STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF EDUCATION,

Petitioner,

vs. Case No. 13-4987PL

JANNETT AMELDA PUSEY,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference at sites in Tallahassee and Miami, Florida, on October 15, 2014.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
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For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent (a) pushed a ten-year-old student against a wall and struck his arm with a closed fist; and/or (b) falsely answered a question on the application for

renewal of her educator certificate, as Petitioner alleges; if so, whether (and what) disciplinary measures should be taken against Respondent's educator certificate.

PRELIMINARY STATEMENT

On June 3, 2013, Dr. Tony Bennett, as Commissioner of Education ("Petitioner"), filed an Administrative Complaint with the Education Practices Commission (EPC) seeking disciplinary sanction of the educator's certificate of Jannett Amelda Pusey (Respondent). On December 26, 2013, Respondent filed a request for formal hearing, and the matter was referred to the Division of Administrative Hearings (DOAH) on December 31, 2013. On January 2, 2014, DOAH assigned Administrative Law Judge John Van Laningham to conduct the proceeding.

The final hearing was originally set for February 20, 2014. On January 17, 2014, the parties filed a Joint Motion to Reschedule Formal Hearing. This motion was granted and the final hearing was continued until April 8, 2014. Petitioner filed Petitioner's Motion to Cancel Hearing on March 28, 2014, because Respondent's counsel had indicated that a substitution of counsel was necessary, and the parties would be unable to go forward with the hearing as scheduled. This motion was granted, and the hearing was reset for May 30, 2014. On April 9, 2014, the parties filed another Joint Motion for Continuance, in order to

conduct additional discovery, which was granted setting the hearing for August 19, 2014.

The case was transferred to Administrative Law Judge F. Scott Boyd on July 3, 2014. The parties filed another Joint Motion for Continuance based upon the unavailability of deponents over the summer school break and due to the press of other prior pending matters. This motion was granted and the matter was reset for October 15, 2014.

The matter was transferred to the undersigned on October 2, 2014, and heard as scheduled on October 15, 2014. At the hearing, Petitioner presented the testimony of nine witnesses: E.A., a student; Sharon Gonzalez, Principal of West Hialeah Gardens Elementary School (WHGES); Mary Pineiro, Assistant Principal of WHGES; C.S., D.O., D.M., and A.L., students;[1/] Jose Garcia, Instructional Certification with Miami-Dade School Board; and Marian Lambeth, Chief of the Office of Professional Practices Services (PPS) of the Department of Education (DOE). Petitioner's Exhibits 1 through 10 and 14 were admitted in evidence.

Respondent testified on her own behalf. Respondent's Exhibits 1, 2, and 4 through 8 were admitted.

A two-volume Transcript of the proceeding was filed with DOAH on December 4, 2014. After a requested continuance was granted, proposed recommended orders were timely filed by both

parties and have been given due consideration during the preparation of this Recommended Order.

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

FINDINGS OF FACT

1. Petitioner is responsible for the investigation and prosecution of complaints against holders of Florida Educational Certificates who are accused of violating section 1012.795, Florida Statutes, and related rules.

2. Respondent holds Professional Educators Certificate 730057 (certificate). Valid through June 30, 2018, the certificate covers the areas of Mathematics, Business Education, Teacher Coordinator of Cooperative Education, Teacher Coordinator of Work Experience Programs, and Exceptional Student Education (ESE).

3. At all times material to this proceeding, Respondent was employed as an ESE teacher at WHGES in the Miami-Dade County School District (District). Respondent has been employed by the District in a variety of capacities for a total of 25 years and in a teaching capacity for the last 17 years.

4. The charges against Respondent arise from an altercation Respondent had with a then 11-year-old fourth grade ESE student, E.A., on September 27, 2011.

5. On that date, E.A. returned to Respondent's classroom after an in-school appointment with his therapist. Rather than entering the classroom, E.A. stood outside the closed door and knocked on the door intermittently for approximately five to ten minutes. Several students in the classroom went to the door to tell E.A. that the door was unlocked and to come in.

6. When E.A. continued to knock on the door and disrupt the classroom, Respondent went to the door. Respondent was able to open the door part of the way and get her hand and part of her body in between the door and the door frame when E.A. pushed the door closed on Respondent and held it shut with his foot. Respondent shouted at E.A. to open the door and said repeatedly, "it's the teacher, open the door!"

7. When E.A. removed his foot from the door, the door swung out towards the wall, trapping E.A. in a corner between the open door and the wall. Respondent yelled at E.A. to get into the classroom and struck him on the upper arm at least two times. Respondent also picked up E.A.'s backpack and threw it in the classroom.

8. According to Respondent, she made physical contact with E.A. when he raised his arm and she believed he was about to hit her. Respondent claims she used a "defensive move" to prevent E.A. from striking her. Respondent's testimony is inconsistent

with that of E.A. and several students who witnessed the event, and deemed not credible by the undersigned.

9. According to E.A., Respondent definitely meant to hit him although he was not hurt physically by the contact. E.A. entered the classroom crying because he was very embarrassed that this occurred in front of his fellow classmates.

10. This altercation was witnessed by another teacher who reported it immediately to administration. Assistant Principal Mary Pineiro (Pineiro) was sent to the classroom to determine what happened. Pineiro observed E.A. crying and holding his arm. Pineiro heard another student say, "I cannot believe you did that to my friend," to Respondent. Respondent refused to answer Pineiro's questions regarding the incident. The teacher and other students who witnessed the event were sent to the office and asked to provide written statements of what they observed. The statements were provided independently and students were separated when they wrote their statements. They were not told what to write and their statements were not edited. The statements corroborated E.A.'s version of events that he was playing around outside the door when Respondent came out and struck him on the arm several times.

11. On February 15, 2012, Respondent was suspended without pay from her teaching position for 25 days which was later upheld after a formal hearing (DOAH Case No. 12-0808TTS).

12. By certified letter dated March 14, 2012, Petitioner informed Respondent that PPS opened a case to investigate her use of inappropriate discipline.[2/] On August 9, 2012, another certified letter was sent from Petitioner to Respondent advising that Petitioner had "concluded its preliminary investigation" and wanted to provide Respondent an opportunity to review the materials and respond to the allegations. The letter states that Respondent is not required to respond and that an informal conference was scheduled for August 29, 2012.

13. Respondent wrote back to Katrina Hinson (Hinson) with PPS on August 31, 2012, thanking PPS for "putting me on this pedestal of honor" and giving her the opportunity to refute the allegations of misconduct. Respondent asserts in this letter that she is the victim of a "mafia-type, posse ring" and the victim of a conspiracy including Pineiro and others at WHGES. Rather than respond to the allegations of misconduct, Respondent's three-page letter appears to be a plea for help from Respondent to protect her teaching position from the "obsessive hate" of the alleged conspirators.

14. Petitioner sent a memo to Respondent on August 30, 2012, enclosing a copy of the materials assembled during the preliminary investigation conducted by PPS. The purpose of this memo appears to be to notify Respondent to keep the materials

confidential during the proceedings. This memo and the materials were received by Respondent on September 8, 2012.

15. On September 17, 2012, Respondent wrote another letter to Hinson at PPS in which she states, "to be in compliance with your office's investigation, I am writing for professional guidance in regard to curtailing the constant bare-faced humiliation and bait-and-switch torture by Dade County Public School's [sic] employees, as my soul is longing for peace to have solace to grieve my loss in every respect of life fulfillment." Respondent asks whether PPS is part of the DOAH process, complains about the union attorney and the school board attorney and asserts that the "mafia-type posse wants me to be on an accelerated program for homelessness and malnutrition." This letter, and its reference to an "investigation," is not a response to allegations of misconduct but rather appears to be Respondent's attempt to seek help from PPS with regard to the DOAH proceeding.

16. The final hearing in the DOAH proceeding regarding Respondent's suspension without pay occurred before Administrative Law Judge Stuart M. Lerner on September 24, 2012.

17. On October 1, 2012, Respondent wrote another letter to Hinson which states in the opening paragraph:

> To be in compliance with your office's investigation, I am writing for professional guidance in regard to my mental faculty due

> to my mild malnourished and homeless states, as I am constantly being deprived of rightful income due to a group of vicious, hateful, and jealous so-called professional educators and so-called professional administrators of Dade County public schools.

18. This letter states, "I am being sanctioned (mentally slaved [sic]) that if I return to employment of Dade County Public Schools. I cannot communicate further with your office, neither through writing or telephone." In this letter, Respondent asserts that E.A. and the student witnesses were "coached to give false witness against me." Regarding the incident with E.A., Respondent states, "the student kidnapped me between the door and the door jamb, and battered me with the door to my head and upper torso, that left me with a mild head trauma."

19. A similar letter was written by Respondent to Hinson on October 5, 2012. Respondent does not mention any "investigation" but again asks for help from Hinson stating:

> May you please go another extra mile to help me? I beg of you. My grasp to hope is weakening as my resilience to these evil ones has been for many, many years. They have cornered me by attacking my every phase of bottom line. Please, do not allow evil to have dominion over good.

20. A final letter by Respondent to Hinson was written on October 19, 2012, in which Respondent complains that she is being

unfairly harassed by the principal at her new assigned school, Aventura Waterway K-8 Center.

21. Notably, Hinson did not reply to any of the correspondence from Respondent. According to Hinson, PPS has no authority to address concerns or complaints about harassment or discrimination. This information was not communicated by PPS to Respondent. What is clear from these letters is that Respondent had no understanding that she was under investigation by DOE. Rather, Respondent erroneously believed that PPS would intervene on her behalf with regard to her then-pending matter before DOAH or with her assigned schools.

22. The final order upholding Respondent's suspension without pay was issued by the District on February 13, 2013. Respondent alleges that, at that time, she was advised by her union representative that the matter was concluded and that she did not have to worry about this incident any further.

23. On March 18, 2013, Respondent filed her annual application for renewal of her educator's professional certificate with the District. In response to the question, "Do you have any current investigative action pending in this state or any other state against a professional license or certificate or against an application for professional license or certificate?" Respondent answered "No." Respondent certified by

her application signature that all information provided in the application was "true, accurate and complete."

24. When the District received and reviewed the application, a computerized alert was received from Petitioner indicating that an investigation was pending with PPS. Jose Garcia, Certification Officer for the District, notified Respondent by memorandum dated April 17, 2013, that Respondent needed to return a corrected application.

25. Respondent did not believe she was under investigation and thought that by indicating "yes" on the form, she would be incriminating herself. Respondent wrote Governor Scott an email on May 17, 2013, alleging that PPS and the District Certification Office were wrongfully preventing the renewal of her application in an attempt to prevent her from working with children with disabilities.

26. As a result of this email, the alert was removed from Respondent's certificate and it was reissued by the District. Respondent never acknowledged the DOE investigation in her application for renewal. Petitioner considers Respondent's refusal to acknowledge the pending PPS investigation as an attempt to renew her certificate by fraudulent means.

27. The Administrative Complaint charges Respondent as follows:

STATUTE VIOLATIONS

COUNT 1: The Respondent is in violation of Section 1012.795(1)(a), Florida Statutes, in that Respondent obtained or attempted to obtain a teaching certificate by fraudulent means.

COUNT 2: 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.

COUNT 3: 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 her effectiveness as an employee of the school board.

COUNT 4: The Respondent is in violation of Section 1012.795(1)(j), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

RULE VIOLATIONS

COUNT 5: The allegations of misconduct set forth herein are in violation of Rule 6A-10.081(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.

COUNT 6: The allegations of misconduct set forth herein are in violation of Rule 6A-10.081(3)(e), Florida Administrative Code, in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

> **COUNT 7:** The allegations of misconduct set forth herein are in violation of Rule 6A-10.081(5)(a), Florida Administrative Code, in that Respondent has failed to maintain honesty in all professional dealings.

28. Respondent filed a Motion for a Formal Hearing on December 26, 2013, with the EPC in which she disputed all of the allegations of the Administrative Complaint.

CONCLUSIONS OF LAW

a. Jurisdiction

29. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

b. Burden of Proof; Standard of Proof

30. Petitioner has the burden of proof in this disciplinary proceeding. The "disciplinary" nature of the proceeding requires that the standard of proof Petitioner must meet is "clear and convincing evidence." See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987), and McKinney v. Castor, 667 So. 2d 3878 (Fla. 1st DCA 1995).

c. Clear and Convincing

31. The "clear and convincing" standard of proof and its components are described by the Florida Supreme Court in In re Davey, 645 So. 2d 398 (Fla. 1994). The Court held:

> 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 explicit and the witnesses must be lacking in 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.

Id. at 404 (quoting with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

32. Although the "clear and convincing" standard of proof may be met where the evidence is in conflict, In re Guardianship of Browning, 543 So. 2d 258, 273 (Fla. 2d DCA 1989), approved, 568 So. 2d 4 (Fla. 1990), it precludes evidence that is ambiguous. Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986 (Fla. 1st DCA 1991).

d. Application of Standard of Proof in This Case

33. Respondent argues that her denials of the allegations concerning the incident with E.A., including those made under oath at the hearing, have been unchanged from the start. In contrast, she points to disagreement among E.A. and the eyewitnesses as to the exact details of the incident as proof of a conspiracy against her and that the students' statements were coached and false.

34. Although the students' testimony varied slightly regarding the recollection of events, it was consistent with

their prior written statements and the testimony of E.A. The minor inconsistencies between the students can be attributed to their different perspectives when reviewing the incident and the more than three years which passed since it occurred.

35. The students were credible, did not exaggerate, and supported the factual allegations of the Administrative Complaint regarding the E.A. incident. The testimony of E.A. and the students constitutes "clear and convincing" evidence.

36. With regard to the allegation that Respondent intentionally failed to disclose the PPS investigation when renewing her certificate, the evidence presented was less than clear and convincing.

37. While Petitioner certainly communicated in writing with Respondent regarding the pendency of an investigation, Respondent's denial of awareness of such an investigation is credible. Her failure to grasp the reality of the ongoing PPS investigation is evident in this series of letters, albeit rambling and suspicious, written by Respondent to Hinson.

38. Although Petitioner's letters to Hinson refer to an "investigation," the letters repeatedly refer to the proceedings at Respondent's old school, new school, and with DOAH. Respondent served her suspension in February 2012. It is not unreasonable that she was confused by correspondence referencing a "preliminary investigation" in August 2012 regarding an

incident from the beginning of the prior school year for which she had already gone through the administrative appeal process and been disciplined.

39. In light of Respondent's genuine confusion regarding the status of any investigation by PPS, Petitioner failed to demonstrate by clear and convincing evidence that Respondent attempted to renew her certificate by fraud.

e. Attempt to Obtain Certificate by Fraud and Failure to Maintain Honesty in All Professional Dealings

40. Fraud is not defined in section 1012.795(1)(a), Florida Statutes. However, Florida courts have consistently held that the elements of common law fraud include: (1) a false statement of fact; (2) known by the person making the statement to be false at the time it was made; (3) made for the purpose of inducing another to act in reliance thereon; (4) action by the other person in reliance on the correctness of the statement; and (5) resulting in damage to the other person. Gandy v. Transworld Computer Tech. Group, 787 So. 2d 116, 118 (Fla. 2d DCA 2001), citing Mettler, Inc. v. Ellen Tracy, Inc., 648 So. 2d 253 (Fla. 2d DCA 1994).

41. In this case, Petitioner failed to prove elements two through five by clear and convincing evidence. As discussed above, Respondent did not understand her statement, that she was

not currently under investigation, to be false at the time she completed the application for recertification.

42. There was no intent to surreptitiously obtain a renewal of Respondent's certificate. The evidence demonstrates that both Petitioner and the District were well aware of the EPC's pending investigation against Respondent. The District was actively engaged in litigating the issue of Respondent's disciplinary suspension and knew it had referred the matter, as required by law, to Petitioner. Petitioner, as the party initiating the investigation, clearly was aware it was pending against Respondent at the time she filed her application for renewal. Although the District may not have been aware of the exact status of the investigation at all times, it received notification that an investigation was pending at the critical juncture when Petitioner's application was received.

43. No "fraud" occurs when the entity to which the alleged fraudulent statement is made is already aware of the correct facts and takes no action in reliance upon the alleged fraudulent statement. See Dep't of Bus. & Prof'l Reg. v. Mitulinsky, Case No. 96-1864 (Fla. DOAH Sept. 30, 1996)(A fraudulent act requires a defrauded party. Even where an intent to defraud exists, someone must be defrauded for fraud to take place; something must be concealed for concealment to take place.).

44. Similarly, Petitioner failed to demonstrate by clear and convincing evidence that Respondent failed to maintain honesty in her professional dealings. Respondent did not understand that despite going through the hearing process for her disciplinary suspension and serving the 25-day suspension without pay that there was a separate and independent investigation by EPC.[3/]

45. Accordingly, Respondent is not guilty of violation of section 1012.795(1)(a) or Florida Administrative Code Rule 6A-10.081(5)(a).

f. Gross Immorality or an Act Involving Moral Turpitude

46. Count 2 alleges a violation of section 1012.795(1)(d): gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

47. "Immorality" is defined in rule 6A-5.056(1) as:

> "Immorality" means conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that brings the individual concerned or the education profession into public disgrace or disrespect and impairs the individual's service in the community.

There is no definition of "gross immorality" in statute or rule nor is there any definition in statute or rule of the term "gross" in relation to the rule's definition of "immorality" quoted above.

48. While one might infer that "gross immorality" is misconduct that is more egregious than mere "immorality," absent definition in a rule of the State Board of Education, the charge against Respondent cannot be lodged. See Pam Stewart, as Comm'r of Educ. v. Scheumeister, Case No. 14-1052PL, (Fla. DOAH Sept. 8, 2014); Arroyo v. Dr. Eric J. Smith, as Comm'r of Educ., Case No. 11-2799 (Fla. DOAH May 31, 2012; Fla. EPC Nov. 5, 2012); Torreya Landrea Davis v. Pam Stewart, as Comm'r of Educ., Case No. 13-2501 (Fla. DOAH Dec. 13, 2013; Fla. EPC Mar. 28, 2014); Pam Stewart, as Comm'r of Educ. v. Elaine Anderson, Case No. 13-1347PL (Fla. DOAH Dec. 16, 2013; Fla. EPC Mar. 28, 2014); Dr. Tony Bennett, as Comm'r of Educ. v. Doreen Whitfield, Case No. 13-3360PL (Fla. DOAH Jan. 8, 2014; Fla. EPC May 20, 2014).

49. Even if the definition of "immorality" was applicable as the standard for gross immorality, Petitioner has not met its burden to establish that Respondent's conduct rose to the requisite level. No evidence was presented to support a finding that Respondent's conduct was sufficiently notorious to bring the Respondent or the education profession into public disgrace or disrespect. Similarly, there was no evidence presented that Respondent's conduct impaired her service in the community.

50. The term "moral turpitude" is defined in rule 6A-4.009, which has been transferred to rule 6A-5.056. The incident with E.A. occurred prior to a substantial rewording of rule 6A-5.056

on July 8, 2012. Thus, whether the incident constituted ones involving moral turpitude must be gauged against the standard in effect at the time the act giving rise to this proceeding occurred, i.e., that version of the rule as it existed prior to its 2012 amendment. Childers v. Dep't of Envtl. Prot., 696 So. 2d 962, 964 (Fla. 1st DCA 1997)("The version of a statute in effect at the time grounds for disciplinary action arise controls.").

51. Prior to its 2012 amendment, rule 6A-5.056(6) defined "moral turpitude" as "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."

52. A finding that an individual has engaged in moral turpitude requires a finding of intent. See Pearl v. Fla. Bd. of Real Estate, 394 So. 2d 189, 191 (Fla. 3d DCA 1981). There is no evidence to establish that Respondent intended to hurt E.A., or to otherwise commit a crime.

53. Petitioner failed to demonstrate by clear and convincing evidence that Respondent engaged in gross immorality or an act of moral turpitude.

g. Reduction of Effectiveness as a School Board Employee

54. Count 3 alleges that Respondent has been found guilty of conduct which seriously reduces her effectiveness as a school board employee.

55. However, the witnesses from WHGES explained that because Respondent was immediately removed from their school after the incident with E.A., they could not assess her on-going effectiveness (or lack thereof). No administrators from Respondent's current school placement testified about her effectiveness as a district employee. Therefore, Petitioner failed to meet its burden as to Count 3.

h. Violation of the Principles of Professional Conduct

56. Count 4's charge of a violation of section 1012.795(1)(j) for violations of the Principles of Professional Conduct for the Educational Profession prescribed by the State Board of Education involves two rules.

57. The first is rule 6A-10.081(3)(a) as cited in Count 5. It requires that the holder of an educational certificate "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."

58. The second is rule 6A-10.081(3)(e) as cited in Count 6. It requires that the holder of an educational certificate "shall

not intentionally expose a student to unnecessary embarassment or disparagement."

59. Respondent's conduct with regard to E.A. constituted a failure to protect E.A. from conditions harmful to learning and to his mental health. Respondent's yelling at E.A. loud enough to be heard by another class, punching E.A. in the arm which was seen by students in another class, and throwing E.A.'s book bag into her classroom intentionally exposed E.A. to unnecessary embarrassment and disparagement. Respondent is guilty of the charges contained in Counts 4, 5, and 6 of the Administrative Complaint.

i. Penalty Assessment

60. Section 1012.796(7) provides a range of penalties for a teacher who violates section 1012.795, including denial of an application for a teaching certificate, revocation or suspension of a certificate, written reprimand, an administrative fine, and probation. See also Fla. Admin. Code R. 6B-11.007.

61. It should be noted that the incident involving E.A. occurred more than three years ago. E.A. was not physically injured; however, Respondent suffered minor physical injury during the incident as a result of being temporarily stuck between the door and the door frame. Respondent has been employed with the District as a teacher for over 17 years. Respondent already served a 25-day suspension without pay as a

result of the District's disciplinary process. No evidence was presented at the final hearing of any prior or subsequent discipline against Respondent for the same or similar conduct.

62. Under these circumstances, the undersigned recommends Respondent be placed on probation for 90 school days with a written reprimand to be placed in her certification file. This penalty takes into account that Respondent's conduct, in striking the student, was inappropriate under any circumstances, but also places the conduct in perspective in relation to Respondent's otherwise incident-free teaching career.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order reprimanding Respondent for the incident with E.A., with a copy to be placed in Respondent's certification file, and placing Respondent on probation for a period of 90 school days.

DONE AND ENTERED this 22nd day of January, 2015, in Tallahassee, Leon County, Florida.

MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 2015.

ENDNOTES

[1/] The students who participated at the hearing were between 12 and 14 years old. Each student was individually questioned by the undersigned prior to testifying to discern their recollection of the relevant events and their capacity to tell the truth. All but one student, A.L., were deemed competent to testify. Although A.L. initially answered the questions of the Administrative Law Judge coherently, it was evident upon direct examination that she had no clear memory of the events in question and, as a selective mute, had great difficulty testifying. Accordingly, her testimony was not considered in the drafting of this Recommended Order.

[2/] No evidence was presented at hearing that this letter was received by Respondent.

[3/] It is not clear from the Administrative Complaint whether Count 7, charging Respondent with a failure to "maintain honesty in all professional dealings," refers only to the alleged fraudulent application or includes Respondent's statements that she only touched E.A. in an effort to defend herself. Although the undersigned did not find Respondent's testimony regarding her altercation with E.A. to be credible, it is apparent that Respondent truly believes her version of events is what occurred.

One only needs to examine the series of letters written to Hinson from Respondent to realize Respondent suffers from significant misperceptions regarding the potential nefarious intentions of others.

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.