STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GERARD ROBINSON, AS COMMISSIONER OF EDUCATION, Petitioner, vs. WILLIAM RANDALL AYDELOTT, Respondent.	)	Case No. 12-0621PL

RECOMMENDED ORDER

An administrative hearing was held in this case on April 24 and 25, 2012, in Pensacola, Florida, before James H. Peterson, III, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Peter J. Caldwell, Esquire
213 South Adams Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated subsections 1012.795(1)(d), (g), and (j), Florida Statutes,[1/] and Florida Administrative Code Rule 6B-1.006(3)(a), (e) and h), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On December 20, 2011, Petitioner, Gerard Robinson as Commissioner of Education (Petitioner), issued a six-count Administrative Complaint (Administrative Complaint) against Respondent, William Randall Aydelott (Respondent), alleging that Respondent exchanged text messages with a female student and attempted to obtain her cellular telephone in a manner which violated subsections 1012.795(1)(d), (g), and (j), and rule 6B-1.006(3)(a), (e), and (h). Respondent timely requested an administrative hearing and, on February 15, 2012, the case was forwarded to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a final hearing.

At the final hearing, Petitioner presented the testimony of Sharon Aydelott, E.M., John Dobbs, Alan Scott, and Tarlanda Gooden, and offered 12 exhibits which were received into evidence as Exhibits P-1 through P-12. Respondent testified in his own behalf and presented the testimony of Pam Hill and Michael McMillian.

By stipulation of the parties, parts of the record from Respondent's March 15, 2012, termination hearing in the matter of Escambia Education Association v. School District of Escambia County, Case number 33-390-00376-11 (Termination Hearing), before Arbitrator Jeanne Charles Wood, Esquire, of the American Arbitration Association, were taken into evidence as Joint

Exhibit 1, consisting of the transcript and Exhibits C4, C5, C6, C7, R2, R3, R4, R5, R6, R7, J1, and J2 from that proceeding.

At the end of the hearing the record was held open at Petitioner's request for the purpose of allowing Petitioner to attempt to take the post-hearing depositions of witnesses Y.F. and S.B., who had been subpoenaed for the final hearing but had failed to appear. Petitioner, however, did not depose those witnesses within the allotted time and the record was closed.

The proceedings were recorded and a Transcript was ordered. The parties were initially given 30 days from the filing of the Transcript within which to file their Proposed Recommended Orders. The three-volume Transcript was filed on May 30, 2012. Upon the granting of Respondent's Partially Unopposed Motion for Enlargement of Time to File Proposed Recommended Orders, the time for filing was extended until July 30, 2012. Thereafter, the parties timely filed their respective Proposed Recommended Orders on July 30, 2012, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, on behalf of the Education Practices Commission, is charged with the responsibility of certifying and regulating public school teachers in Florida.

2. Respondent holds Florida Educator's Certificate 697708, covering the areas of Health, General Science, and Physical

Education. Respondent's Educator's Certificate is valid until June 30, 2013.

3. At all times pertinent to this action, Respondent was employed as a science teacher at Pensacola High School in the Escambia County School District. He also coached football and the girl's weightlifting team at Pensacola High School.

4. During the 2010-2011 school years, which began in August 2010, Respondent's science classes had a total enrollment of approximately 120 students. One of his students was Y.F., a 14-year-old female ninth-grade student, who attended Respondent's second-period science class which met every school day.

5. Respondent has two children, a daughter and a son. In the fall of 2010, Respondent's daughter was six years old and his son was 14 and in the ninth grade.

6. During the time period from October 1 through October 8, 2010, approximately 340 text messages were exchanged between Respondent and Y.F. The frequency of the text messages was inappropriate. In addition, the timing and content of a number of those text messages from Respondent to Y.F. were inappropriate.

7. Y.F. and her mother gave Respondent Y.F.'s cellular telephone number so that Respondent could provide Y.F. with information regarding the girls' weightlifting tryouts and tutoring.

8. While some of the texts exchanged between Respondent and Y.F. between October 1 and 8, 2010, involved the subject of tutoring, the girls' weightlifting team, and an in-class review activity, many involved non-school-related matters.

9. Respondent admits that texting Y.F. hundreds of times was inappropriate. The frequency of texts exchanged between Respondent and Y.F. included:

a) 24 texts on Friday October 1, 2010, between 5:13 p.m. and 11:00 p.m., 12 of which were from Respondent;

b) 58 texts on Saturday, October 2, 2010, between 9:04 a.m. and 11:02 p.m., 35 of which were from Respondent;

c) 88 texts on Sunday, October 3, 2010, between 12:02 p.m. and 11:57 p.m., 51 of which were from Respondent;

d) 26 texts on Monday, October 4, 2010, between 7:18 a.m. and 11:18 p.m., 15 of which were from Respondent;

e) 52 texts on Tuesday, October 5, 2010, between 10:42 a.m. and 11:10 p.m., 32 of which were from Respondent;

f) 40 texts on Wednesday, October 6, 2010, between 9:15 a.m. and 11:52 p.m., 28 of which were from Respondent;

g) 40 texts on Thursday, October 7, 2010, between 5:24 p.m. and 11:31 p.m., 27 of which were from Respondent.

10. Y.F. provided sworn testimony during Respondent's Termination Hearing held March 15, 2012, regarding some of the text messages that she received from Respondent.[2/] When Y.F. was asked whether she felt that the 88 messages on Sunday were

bothersome, she testified, “A little, yes.” When asked whether some of the words Respondent chose in his text messages were inappropriate, Y.F. testified, “Yes, some.” Those responses by Y.F. are credited.

11. In one of the text exchanges between October 1 and October 8, 2010, Respondent responded to a chain text message that Y.F. sent to her cell phone contacts list, including Respondent. It contained the survey question, “explain [describe] me in one word,” and provided a list of answers to choose from, one of which was the word “sexy.” In response, Respondent selected the option “sexy” and sent this answer to Y.F.

12. In her testimony at Respondent’s Termination Hearing, Y.F. credibly testified that she found Respondent’s use of the word “sexy” in responding to the survey message was “kind of a bother.” When asked whether she felt as though Respondent was “coming on” to her, Y.F. testified, “I mean in a way, yes, but in another way I was like I just brushed it off.” Y.F. further testified that she was Respondent’s student at the time of the messages and did not feel awkward in class with Respondent. Nevertheless, Respondent’s message was inappropriate and Y.F. perceived that it was not right.

13. In that same time frame, between October 1 and 8, 2010, Respondent responded to another text message from Y.F. received through her group distribution. This time, the message contained

a survey question from Y.F. that asked, "would you bang or pass?" to which Respondent responded, "bang." While Y.F. does not remember receiving Respondent's message, she acknowledged that the group distribution message could have gone out. Respondent admitted that he sent the "bang" message to Y.F., that the message had a sexual connotation, and that sending the message to a 14-year-old female student was wrong.

14. A review of the timing and content of some of the actual text messages retrieved from the cell phones belonging to Respondent and Y.F. further reveal the inappropriate nature of Respondent's text communications with Y.F.

15. Of the text messages exchanged on Wednesday, October 6, 2010, which was a school night, Respondent texted Y.F. at 11:03 p.m., "Sweet dreams."

16. On Thursday, October 7, 2010, at 5:41 p.m., also a school night, Respondent texted Y.F. the message, "going to game." She responded at 5:42 p.m., "No, no money." At 5:43 p.m., Respondent texted Y.F., "Next time ask me 4 some." At 5:44 p.m., Y.F. replied, "Idk, I don't like asking." At 6:12 p.m., Respondent persisted by texting, "just ask next time." At 6:13 p.m. Y.F. responded, "Idk maybe." Then, at 6:15 p.m., Respondent texted, "can u call me?" At 6:15 p.m., Y.F. texted back, "I don't call till after 9." Respondent responded at 6:27 p.m., "okay @ you call me later," to which Y.F. responded by texting, "Kk."

17. Later that same evening, Thursday, October 7, 2010, at 10:42 p.m., Y.F. texted Respondent, "Hey." Respondent texted back at 10:44 p.m., "what u up 2." At 10:45 p.m., Y.F. replied, "just layin down." Respondent immediately texted back at 10:45 p.m., "sexy."

18. Seven minutes later, at 10:52 p.m., Respondent texted Y.F., "just want to chat." He then texted, "I meant txt." Y.F. texted back at 10:53 p.m., "Ok." Respondent texted to Y.F. at 10:55 p.m., "I need 2 talk 2 u bout ur make up work?" Y.F. responded by texting, "what about it." Respondent texted back at 10:58 p.m., "well I was jus gonna tell u not 2 worry bout it." Y.F. texted right back, "Really?" At 10:59 p.m., Respondent replied, "yeah." Y.F. texted back, "Thanx." Respondent replied at 11:00 p.m., "u r welcome."

19. After that, beginning at 11:02 that same evening, October 7, until after midnight, October 8, 2010, Respondent engaged in a monologue by texting Y.F. a series of unanswered text messages, as follows:

11:02 p.m., Respondent to Y.F.: "wish I could talk 2 u for a sec."

11:02 p.m., Respondent to Y.F.: "can I call U?"

11:04 p.m., Respondent to Y.F.: "?"

11:08 p.m., Respondent to Y.F.: "hello"

11:11 p.m., Respondent to Y.F.: "Ok we will just text"

11:14 p.m., Respondent to Y.F.: "do you want me to stop texting u?"

11:18 p.m., Respondent to Y.F.: "I'm sorry! nite"

11:25 p.m., Respondent to Y.F.: "if you do chahge [sic] your mind & decide 2 txt me its ok Im at Walmart getting candy for our game that were playing 2 morrow"

11:27 p.m., Respondent to Y.F.: "What kind of chocolate candy is ur favorite"

11:31 p.m., Respondent to Y.F.: "I will be out 4@ least another hour if u want 2 txt or email"

October 8, 2010 (after midnight)
12:08 a.m., Respondent to Y.F.: "what kind of chocolate u want"

12:25 a.m., Respondent to Y.F.: "Hey I guess u gone to sleep I got u some choc c u 2 morrow"

20. In his testimonies, including his Termination Hearing, his deposition taken in this case, as well at the final hearing, Respondent tried to justify his texts to Y.F. by explaining that the text messages with Y.F. between 10:55 p.m., October 7, and 12:35 a.m., October 8, 2010, concerned Y.F.'s make-up assignment and chocolate candy he was purchasing for an in-class review game in preparation for a test. He admitted, however, that it was inappropriate for him to be texting with Y.F. late in the evening. He also admitted that he did not text any other student to ask about what candy they liked.

21. When asked in his deposition why he was texting a 14-year-old ninth grade student after midnight asking her what kind of chocolate she wants, Respondent testified:

> I wish I knew the answer to give you for that. I don't know. I don't know why I did a lot of the things that I did during that time period. Out of 22 years of teaching, I've never done anything remotely close to that. Why I did it then, I don't know. I deeply regret it. If I could take it back, I would.

22. Although there is no evidence that he ever told her, Respondent thought Y.F. was pretty, or even beautiful. He told her that she was his favorite student –– that every year he had a favorite, and this year it was her.

23. Even prior to the period of high-frequency texting, Respondent initiated a non-school related contact with Y.F., this time offering Y.F. cake. On Sunday, September 27, 2010, Respondent's wife and two children took Respondent to lunch at a local restaurant to celebrate his birthday that had occurred the day before. His wife bought him a birthday cake and brought it to the restaurant. It was a yellow pound cake with white icing.

24. After lunch, Respondent went to a coaches' meeting and took the cake with him. At some point, Respondent had a telephone conversation with Y.F. during which Respondent asked Y.F. if she would like to have some of his birthday cake. Y.F. told Respondent that she would. Respondent already knew where Y.F. lived. He told Y.F. that he would drop off the cake on his way home.

25. When Respondent left the coaches' meeting, he drove to Y.F.'s home in his truck. He did not get out of his truck. Rather, Y.F. met him at his truck. Respondent rolled down his

driver's-side window. According to Respondent, he said, "Hey, how are you doing? Here's the cake." He testified that he then handed Y.F. the cake, she said "Thank you," and he then immediately drove away.

26. Respondent could have taken the cake home to his family or to school the next day to share it with his other students. Instead, Respondent decided to use the cake as an excuse to meet with Y.F. When asked in his deposition why he took the cake to Y.F. instead of bringing it home to his family, he had no excuse. Respondent answered:

> I don't know why. You know, thinking back on it, that's what I should have done. Why I didn't, I don't know.

27. At the final hearing, regarding the fact that he had given his left-over birthday cake to Y.F., Respondent admitted:

> Looking back on it, it was inappropriate. I shouldn't, again, it was something that I shouldn't have done.

28. It is found that, under the circumstances, rather than for the benefit of Y.F., Respondent used the cake as an excuse to see Y.F. for his own personal benefit.

29. During the October 1 through 8, 2010, frequent-texting time period, Respondent again made arrangements to meet with Y.F. outside the school setting. Respondent knew that Y.F. liked certain types of sweets. He asked Y.F. if she had ever eaten cupcakes from a certain cupcake store located on Cervantes. He suggested to Y.F. that she should meet him there on a Saturday so

that he could tutor her. Respondent and Y.F. never met at the cupcake shop for the contemplated tutoring session.

30. The texting between Respondent and Y.F. came to an abrupt end on Friday, October 8, 2010, when Y.F. lost her cellular telephone early in the morning at school. Student E.M. found the telephone in a classroom during first period.

31. After finding Y.F.'s cell phone, E.M. and another student, S.B., reviewed the text messages on the phone. They were offended by the texts they found from Respondent. The students called Respondent that Friday night, October 8, 2010, and placed him on speakerphone. During the call, student S.B. confronted Respondent regarding his text messages and called him a "filthy bastard."

32. The callers did not identify themselves and Respondent did not know whether he was speaking to adults or students. During the call, Respondent told the caller that he would pay if she would not tell or turn in the phone. S.B. said she wanted one hundred dollars. Respondent said that he only had fifty.

33. At the final hearing, Respondent denied that he ever offered money in exchange for the phone. He admitted, however, that he arranged to meet the callers at a local convenience store, and then later at another location for purposes of obtaining the cell phone from the callers. At the final hearing, when asked whether he wanted to get the phone back so that nobody else would learn about the texts, Respondent testified, "Yes sir.

Damage control so nobody else would call." When further asked whether he wanted the phone back so that nobody else would know about it, Respondent testified, "Yes, sir."

34. Respondent also offered the inconsistent explanation during his testimony that he wanted to get the phone back so that he could turn it in to the principal at Pensacola High School. That testimony was not credible and is not credited. Rather, it is found that Respondent wanted to get Y.F.'s cell phone back so that his texts to Y.F. would not be further discovered.

35. Respondent and the students with Y.F.'s phone arranged to meet at a convenience stored named "Trisha's One Stop" to exchange the phone for money on Saturday. Respondent drove around that Saturday, October 9, 2010, but could not find the convenience store. He called the callers and suggested that they meet at the Brownsville Assembly of God Church in Pensacola. The girls agreed, but never went to the church. Respondent, however, went to the church and waited for some time.

36. During the weekend of October 9 and 10, 2010, Respondent became despondent. He punched holes in walls at his home, banged his head against the wall, rolled around on the floor, and at one point grabbed a gun and threatened to harm himself. While some of this behavior might be attributed to marital distress he was experiencing at the time, apart from the allegations in this case, it is found that the primary reason for Respondent's "bizarre" behavior that weekend was because of his

guilt and concern he felt over the fact that the discovery of Y.F.'s cell phone would reveal his inappropriate communications with Y.F.

37. According to Respondent, after waiting for some time at the church to meet with the callers and obtain Y.F.'s phone, he decided instead to turn himself into the principal of Pensacola High. He testified that, after meeting with another high school coach, he arranged to meet the principal during the weekend to report what had happened and turn in his own cell phone.

38. Student S.B. turned in Y.F.'s cell phone to the Pensacola High School administration on Monday, October 11, 2010.

39. Upon discovery of the text messages between Respondent and Y.F., the Escambia County School Board suspended Respondent from his teaching position, and on January 19, 2011, terminated Respondent's employment with the Escambia County School District. Respondent challenged his termination by requesting arbitration on the issue of his dismissal. The outcome of that arbitration proceeding was pending as of the hearing in the instant case.

40. Prior to the incidents that are the subject matter of this case, Respondent has had no discipline in his twenty-two years as a teacher, and neither of Respondent's Florida nor Alabama teaching certificates has ever been disciplined. In addition, all of Respondent's performance evaluations throughout his 22-year teaching career have been satisfactory or higher.

41. Respondent's former supervisor, Michael McMillian, wrote a recommendation and testified about Respondent's excellent teaching performance, how students' benefited from his teaching, and his good moral character. Mr. McMillian, however, was unaware of the allegations or facts of this case.

42. There is no evidence that Respondent ever touched Y.F.

43. Escambia County School Board asked Pensacola Police to investigate whether Respondent had violated any criminal laws. No criminal violations were found. However, according to Pensacola Police Detective Tarlanda Gooden, who conducted the investigation, based upon her experience as a sex crime investigator who has investigated numerous sex crimes, Respondent's actions with minor female student Y.F. constituted "grooming" behavior for eventual sexual contact with Y.F. The undersigned agrees and further finds that Respondent's grooming behavior towards Y.F. was for Respondent's personal benefit.

44. Based upon his review of materials from Respondent's level-one grievance hearing, as well as his Termination Hearing, Dr. Alan Scott, Assistant Superintendent for Human Resource Services, was of the professional opinion that Respondent's misconduct violated the statutory and rule provisions cited in the Administrative Complaint filed against Respondent in this proceeding. Dr. Scott's opinion is based on thirty-two years of experience in the field of education in the State of Florida, where he has served as a teacher, coach, assistant principal,

principal, county administrator for curriculum, instruction and discipline, and as assistant superintendent. While Dr. Scott's opinion has not been used to supplant legal conclusions recommended herein, his opinion is credible and has been considered.

45. In sum, as alleged in the Administrative Complaint, "Respondent engaged in inappropriate conduct towards fourteen year-old female student Y.F., in that from October 1, 2010, through October 8, 2010, Respondent exchanged approximately 340 text messages with Y.F. Several of Respondent's messages were of a flirtatious and suggestive nature and included offering to pay Y.F.'s way to attend sporting events, offering to purchase [candy] for Y.F., and telling Y.F. that Respondent could be described as 'sexy.'"

46. Based upon the clear and convincing evidence reflected in the factual findings above, it is further found that Respondent's behavior toward Y.F. was unacceptable and should not be tolerated from a licensed school teacher in Florida.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to section 120.569 and subsection 120.57(1), Florida Statutes(2012).

48. Subsection 1012.796(6), Florida Statutes, authorizes the Commissioner of Education to file a formal complaint and

prosecute the complaint against a teacher's certificate pursuant to the provisions of chapter 120, Florida Statutes.

49. Petitioner, as the party asserting the affirmative in this proceeding, has the burden of proof. See, e.g., Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).

50. Because Respondent's teaching certificate is at risk, Petitioner has the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

51. Clear and convincing evidence:

> [r]equires that evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking confusion as to the facts in issue. The evidence must be of such 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)).

52. Disciplinary statutes are penal in nature, and must be construed against the authorization of discipline and in favor of the individual sought to be penalized. Munch v. Dep't of Bus. & Prof'l Reg., 592 So. 2d 1136 (Fla. 1st DCA 1992). A statute imposing a penalty is never to be construed in a manner that expands the statute. Hotel & Restaurant Comm'n v. Sunny Seas No. One, 104 So. 2d 570, 571 (1958).

53. The Administrative Complaint alleges that Respondent violated subsections 1012.795(1)(d), (g), and (j), Florida Statutes, and Florida Administrative Code Rule subsections 6B-1.006(3)(a), (e), and (h).

54. Section 1012.795 provides in pertinent part:

> Education Practices Commission; authority to discipline.--
> (1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for a period of time not to exceed 3 years, thereby denying that person the right to teach 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 for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person; may suspend the educator certificate, upon order of the court, of any person found to have a delinquent child support obligation; or may impose any other penalty provided by law, provided it can be shown that the person:
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> * * *
>
> (d) Has been guilty of gross immorality or an act involving moral turpitude.
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> * * *
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> (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.
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> * * *
>
> (j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

55. Rule 6B-1.006 contains the Principles of Professional Conduct and provides, in pertinent part:

> (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 student to unnecessary embarrassment or disparagement.
>
> * * *
>
> (h) Shall not exploit a relationship with a student for personal gain or advantage.

56. The six-count Administrative Complaint tracks the language of the above-recited statutes and rules. It first sets forth the following material allegations in paragraphs 3 through 6 of the Administrative Complaint:

> 3. During the beginning of the 2010-2011 school year, the Respondent engaged in inappropriate conduct towards fourteen-year-old female student Y.F., in that from October 1, 2010, through October 10, 2010, the Respondent exchanged approximately 340 text messages with Y.F., including offering to pay Y.F.'s way to attend sporting events, offering to purchase gifts for Y.F., and telling Y.F. that the Respondent could be described as "sexy."

> 4. Two female students, E.M. and S.B., discovered Y.F.'s cell phone and observed he text messages between Y.F. and the Respondent. E.M. and S.B. contacted the Respondent to tell him that they had observed the text messages and offered to give him the phone for $100.00. The Respondent initially offered to pay E.M. and S.B. $50.00 for the phone and later cancelled the offer.
>
> 5. Upon discovery of the text messages between Y.F. and the Respondent, the Escambia County School District suspended the Respondent from his position.
>
> 6. On or about January 19, 2011, the Escambia County School District terminated the Respondent from his position as a result of his conduct towards Y.F.

57. As demonstrated by the factual findings under the Findings of Fact, above, Petitioner proved all of the material allegations recited in the Administrative Complaint. All of the findings were based upon clear and convincing evidence.

Count 1

58. Count 1 of the Administrative Complaint alleges:

> The Respondent is in violation of Section 1012.795(1)(d), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

59. The terms "gross immorality" and "moral turpitude" are not defined in any statute or rule applicable to the Education Practices Commission in license disciplinary cases under chapter 1012. However, the definitions in Florida Administrative Code Rule 6A-5.056,[2/] which relate to the suspension and dismissal of teachers by school districts, are instructive in defining terms

as used by the Education Practices Commission in revocation actions.

60. Rule 6A-5.056 provides the following definitions:

> (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.

61. "'Gross immorality' has been described as misconduct that is serious, rather than minor in nature; it is a flagrant disregard of proper moral standards." Smith, Comm'r of Ed. v. Malvar, Case No. 10-2784PL (DOAH Sept. 13, 2010); EPC Jan. 13, 2011) (citing Education Practices Comm'n v. Knox, 3 FALR 1373-A (Fla. Dep't of Education 1981)).

62. Moral turpitude has also been defined by the Supreme Court of Florida 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).

63. Respondent argues in his Proposed Recommended Order that, "although 'gross immorality' is identified as grounds for discipline in Section 1012.795(1)(d), Fla. Stat., the term 'gross immorality' has never been defined in statute or in rule." Indeed, Florida Administrative Code Rule 6A-5.056, quoted above, defines "immorality" but does not define "gross immorality." For this reason, there have been cases brought before the Division of Administrative Hearing resulting in recommendations that have not applied charges alleging 'gross immorality' in a proceeding against a Florida Educator Certificate. See, e.g., Hodges v. Commissioner of Education, Case No. 09-3048; 2009 WL 4543095 (Fla. DOAH Dec. 2, 2009)(teacher "cannot be found guilty of gross immorality as defined by rule since there is no rule providing a definition, as is required by the statute").

64. Unlike the term "gross immorality," which is not defined by rule, "moral turpitude" is defined, as set forth in rule 6A-5.056(6), quoted above. As to that provision, Respondent argues, by relying on the rule's reference to "crime," that he cannot be found guilty of an act involving moral turpitude because he has committed no "crime."

65. While Respondent's argument regarding the lack of rule definition of the term "gross immorality" has some support, his argument that he must have committed a crime in order to be found

guilty of an act involving moral turpitude is rejected. Teachers are traditionally held to a high moral standard in the community. Adams v. Professional Practices Council, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981). As a teacher, it is not necessary that Respondent be charged or convicted of a crime in order to be disciplined for conduct involving moral turpitude. Walton v. Turlington, 444 So. 2d 1082,1084 (Fla. 1st DCA 1984).

66. Considering the material allegations which have been proven against Respondent in light of the definition of moral turpitude, it is found that Respondent is guilty of acts involving moral turpitude. Respondent's conduct constituted obsessive grooming behavior towards one of his 14-year-old students which violated accepted standards of society, as well as the higher moral standards expected of teachers. His actions were wrong and Respondent knew it, as demonstrated by his attempts to retrieve Y.F.'s phone to cover his base actions.

67. Respondent's actions, which were proven by clear and convincing evidence, violated section 1012.795(1)(d), as charged in the Administrative Complaint.

Count 2

68. In Count 2 of the Administrative Complaint alleges:

> The Respondent is in violation of Section 1012.795(1)(g), Florida Statutes, in that Respondent has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

69. Whether Respondent's misconduct seriously reduces his effectiveness as an employee of the school board may be inferred from the nature and seriousness of the misconduct. Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128 (Fla. 2d DCA 2000). Expert opinion may also provide evidence on whether the misconduct seriously reduced Respondent's effectiveness as a school board employee. Woodward v. Prof'l Practices Council, 388 So. 2d 343, 344 (Fla. 1st DCA 1980).

70. Considering the nature and seriousness of Respondent's misconduct proved in this action, the opinions offered by Assistant Superintendent Scott, as well as the actions of the Escambia County School Board, it is concluded that Respondent violated section 1012.795(1)(g), as alleged in the Administrative Complaint. Respondent's misconduct involved a 14-year-old ninth-grader in the same grade as Respondent's son, who also attended Pensacola High School at the time of the actions giving rise to this case. As a result, Respondent's son was transferred to another high school.

71. Respondent admitted that, as a result of his misconduct, he would not be effective at Pensacola High School. Instead, he would opt for another assignment. The Escambia County School Board, however, upon the discovery of the misconduct, immediately suspended Respondent and took legal action to terminate his employment with the School Board.

72. Assistant Superintendent Scott, who was involved in the investigation of the case for the Escambia County School Board, offered the following opinion testimony which was persuasive on the issue of whether Respondent's misconduct seriously reduces his effectiveness as an employee of the School Board:

> As we go through the facts of the case, also, the situation, what would you do, the whole bang me comment, trying to go to the cupcake store, taking the cake by the house, offering to buy chocolate, I'll pay your way into a football game, don't worry about your make up work with a struggling student. You take all of that and then you factor in that you have an individual that another group of students knows about this because a cell phone has been lost, there's an extortion thing where Coach Aydelott actively involves in trying to negotiate and get this cell phone back, based on the opinion of this group [referring to the Escambia County Schools Superintendent's discipline committee] that made this decision that we needed to move forward with the termination, based on the report we have from Detective Gooden that this individual was grooming this young lady, . . . you take that all into consideration and say, did Coach Adyelott impugn his ability to be effective in that school, yes. Me, as a former principal, having dealt with situations like this in the past, when you have an individual that participates in that kind of conduct is known by the school community makes a very untenable situation at that school. You have parents calling. They don't want their students in that class. And I have a daughter and I don't know who else in this room has a daughter. I can clearly understand the reaction of some parents, they do not want their daughters in this gentleman's class. I've had to deal with that the principal - - as a principal, I've had to deal with it as a director, on those phone calls and the outrage that comes in from a community. So, based on the facts that were presented to us, it was the opinion

> of that committee to the Superintendent who has the final say, who makes a recommendation to the Escambia County School Board, that he had impugned his ability to be effective in Escambia County School District. And the appropriate penalty here was termination.

Count 3

73. Count 3 of the Administrative Complaint alleges:

> The Respondent is in violation of Section 1012.795(1)(j), Florida Statutes, in that Respondent has violated the Principals of Professional Conduct for the Education Profession prescribed by State Board of Education Rules.

74. As discussed under Count 4 through Count 6, below, Respondent violated Principals of Professional Conduct for the Education Profession set forth in Florida Administrative Rules 6B-1006(3)(a), (e), and (h). Therefore, Respondent violated section 1012.795(1)(j), Florida Statutes, as alleged in Count 3 of the Administrative Complaint.

Count 4

75. Count 4 of the Administrative Complaint alleges:

> The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), Florida Administrative Code, in that Respondent has failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

76. Contrary to the argument advanced in Respondent's Proposed Recommended Order, violation of rule 6B-1.006(3)(a) does not require evidence that Respondent actually harmed Y.F.'s health or safety. Rather, it requires a showing that Respondent

failed to make reasonable efforts to protect the student from such harm.

77. The clear and convincing evidence demonstrated that Respondent not only failed to make reasonable efforts to protect Y.F., but that he actively pursued a course of action which could lead to Y.F.'s harm, in violation of rule 6B-1.006(3)(a).

Count 5

78. Count 5 of the Administrative Complaint alleges:

> The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(e), Florida Administrative Code, in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

79. In addition to her realization that, on at least one occasion, Respondent was "coming on" to her, as a result of Respondent's multiple intentional inappropriate contacts, Y.F. was injected into investigations requiring that she provide a written statement to school officials and to a Department of Education investigator, undergo interviews with a school investigator and Detective Gooden, testify at Respondent's Termination Hearing, and be subjected to a subpoena in this proceeding.

80. Despite Respondent's argument to the contrary, rule 6B-1.006(3)(e) does not require that Respondent intended to embarrass student Y.F. As noted by the Hearing Officer in School Board of Pinellas County v. Ray, DOAH Case No. 94-1631 (June 13, 1994): Specific intent to embarrass is not required where "a

general intent to act in a way which one could expect to result in embarrassment or disparagement."

81. As evidenced by his acknowledgment that his actions were inappropriate, as well as his attempt to get back Y.F.'s phone, Respondent knew and expected that, if discovered, his actions would expose both Y.F. and him to scrutiny and embarrassment.

82. The clear and convincing evidence showed that Respondent violated rule 6B-1.006(3)(e).

Count 6

83. Count 6 of the Administrative Complaint alleges:

> The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(h), Florida Administrative Code, in that Respondent has exploited a relationship with a student for personal gain or advantage.

84. The evidence in this case, supporting the Findings of Fact above, clearly and convincingly demonstrated that Respondent engaged in inappropriate grooming behavior toward Y.F. His obsessive texting, inappropriate sexual comments, and arrangements to meet Y.F. outside the school setting were exploitive towards Y.F. and designed for Respondent's personal benefit. As such, Respondent's actions violated rule 6B-1.006(3)(h).

Penalties

85. The Education Practices Commission has adopted guidelines for the imposition of penalties for violations under

1012.795, Florida Statutes, and Florida Administrative Code Rule 6B-1.006. Rule 6B-11.007, entitled "Disciplinary Guidelines" discipline ranging from probation to revocation for the statutory and rule violations for which Respondent is charged in this proceeding. Rule 6B-11.007(3), provides a number of aggravating and mitigating factors that can be considered in determining the appropriate penalties, as follows:

> (a) The severity of the offense;
> (b) The danger to the public;
> (c) The number of repetitions of offenses;
> (d) The length of time since the violation;
> (e) The number of times the educator has been previously disciplined by the Commission;
> (f) The length of time the educator has practiced and the contribution as an educator;
> (g) The actual damage, physical or otherwise, caused by the violation;
> (h) The deterrent effect of the penalty imposed;
> (i) The effect of the penalty upon the educator's livelihood;
> (j) Any effort of rehabilitation by the educator;
> (k) The actual knowledge of the educator pertaining to the violation;
> (l) Employment status;
> (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;
> (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
> (o) Actual negligence of the educator pertaining to any violation;
> (p) Penalties imposed for related offenses under subsection (2) above;
> (q) Pecuniary benefit or self-gain inuring to the educator;
> (r) Degree of physical and mental harm to a student or a child;

(s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
(t) Any other relevant mitigating or aggravating factors under the circumstances.

86. While there were some mitigating factors offered by Respondent, including his years of service without discipline and successes as a teacher and coach, the aggravating factors predominate under the facts and circumstances of this case. The types and seriousness of Respondent's violations and Respondent's repetitive misconduct in light of his awareness that his actions were wrong implicate factors (a), (c), (k), and (p) as aggravating factors from list in Rule 11.007, listed above. Factor (h)(deterrent effect) and the final orders cited in Petitioner's Proposed Recommended Order involving similar facts have also been considered in crafting an appropriate recommended penalty.

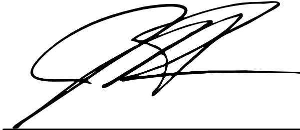
RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that a Final Order be issued finding that Respondent, William Randall Aydelott, violated the provisions of subsections 1012.795(1)(d), (g) and (j), Florida Statutes, and Florida Administrative Code Rule 6B-1.006(3)(a), (e) or (h), revoking Respondent's Florida educator’s certificate for a period of five years, and imposing as a condition of re-certification that Respondent provide written verification from a Recovery

Network Program approved, licensed Florida provider, that Respondent poses no threat to children and is capable of assuming the responsibilities of an educator.

DONE AND ENTERED this 29th day of August, 2012, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of August, 2012.

ENDNOTES

[1/] Unless otherwise noted, all citations to the Florida Statutes and the Florida Administrative Code are to the 2010 versions which were in effect at the time of the alleged violations.

[2/] Although subpoenaed, Y.F. did not appear at the final hearing in this case. Y.F., however, provided written statements to school officials and the Department of Education, was interviewed by a school investigator and Pensacola Police Detective Gooden, and testified at Respondent's Termination Hearing.

[3/] Effective April 5, 1983, Florida Administrative Code Rule 6B-4.009 was transferred to Florida Administrative Code Rule 6A-5.056. The quoted version of the rule, as all other rules cited in this Recommended Order, is the version effective in 2010.

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.