, following the retirement of the former principal, Nancy Reese. Dr. Cagle was also the principal for Hallmark Elementary School, serving in that capacity at both schools simultaneously.

6. Shortly before the beginning of the school year, Respondent's adult son died unexpectedly. Dr. Cagle, along with other school district administrators, attended the wake for Respondent's son to offer their condolences. Although Dr. Cagle had attended a faculty meeting soon after her appointment was announced at the end of the preceding year, this was the first time that she and Respondent had met.

7. Respondent believed she had a good relationship with Ms. Reece, and Ms. Reece's testimony was consistent with that belief. She generally had a reputation of being a good, professional, and knowledgeable teacher, with high standards for her students. She did not share the same rapport with Dr. Cagle.

I. The 2009-2010 School Year

A. Medication

8. M.H. was a student in Respondent's fifth-grade class during the 2009-2010 school year. He made B's and C's in her class. M.H. claimed that Respondent told him that he needed to be on medication and that she called him dumb in front of the class. M.H. admitted that right before the alleged comment regarding the need for medication, he was standing at his seat as opposed to sitting, and liked to move around the class a lot. He did not recall her ever calling a student in the class stupid.

9. Respondent denied asking M.H. if he was on medication or telling him that should be medicated. Respondent acknowledged that she spoke to M.H.'s mother during a parent conference about his behavior and asked whether he was on medication. Although M.H. was unsure why he was removed from Respondent's classroom, he was transferred to the other fifth-grade teacher (Ms. Sheater) at his mother's request.

10. K.L. was also a student in Respondent's class. Generally, he was a B-to-D student who Respondent did not consider to be a discipline problem. K.L. was on medication that helped him with focus. One morning, K.L. failed to take his medication before leaving for school. K.L. could not stay still that day and was not getting his work finished. K.L. testified that Respondent asked him why he was not finishing his work, and whether he had taken his medication that day. When he said no, she told him he should take his medication. No testimony was presented as to who else could hear the comments made to K.L.

11. Respondent vaguely remembers an incident where K.L. was not doing his work and was talking instead, but does not recall telling K.L. that he should have taken his medication.

12. Another student testified that on occasion, Ms. Juniper would make the statement that the students were "on medication or something" when they were noisy and disruptive as a class, and she was trying to get them to be quiet. The comments were directed to the class as a whole, however, and this student denied ever hearing Respondent tell an individual that he or she needed to be on medicine.

13. Dr. Cagle testified that it would be inappropriate to tell an unfocused student who had already told her that he forgot to take his medication that he needed to do so. According to Dr. Cagle, it is not up to the teacher to determine whether

taking meds is going to help him have a better day, and it is not appropriate to make a statement regarding medication in front of other children.

14. After review of all of the evidence presented, the Commissioner presented clear and convincing evidence that Respondent told K.L. that he needed to take his medication on the day that he acknowledged he had not done so. It is not established by clear and convincing evidence that the statement was heard by other students. The other allegations regarding comments to students that they needed medication were not supported by clear convincing evidence.

B. Belittling or Disparaging Remarks

15. M.H. claimed that Respondent called him dumb in front of the class. He did not recall her ever calling a student in the class stupid. M.H. admitted that Respondent told the entire class that not doing their work was dumb, but insisted that she also made that statement about him individually.

16. K.L. also testified that she called him dumb in front of the class. Another student, G.L., stated that she told a student on a single occasion that they needed to be on medication but could not identify the student and could not recall any of the circumstances related to the incident.

17. No student indicated that they heard Respondent call a student crazy or retarded. While D.L. testified that Respondent told a student he or she was not going to sixth grade, she was unsure which student was involved.

18. Other individuals, including students, parents, and staff, testified that they had never heard Respondent accuse a child of needing medication or call a student dumb, crazy, or retarded. Respondent denies ever making such statements. With respect to the statement about going to sixth grade, she testified credibly that the only time she would discuss a student's promotion to the next grade would be in the context of parent-child conferences, and not in front of other students.

19. The evidence is not clear or convincing that Respondent called students crazy, dumb, or retarded.

### C. Clothing

20. Yniestra, as a part of the Escambia County School District, had a dress code that prohibited clothing that could be considered disruptive. On one occasion, a female student in Respondent's class was wearing a t-shirt that depicted a vampire biting in the general vicinity of the student's breast. The t-shirt was covered by another shirt, but while the students in Respondent's class were in line in the hallway, the overshirt had come loose, exposing the t-shirt.



21. Respondent found the t-shirt inappropriate, and noticed that the boys in the line were talking about it. Ms. Parker, the reading coach at Ynuestra, was also in the hallway. Respondent asked Ms. Parker whether the shirt was inappropriate, and in Ms. Parker's view, Respondent was speaking about the shirt too loudly and where the class could hear her. Ms. Parker felt that Respondent was being confrontational toward the child and that if the shirt was a problem, the proper procedure was to send the student to the clinic, where the student could either secure something to wear over the shirt or arrange for other clothing.

22. Ms. Juniper did not report the child or send her to the office, but she admits that she asked the child to cover the t-shirt. The child was never identified at hearing, and did not testify, so it cannot be determined whether the student felt singled out or embarrassed by the incident.

23. On another occasion, Respondent commented upon T.I.'s pants which had a paint-splatter pattern on them. T.R., however, testified that Respondent told T.I. that her clothes were dirty, and when she did so T.I. was wearing cut-up jeans and a white t-shirt which was in fact dirty. T.I. did not testify.

24. The evidence is not clear and convincing that Respondent made inappropriate comments regarding students' clothing.

#### D. Informal Conference

25. On November 5, 2009, Dr. Cagle requested an informal conference with Respondent to discuss complaints that she had received regarding inappropriate comments to students, such as "you need medication"; "you need counseling, you are crazy"; and "you'll never make it to middle school." Dr. Cagle's notes from the conference indicate that Respondent admitted saying things "like this" but not in the way the statements reported. Dr. Cagle spoke with her about talking with students privately and appropriately. The documentation relates only the events from Dr. Cagle's point of view, with no written comments from Respondent.

26. In February 2010, Dr. Cagle sent Respondent a memo indicating that discipline was being considered for several reports of inappropriate comments being made to students in front of the class, and for not following appropriate procedures. The reference to improper procedures apparently was in response to a report that on at least one occasion, Respondent sent a student to the office for discipline as opposed to having assistance sent to her classroom. The memo outlined strategies for improvement, and Ms. Juniper was given a copy of the Discipline Procedures from the Policy Book and a copy of a memorandum that outlined the steps for discipline.

E. The Treatment of S.J.

27. S.J. is by all accounts, a very bright child, and was at the head of her class. She was generally considered to be a model student. Respondent thought her to be a bright child, but believed she at times had an attitude problem.

28. The Administrative Complaint alleges that Respondent singled S.J. out for disparagement and told other students S.J. was a bad influence and was trying to get Respondent in trouble. The allegations regarding S.J. revolve around three incidents: a claim by Ms. Brees, the art teacher, that Respondent singled S.J. out for rebuke in the hallway; a claim by Ms. Brees that she reprimanded S.J. in the classroom when S.J. had done nothing wrong; and an incident where Respondent allegedly tore S.J.'s citizenship card.

29. Ms. Brees was the art teacher at Yniestra, and taught there for six years. Her classroom is in a portable whereas Ms. Juniper's was on the second floor of the school building. Ms. Brees describes two incidents that led her to believe that Respondent had singled out S.J. for disparaging treatment. The first was an incident where students from Ms. Juniper's class were standing in line in the hallway. According to Ms. Brees, Respondent accused S.J. of talking and berated her for doing so, when S.J. was actually one of few students standing quietly in line.

30. There was no testimony as to when this incident occurred, or how long Ms. Brees had been observing the conduct of the students. It is impossible to tell, from the evidence presented at hearing, whether S.J. may have been misbehaving before Ms. Brees observed her or whether Respondent in fact singled her out for rebuke.

31. The second incident occurred at the end of art class on or about February 16, 2010, when Respondent went to pick up her students and escort them back to lunch. She and Ms. Brees were standing in the doorway to Ms. Brees' portable. According to Ms. Brees, she was standing in the open doorway, with her back against the frame of the door. Ms. Juniper was standing in the open doorway of the portable but was partially inside the classroom. While the students were waiting to line up to leave, Ms. Juniper testified that saw S.J. make a "smart face" at Ms. Brees and say something under her breath. She told S.J., "that is not appropriate. You are our valedictorian and should be an example to others." Ms. Brees testified that she did not see or hear S.J. do anything that needed correction.

32. While Ms. Brees testified that she could see S.J. the whole time, and Ms. Juniper testified that Ms. Brees could not, from both women's descriptions, Ms. Juniper would have had a better view of the children and was closer to them in terms of

hearing what was said. It is found that Respondent had a basis to correct S.J.'s behavior and did so.

33. Ms. Brees acknowledged that there are times when a student can present behavioral issues for one teacher and not for others. Moreover, there was a prior incident to which Respondent testified she had observed Ms. Brees speaking to a student in what she believed to be an inappropriate manner, and had told Ms. Brees that she "couldn't say those things to a kid." Whether or not Ms. Brees acted inappropriately in the prior incident is not an issue in this case. However, Respondent's comment on Ms. Brees' behavior, whether or not warranted, may have had an effect on her attitude toward Respondent and her view of Respondent's behavior.

34. In any event, after the incident in the portable, Ms. Brees wrote an e-mail to Ms. Cagle complaining about Respondent's treatment of S.J.

35. The third incident involved the tearing of a citizenship card (also referred to as a conduct card. On or about March 8, 2010, Respondent was filling out a citizenship card for S.J. and S.J. asked her for it. Ms. Juniper was not finished writing on the card when S.J. reached for it, and the card tore as she took it. Although S.J. knew that Ms. Juniper had not torn the citizenship card, she told both her mother and Dr. Cagle that Respondent had ripped the citizenship card into

pieces. She did not retract her statement until after the school year ended and never told Dr. Cagle that her accusation was not true.

36. After the incident with the conduct card, S.J. started keeping a log of things that Respondent did or said that she felt were improper. Shortly thereafter, on March 12, 2010, Dr. Cagle issued an e-mail to Respondent and to Ms. Sheater, stating: "[S.J.] will be moved to Mrs. Sheater's class effective Monday, March 15, 2010. This is at the mother's request and I believe it will be the best for all parties involved."

37. At the time Dr. Cagle made the decision to transfer S.J., she had both the e-mail from Ms. Brees and a complaint from S.J.'s mother in response to the alleged incident with the conduct card. Transferring the child to another classroom under these circumstances was reasonable.

38. However, the question remains what would cause S.J. to pull the conduct card from Respondent's hand in the first place, and then lie about the incident to both her mother and to Dr. Cagle. It is implausible that a model child with absolutely no discipline or attitude problems would attempt to snatch something out of her teacher's hand to the point of tearing it. The circumstances related to the torn citizenship card lend credence to Respondent's testimony that she was recording on the card that S.J. had been disrespectful and belligerent in class

that day, and that the citizenship card would reflect that information.

39. Contrary to Ms. Brees' testimony, the guidance counselor, Ms. McGowen, testified that she had been in Ms. Juniper's classroom and that her interaction with students was appropriate. She did not believe that Respondent singled out S.J. for disparagement. She testified that Respondent had actually come to her about S.J., stating that S.J. may need to talk to Ms. McGowen about some personal problems away from school. Respondent testified that she had suggested to S.J.'s mother that she go to guidance. Given this testimony, it is plausible that, for whatever reason, S.J. resented Respondent and/or did not behave as well in her classroom as she did elsewhere. Whether or not that is the case, the evidence is not clear and convincing that Respondent singled her out for disparagement.

#### F. The Code Yellow

40. On or about April 5, 2010, a lockdown was initiated at Yniestra. Lockdowns could be a code yellow or a code red. A code yellow indicates that there is someone around the premises or in the nearby community that could be or cause danger. In that circumstance, a teacher was to account for all of the students in her class, and if accounted for, place a green sheet of paper in the door, lock it, and continue instruction quietly.

41. A code red indicated that someone has broken into the building. The same procedures are followed as for a code yellow, except that students and staff are to remain silent and stay away from windows and doors.

42. The lockdown on April 5, 2010, was extremely long. Initially, all of the students in Respondent's class were at a reading table in the back of the classroom. As the lockdown continued, however, the students became restless and were talking. Some of them were under the table, laughing, cutting up, and banging their heads. Respondent instructed them to be quiet, but to no avail.

43. Ms. Juniper called the front office to find out why the lockdown was taking so long, and no one answered. She then called Ann Choat, a curriculum coordinator for the 2009/2010 school year at Yniestra, to ask what was going on, and told Ms. Choat that she had called the office and could not get anyone. Ms. Choat confirmed at hearing that she had received the call and testified as to the contents of the conversation, yet none of the students remembered whether Ms. Juniper used the telephone during the lockdown. This is significant because it indicates to the undersigned that the students were paying more attention to their own conversations, which they were not supposed to be having, than to what Ms. Juniper was doing or saying.



44. D.L. was one of the students who was laughing with her friends. When the students did not follow her directions to be quiet, Ms. Juniper moved her away from the other students to a spot along the wall under the windows, on the same side of the room as the door. Her head was not above the windows and she could not be seen from outside the room. At least one other student was also moved in order to get the students to be quiet.

45. D.L. testified that she did not like being moved, and told Respondent that if someone was outside, they could see her and shoot her. D.L. testified that Respondent said she hoped the person would come in and shoot them. Respondent adamantly denies making such a statement, and testified that she responded to D.L. by saying "I hope you aren't shot, but if you keep talking like that, I couldn't stop one from coming through this door."

46. The testimony from other students regarding this incident was varied. Some testified that it was a code red, while others testified it was a code yellow. Students remembered other students being moved from the back of the room, but could not remember who or how many were moved or the location to which they were moved. They could not remember whether D.L. was talking to Respondent before Respondent's comment, and if they could remember, did not recall what D.L. said. All remember some version of Ms. Juniper saying she hoped that those who were talking got shot.

47. Given the level of noise in the room and the inability to remember other details about the lockdown, it is just as likely (and more plausible) that Ms. Juniper said "I hope you aren't shot" as opposed to saying "I hope you are shot." Dr. Cagle acknowledged that children sometimes relate what they thought they heard rather than what was actually said. It is farfetched to believe that these students, who were holding their own conversations and could not identify with certainly any of the details surrounding the lockdown, suddenly heard with crystal clarity exactly what Ms. Juniper said. In any event, the evidence does not rise to the level of clear and convincing evidence that she told her students she hoped they were shot.

48. Whether or not she actually made the statement, it is clear that D.L. believed that she did. She became very upset and once the lockdown was over, Respondent sent her to Ms. Sheater, the other fifth-grade teacher, so that she could take a few moments and calm herself down. While in Ms. Sheater's room, she relayed her version of the events to Ms. Sheater, who instructed D.L. to write down what happened, and called Ms. Parker, the reading coach.

49. Ms. Parker had D.L. come to her room and tell her what happened. D.L. was visibly upset. Ms. Parker spoke to another, unidentified student in the hall who was in Ms. Juniper's class,

who verified D.L.'s story. She then called Dr. Cagle and to report the incident.

G. Discipline by the School District

50. Dr. Cagle spoke to D.L. and then spoke to the other children in the classroom. As a result of her investigation, the district office was notified of the incident, and Ms. Juniper was immediately placed on suspension with pay while the incident was investigated by the district.

51. After the district's investigation, on May 12, 2010, Respondent received a letter of reprimand "for use of abusive, rude or inappropriate communication both to, and in front of, students and other employees at Yniestra Elementary School." She was required to attend the staff development training titled "What is it about me you can't teach?" and to meet regularly with her principal to discuss any and all concerns regarding her students. Participation in the Employee Assistance Program was suggested but not required.

52. Respondent grieved the reprimand through the district's process for doing so. Consistent with the notice provided in the reprimand, Respondent prepared a written response which stated in part:

As a 36 year veteran teacher, I have spent the last ten years at Yniestra Elementary. I have received commendations from students, parent and administrators throughout my career. I have always conducted myself in a

professional manner, keeping the best interests of my students in my mind. I am cognizant of their individual differences, respectful of their feelings, and doing my best to meet their needs.

Your letter stated that it was given to me because of my professional demeanor was determined to be inappropriate. Incidents that occurred during the 2009-2010 year were interpreted to portray me in a negative light and to shed doubts on my professionalism. I believe the District's decision to discipline me is based on information obtained from biased and shoddy investigations, giving undue weight to statements made by students known to have discipline issues in my and other classrooms. This led to a faulty conclusion, casting me in a negative light.

. . .

## II. The 2010-2011 School Year

### A. Abusive Statements

53. Dr. Cagle changed Respondent's teaching assignment for the 2010-2011 school year from the fifth grade to the second grade. She testified that she believed there would be fewer disciplinary challenges in a second-grade setting because children generally love their teachers at that age and are generally easier to manage. In her view, it was a better match for Respondent. She acknowledges that there were fewer issues in this school year.

54. Dr. Cagle testified that while there were fewer issues, at least three or more students complained to her that Respondent made derogatory comments to them or put her hands on them when she was angry.

55. On October 22, 2010, she sent a memorandum to Respondent directing her to come to the office and discuss allegations that she made inappropriate comments in class and engaged in inappropriate touching of students. Although the memorandum indicated that documentation gathered regarding these issues was attached, no such documentation was entered into evidence. Further, no student testified that inappropriate statements were made to them or that Respondent touched them inappropriately. Dr. Cagle could not name any of the students that she states complained to her. Clear and convincing evidence was not presented to support the allegation that Respondent made disparaging or inappropriate remarks to students. The only evidence to support the allegation regarding inappropriate touching involved an incident with K.S., which is discussed below.

#### B. The Bathroom Incident

56. Judy LaBounty, was a curriculum coordinator for Yniestra and Hallmark Elementary Schools during the 2010-2011 school year. She testified that on or about October 15, 2010, she was standing in the hallway of the school and saw Ms. Juniper and her class as the girls were going to use the restroom. According to policies instituted by Dr. Cagle, students and staff were not supposed to talk in the hallways. She said that it appeared that Respondent was upset or angry, and she called a student from the restroom to the door. When the student appeared, she took her by the arm

above the elbow, pulled her over to the wall and leaned over to speak to her. Ms. LaBounty stated that she was about ten yards from her and could not hear her, but from both people's body language, she was reprimanding the student in an angry tone.

57. Ms. LaBounty did not know why Ms. Juniper was reprimanding the child, whom she could not identify by name, but simply knew she was trying to get the child to leave the restroom. She notified Dr. Cagle of the incident because Respondent had put her hand on a student.

58. The student involved in this incident was K.S., an energetic and bright young girl. On this particular occasion, K.S. said another child was "messaging with me" in the bathroom, so she jumped on the other girl's back. The other child came out of the bathroom with tears in her eyes. When Ms. Juniper asked her what was wrong, she relayed that K.S. had jumped on her.

59. Ms. Juniper called to K.S. to come out of the bathroom and had to call more than once. When she came out, according to K.S., Ms. Juniper "gently pulled me out of the bathroom and she just talked to me about it." Ms. Juniper's testimony is consistent with K.S.'s, and Respondent admits taking K.S. by the arm as she exited the bathroom.

60. Both Ms. LaBounty and Dr. Cagle stated that it is against Escambia County School District policy to lay a hand on a child. However, no copy of any policy was placed into evidence,

and without the policy in evidence, no analysis of its parameters can be made. In any event, from the evidence and the demeanor of the witnesses, it does not appear that there was any attempt by Respondent to yank on K.S.'s arm, engage in corporal punishment, or to hurt K.S. in any way.

### C. Birthday Licks

61. M.W. is a special education student in the extended services program for the Escambia County School District. At the time of the incident he was approximately 19 years old, and worked as a volunteer at Yniestra. He is described as a good worker with limited academic skills.

62. February 22, 2010, was M.W.'s birthday, and consistent with school custom, he was wearing a birthday ribbon. The students in Ms. Juniper's class wanted to make him a birthday card, and Ms. Juniper gave them permission to do so.

63. When M.W. went into Ms. Juniper's classroom that day, one of the children asked to sing "happy birthday," and they did. After singing to him, someone suggested that the students give him "birthday licks." While the testimony is in dispute as to whether Respondent suggested the licks or simply acquiesced to them, it is clear that she allowed at least two of the students in the class to hit M.W. on either his buttocks or his lower back, and at least one child hit him hard. M.W. was uncomfortable with the process and told Ms. Juniper that "this was not a good idea."

64. At some point, Dr. Cagle walked into the room and witnessed the children giving M.W. birthday licks. She immediately told Ms. Juniper that it was not appropriate, and had M.W. leave with her. Dr. Cagle had M.W. visit the clinic where he was examined for any injuries caused by the licks. None were noted. However, M.W. was embarrassed by the incident and felt he was in trouble for it.

65. Respondent did not think anything of having the children give M.W. birthday licks, because during the many years that she taught for the Department of Defense schools overseas, giving birthday licks was routine. However, Respondent had been in the Escambia County School District for several years, and should have known that it was not part of the culture in this setting. Moreover, having second graders give licks to a much older special needs student was clearly inappropriate.

66. Later in the day, Respondent took the card her class had made to M.W., and he was still upset. She was then called to the office and told to pack her things because she was being suspended. She told Dr. Cagle that the incident was her fault and she would take the blame for it.

67. Respondent was placed on suspension with pay during the investigation of the incident. Ultimately, she was suspended without pay for two days, beginning Wednesday, April 20, 2011, as discipline for the incident.



#### D. The Relationship Between Dr. Cagle and Respondent

68. Evidence was presented at hearing regarding the changes at Yniestra once Dr. Cagle became principal, for the purpose of showing bias or prejudice concerning Dr. Cagle's testimony.<sup>3/</sup>

69. Dr. Cagle did not know Respondent before she became principal, and before that time her contact with Respondent was limited. However, it is clear that Dr. Cagle's management style was very different from that of her predecessor, Nancy Reese. This proceeding is not the place to determine which, if either, style is or was more effective, but it is clear from the testimony that not all teachers who had taught under Ms. Reese were thrilled with the changes. Several testified that they were removed from committee assignments and did not feel that their contributions were respected by the new leadership. Several transferred or retired rather than stay at Yniestra.

70. Yniestra was scheduled to close after the 2010-2011 school year, and Dr. Cagle was to stay on and serve as principal for the Global Learning Academy, an elementary school that would open in the same location as Yniestra. From the totality of the evidence, it appeared that Dr. Cagle was "cleaning house" in terms of staff. While there is no question that some of the events alleged in the Administrative Complaint in fact occurred, it also appears that Dr. Cagle was motivated to remove Respondent from her

position. As Ms. McGowen stated, she did not believe Respondent could please Dr. Cagle.

71. For example, on June 23, 2011, Dr. Cagle wrote to the Department of Education about Respondent's performance. At hearing, Dr. Cagle indicated that she wrote the letter at the request of an investigator at the Department of Education. The letter, however, makes no reference to a pending investigation and makes several statements that are inconsistent with the other evidence presented at hearing.

72. For example, the first bullet point states that:

Ms. Juniper is emotionally unstable. She lost her son unexpectedly right before school starts. She cries often and for long periods of time. She talks about his death daily to her class. She talks endlessly to anyone who will listen about him. I encourage her to go to counseling but she says she does not need to go.

73. Dr. Cagle acknowledged at hearing that she is not qualified to determine emotional instability, and no fitness-for-duty evaluation was ever requested. No other staff member from Yniestra testified that Respondent was mentally unstable. To the contrary, Linda Mashon (who retired in September 2010), Uadona Lobley (who transferred after the 2009-2010 school year), Holli Herron (who transferred after the 2010-2011 school year), Jennifer Kemp (who transferred after the 2009-2010 school year), and Ann Choat (who retired after the 2009-2010 school year) uniformly

described Respondent as having a reputation of being a professional who worked well with her students and, notwithstanding the loss of her son, none of them considered her to be unstable.

74. Dr. Cagle's letter identified several inflammatory statements that she attributed to Respondent, some of which were alleged in the Administrative Complaint and some of which were not. Although this letter is supposed to be part of an investigation into Respondent's behavior, she gives no specifics as to the identity of the students to whom these statements were made, who reported them, or when they were made in order for the Department to investigate.

75. The letter states that "eight parents requested that their child be placed in another class the year [sic]." At hearing, she testified specifically about a request from D.V. that her daughter not be placed in Respondent's class:

Q. And can you tell us the reasons why these parents asked that their child be removed from Ms. Juniper's class?

A. The first request came before the first day of school. It came from a parent, Ms. V.

Q. What is Ms. V's first name?

A. D.V. That her daughter not be placed in Ms. Juniper's class. That she had past experience with Ms. Juniper. I believe her words were, the lady is crazy, I don't want my daughter in that classroom. And I put

her in Ms. Sheater's classroom before school started.

The other incidences, the other students that were moved were for various reasons. It was typically the result of a situation that occurred between Ms. Juniper and their child and that they wanted another teacher.

76. When she was asked on cross-examination whether the placement request could have been because Respondent and D.V. were friends and Respondent had known the child for years, Dr. Cagle stated that was not what was told to her and she had no knowledge of their friendship.

77. D.V. was the only parent that testified at hearing whose child was reassigned. D.V.'s testimony, however, directly contradicted that of Dr. Cagle. She credibly testified that she met with Dr. Cagle as she has met with the principal each year with respect to her child's placement. According to D.V., her daughter, J.V., is adopted and has bipolar disorder. She is strong willed and can be manipulative. She flatly denied telling Dr. Cagle that she did not want J.V. in Respondent's class because Respondent was crazy: to the contrary, she did not want her placed in Respondent's class because J.V. and Ms. Juniper knew each other too well, and D.V. felt that her daughter would "make a run on Deidra, play on her, on our relationship." She denied ever thinking that Respondent was unstable and denied telling either Dr. Cagle or Ms. Parker that Respondent was crazy.

78. Finally, the letter states that the former principal "said she felt sorry for her because of her divorce and did not take enough action but encouraged her to go to counseling." However, Nancy Reece's testimony at hearing is inconsistent with such a statement. Ms. Reece testified that Respondent was a very professional teacher who stayed on task and exhibited good quality teaching.

79. The testimony and other evidence presented convinces the undersigned that for whatever reason, Dr. Cagle was willing to believe the worst of Respondent and not likely to give her the benefit of the doubt should a complaint arise. To be sure, there is at least one incident of inappropriate behavior that has been proven by clear and convincing evidence. However, Respondent is not the unstable, out-of-control disaster that Dr. Cagle clearly believes her to be.

#### E. Dr. McDonald's Evaluation

80. For mitigation purposes, Respondent was evaluated by Dr. Randi McDonald to obtain a current psychological evaluation in order to determine the presence of mental health issues that impair her ability to continue working as an elementary school teacher. Dr. McDonald is a forensic psychologist with a doctorate degree in psychology. She has been licensed in Florida since 2009.

81. Dr. McDonald conducted a forensic evaluation which included the administration of psychological tests, interviews with Respondent, and review of the Department of Education file. She ultimately opined that Respondent does not suffer from any significant psychiatric issue which would affect her ability to teach.

82. She did, however, stated that the testing revealed that Respondent does not want to admit to even minor shortcomings and faults that most people have, and that her "underreporting" was consistent with her very traditional background. Dr. McDonald stated that Respondent has difficulty seeing weaknesses because they "just don't register in how she defines herself." As stated in her report,

It is this evaluator's clinical impression that Ms. Juniper is perfectionistic and somewhat over-controlled in her general approach to life and her interactions with others. These qualities can be quite positive, in that they likely contribute to excellent organizational skills and leadership capacity and have most certainly played a part in her success as a teacher over the years. On the other hand, these qualities can make her less amenable to change at times. . . .

83. Dr. McDonald's evaluation is consistent with Respondent's demeanor and responses at hearing. Several of the allegations in the Administrative Complaint were not proven by clear and convincing evidence, and in some instances, a change of

phrase makes a great deal of difference in how behavior is perceived. The evidence as to some alleged events was simply not sufficient to meet the clear and convincing standard. However, even in those instances where Respondent essentially admitted to the behavior at issue, she tended to minimize her role in the negative result.

#### CONCLUSIONS OF LAW

84. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action. §§ 120.569 and 120.57(1), Fla. Stat. (2012).

85. This is a disciplinary action by Petitioner in which Petitioner seeks to suspend Respondent's teaching certificate. Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

86. As stated by the Florida Supreme Court:

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 in 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. 2d 797, 800 (Fla. 4th DCA 1983)).

87. The Administrative Complaint charged Respondent with violations of subsections 1012.795(1)(d) and (j), Florida Statutes, and Florida Administrative Code Rule 6B-1.006(3)(a) and (e). Section 1012.795 authorizes the Education Practices Commission to suspend, revoke, or otherwise penalize a teaching certificate, provided it can be shown that the holder of the certificate has committed any of the violations enumerated.

88. The Administrative Complaint alleges the following facts as a basis for taking disciplinary action against Respondent:

3. During the 2009-2010 year, the Respondent taught fifth grade at Yniestra Elementary School. During the school year, the Respondent:

(a) told students that they needed to be on medication or were "crazy" or words to that effect;

(b) told student [sic] that they were stupid and were not going to move on to the sixth grade;

(c) made belittling and disparaging comments to students in front of other students regarding students' clothing and appearance; and

(d) singled out S.J. for disparagement and told other students that S.J. was a bad influence and was trying to get the Respondent in trouble.



4. On or about April 5, 2010, during a school lockdown that was initiated due to concerns about an [sic] shooting reported off-campus, the Respondent observed several student [sic] who were talking and laughing. The Respondent told a student, D.L., to sit near the door and commented that she hoped that the student "would get shot by the gunman" or words to that effect.

5. During the 2010-2011 school year, the Respondent taught second grade at Yniestra Elementary School. During the school year the Respondent:

(a) told students that they were "slow," "had ADD," were acting "retarded" and needed to be on medication, or words to that effect; and

(b) grabbed a student by the arm when the student came out of the restroom.

6. M.W. is a nineteen year-old male student who is classified as an exceptional education student and was a volunteer at Yniestra Elementary School. On or about February 22, 2011, M.W. entered the Respondent's classroom and the students noted that it was M.W.'s birthday. The Respondent held M.W. by the arm and solicited students to come forward and hit M.W. on the back or rear-end as a form of a birthday spanking or "licks." Several students hit M.W. with force. M.W. was embarrassed by the incident.

89. After a complete review of the evidence, Petitioner proved by clear and convincing evidence that Respondent told K.L. he needed to take his medication on the day he forgot to do so, and that she, at the very least, allowed the students in her second-grade class to give birthday licks to M.W. The evidence

supporting the other factual allegations in the Administrative Complaint was not sufficient to meet this high evidentiary standard.

90. Count One of the Administrative Complaint charges Respondent with violating section 1012.795(1)(d), which makes it an offense subject to discipline where a certificateholder "has been guilty of gross immorality or an act involving moral turpitude."

91. In order to prove that Respondent has violated the charge contained in Count One, Petitioner must show that Respondent's conduct, as alleged in the Administrative Complaint, amounts to acts of gross immorality.

92. The Education Practices Commission has not defined "gross immorality" or "moral turpitude" for the purposes of discipline to be imposed pursuant to section 1012.795, Florida Statutes. The Commission has, however, defined "immorality" and "moral turpitude" for use by school districts in taking action against instructional personnel in Florida Administrative Code Rule 6B-4.009. This rule provides in pertinent part:

(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 in 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.

93. 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). In Brogan v. Mansfield, No. 96-0286 (Fla. DOAH Aug. 1, 1986; Educ. Practices Comm'n. Oct. 18, 1986), the hearing officer observed that "[t]he term "gross" in conjunction with "immorality" has heretofore been found to mean "immorality which involves an act of misconduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard of proper moral standards."

94. In this case, the two acts that were proven are telling a student they need to take their prescribed medication, and participating in or allowing her second-grade students to give an exceptional education student/volunteer birthday licks. The question becomes whether Respondent's conduct with respect to

these acts rises to the level of not just immorality, but gross immorality. It is concluded that the events proven here simply do not rise to that level.

95. The medication issue will be discussed more fully with respect to a different count, but in any event does not constitute gross immorality. With respect to the birthday licks, Respondent used extremely poor judgment in allowing this behavior in her classroom. While the practice may have been permitted in Department of Defense schools where she taught, and is a practice perhaps permitted among friends or family, administration of birthday licks, especially to a volunteer with significant learning disabilities, in a classroom setting is clearly not appropriate. However, it is not an action rising to moral turpitude or gross immorality. Count One has not been demonstrated by clear and convincing evidence.

96. Count Two charges Respondent with violating the Principles of Professional Conduct for the Education Profession, in violation of section 1012.795(1)(j). By virtue of the conclusions made below with respect to Counts Three and Four, Petitioner has proven Count Two by clear and convincing evidence.

97. Counts Three and Four charge Respondent with violating subsections of Florida Administrative Code Rule 6B-1.006(3)(a) and (e). The relevant provisions of rule 6B-1.006 state in part:

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

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

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

(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 child to unnecessary embarrassment or disparagement.

98. With respect to the incident involving birthday licks, Petitioner has proven a violation of Counts Three and Four by clear and convincing evidence. M.W., while a volunteer at Yniestra, was a student in the Escambia County School District with the exceptional education program. Although not her student, he was still a student in the school district. Placing him in a position where much younger children were hitting him under the guise of a birthday celebration is an expression of poor judgment that caused M.W. to feel embarrassed and humiliated. It also exposed him to physical harm.

99. The same cannot be said with respect to the comments made to K.L. regarding his medication. The undersigned found his testimony regarding the medication to be clear and credible, but

was less convinced that Respondent ever referred to K.L. or any other student as dumb or stupid. While Dr. Cagle testified that it was inappropriate for Respondent to tell K.L. that he needed to take his medication (which Respondent clearly knew he took), she pointed to no policy or rule that would prohibit a teacher from privately reminding a child to do what has been prescribed for him. Her reminder is not a prediction that taking his medication will make him have a better day, but rather a reinforcement that he should follow the directions already given to him.

100. The Education Practices Commission has adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.796. Florida Administrative Code Rule 6B-11.007 provides a range of penalties from probation to revocation for violations of the rules at issue in this case.

101. The Commissioner recommended that Respondent's certificate be suspended for one year; that she undergo an evaluation by the Recovery Network Program upon terms set by the Education Practices Commission; that she be placed on two years of probation upon terms set by the Commission, that that she pay an administrative fine of \$500. However, the recommended penalty is based upon the assumption that all of the allegations in the Administrative Complaint were proven, and not all of the allegations were found by clear and convincing evidence to have

occurred. The undersigned has considered the aggravating and mitigating factors identified in rule 6B-11.007(3), including that the Commission did not present any evidence of previous discipline by the Commission; that Respondent has been teaching for over 35 years; and that there has been no physical damage caused, although there was the potential for some. After a review of all of the factors present in this case, it is concluded that while punishment is warranted, the discipline suggested is too severe.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a Final Order finding that Respondent has violated section 1012.795(1)(g), Florida Statutes, and rule 6B-1.006(3)(a) and (e), and placing Respondent on probation for a period of two years, subject to terms and conditions imposed by the Commission.

DONE AND ENTERED this 31st day of August, 2012, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of August, 2012.

ENDNOTES

<sup>1/</sup> All references to the provisions in chapter 1012, Florida Statutes, are to the 2009 codification.

<sup>2/</sup> Students, as well as any parents who testified, have been identified only by initials.

<sup>3/</sup> Petitioner objected to the defense inquiry into the work environment as being beyond the scope of the allegations in the Administrative Complaint. However, section 90.608(2), Florida Statutes, provides that any party may attack the credibility of a witness by showing that the witness is biased. "Bias or prejudice of a witness has an important bearing on his credibility, and evidence to show such bias is relevant." Lloyd v. State, 909 So. 2d 580, 581 (Fla. 2d DCA 2005) (quoting Webb v. State, 336 So. 2d 416, 418 (Fla. 2d DCA 1976)). "A defendant should be afforded wide latitude in demonstrating bias . . . on the part of a witness." Id.

Included in the types of evidence that demonstrate bias are prejudice, interest in the outcome of a case, intimate familial or illicit relationships, past or present employment relationships, pending criminal charges, or the witness's occupation. Tobin v. Leland, 804 So. 2d 390, 394 (Fla. 4th DCA 1994) and Jones v. State, 678 So. 2d 890 (Fla. 4th DCA 1996). Moreover, "utterances of a witness indicating motive or bias do not constitute hearsay when offered for impeachment purposes." Green v State, 691 So. 2d 49, 50 (Fla. 4th DCA 1997) (quoting Fields v. State, 608 So. 2d 899 (Fla. 1st DCA 1992)).

The ability to present evidence of bias or prejudice is not unfettered, however. In Tobin, the court stated:

Evidence of bias is subject to balancing under the provisions of section 90.403, and a trial court's determination of how far an inquiry into bias may proceed is within the trial court's discretion.



Although attorneys should be given wide latitude when cross-examining witnesses to demonstrate bias or prejudice, that latitude is not without its limits.

804 So. 2d at 393 (citations omitted).

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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.