

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER
OF EDUCATION,

Petitioner,

vs.

Case No. 15-0335PL

MONROE SHANNON,

Respondent.

_____ /

RECOMMENDED ORDER

On June 9, 2015, a duly-noticed hearing was held by video teleconference at locations in West Palm Beach and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Whitelock and Associates, P.A.
Suite E
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316-1924

For Respondent: Dedrick D. Straghn, Esquire
26 Southwest 5th Avenue
Delray Beach, Florida 33444-2512

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent, Monroe Shannon, violated sections 1012.795(1)(d), (g), or (j), Florida Statutes (2011),^{1/} and implementing administrative rules, as

alleged in the Administrative Complaint, and, if so, what are the appropriate sanctions?

PRELIMINARY STATEMENT

On or about July 15, 2014, Pam Stewart, as commissioner of Education (commissioner or Petitioner), filed an Administrative Complaint against Mr. Monroe Shannon (Mr. Shannon or Respondent). Mr. Shannon subsequently filed an Election of Rights form on August 4, 2014, disputing the allegations in the Administrative Complaint and requesting a hearing. On January 20, 2015, the case was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

After two continuances and the filing of an Amended Administrative Complaint, the hearing was conducted on June 9, 2015. The parties stipulated to certain facts, which were accepted and have been incorporated into the Findings of Fact below. At hearing, Petitioner presented the testimony of Ms. Janis Rosencrans, a language arts teacher at Congress Middle School (Congress); T.S., a student at Congress; Ms. Gina Marie Dempsey, an eighth-grade teacher at Congress; Ms. M.D., mother of a former student at Congress; S.D., a former student at Congress; and Ms. Felicia Banks, a reading teacher at Congress. Petitioner offered Exhibits P-1 through P-3, P-5, P-6, and P-9 through P-13, which were admitted into evidence. Exhibit P-13 was a deposition of Ms. Michele Regan, formerly an English teacher at Congress,

who was unavailable as a live witness. The testimony of Ms. Sandra Gero, the chief of Human Resources in the School District of Palm Beach County, and Exhibits P-14 and P-15 were also offered by Petitioner as rebuttal evidence and were accepted. Respondent testified on his own behalf and offered the testimony of Ms. Lena Roundtree Wallace, retired former principal of Carver Middle School (Carver). He also offered ten exhibits: R-1 through R-3; R-5 through R-8; and R-10 through R-12. All his exhibits were admitted into evidence. At the request of the parties for additional time, July 24, 2015, was set as the deadline to file proposed recommended orders.

The two-volume Transcript of the proceeding was filed with the Division of Administrative Hearings on June 26, 2015. Petitioner timely filed a proposed recommended order. Respondent, under the mistaken impression that a filing made after 5:00 p.m., would be docketed as received on that same business day, filed a proposed recommended order at 11:43 p.m., on July 24, 2015. Consistent with Florida Administrative Code Rule 28-106.104(1), it was shown as filed on the following Monday, July 27, 2015. However, it has been determined that Petitioner suffered no prejudice as a result, and the proposed recommended orders of both Petitioner and Respondent were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The commissioner is responsible for investigating and prosecuting allegations of misconduct against individuals holding Florida educator certificates.

2. Mr. Shannon holds Florida Educator Certificate 734423, covering Educational Leadership, School Principal, and Business Education, which is valid through June 30, 2018.

3. At all times material to this case, Mr. Shannon was employed as an assistant principal at Congress in the Palm Beach County School District. He is a 16-year employee of the School District.

4. Mr. Shannon was transferred to Congress as assistant principal during the early portion of the 2011-2012 school year.

5. Ms. Gina Marie Dempsey was an eighth-grade teacher at Congress during the 2011-2012 school year. She had been introduced to Mr. Shannon early in the school year and saw him frequently in the lunchroom or hall, but other than that, had little reason to be in contact with him, for he was the assistant principal for the seventh grade. Ms. Dempsey credibly testified that Mr. Shannon was a little inappropriate in his comments to her. He asked her where her friends hung out, whether he could be her friend on Facebook, and if she wanted to go out with him for drinks. When he asked her out, she indicated she did not hang out with administration.

6. On September 15, 2011, there was an open house at Congress. Ms. Dempsey was dressed up, wearing stiletto heels. As the open house concluded, Ms. Dempsey was walking down the hall toward her car when she encountered Mr. Shannon. No one else was in the hall. He told her, "I really like those heels. I would like to see you only in those heels." As he made this statement, Mr. Shannon was rubbing his hand in the general area of his genitals. He then asked Ms. Dempsey if she needed an escort to her car. She said no. Mr. Shannon said, "It is getting dark and you need protection." Ms. Dempsey told him that she had an Easton bat in her car and that she could take care of herself. Mr. Shannon said, "All right, all right." Ms. Dempsey felt that the heel comment was "off color." She believed his statements and actions were inappropriate, especially for a married administrator to direct to a teacher. Ms. Dempsey reported the incident to her assistant principal, Ms. Cheryl Van Voorhies, saying she did not want Mr. Shannon in her classroom or her hallway.

7. Ms. Michele Wertman (now Ms. Regan) graduated from Florida Atlantic University in 2009. During the 2011-2012 school year, she was 23 years old and had taught for two years. She was teaching seventh-grade English at Congress. Shortly after the start of the school year, a student in her fourth-period class, which was always difficult to manage, made an inappropriate

sexual remark toward her. Ms. Wertman went to Mr. Shannon, as the new assistant principal for the seventh grade, to find out what should be done. Rather than assist her, Mr. Shannon told her, "Well, you know you are a sexy teacher, what do you expect?" or words to that effect. Ms. Wertman immediately reported the incident to Ms. Janis Rosencrans, the Classroom Teachers Association representative, who credibly testified that Ms. Wertman was visibly upset and in tears when she did so. Ms. Rosencrans in turn advised the principal, Ms. Harris, about the incident.

8. This incident made Ms. Wertman upset and uncomfortable, particularly since Mr. Shannon had earlier asked if she was on Facebook, asked if she and her roommate wanted to go out for drinks, and asked if he could take her out. She had declined and had never socialized with Mr. Shannon. She did not feel it was appropriate for an assistant principal to be seeking a personal relationship with a teacher he supervised.

9. Ms. Wertman continued to have problems with the behavior of her students in her fourth-period class. She concluded it was just a bad combination of students, since her other four classes were wonderful. She approached Mr. Shannon to see if some students could be switched because the existing classroom dynamic was not at all conducive to learning. In response, Mr. Shannon told her that perhaps she needed to transfer to a "west school"

and that she was probably "too white" to work at Congress, which was a predominately black school. Ms. Wertman was shocked and upset and started crying in Mr. Shannon's office. She had gone to Congress as a student and never felt that she was out of place because of her race or color. Mr. Shannon then told her that "if you don't do A, B, or C, then, it will cost you your job and you won't be here next year." Ms. Wertman did not know what Mr. Shannon meant by this last remark, but became insulted and angry at the way Mr. Shannon was treating her. She immediately left and went to see Ms. Rosencrans. After hearing Ms. Wertman's story, Ms. Rosencrans told Ms. Wertman that she should go to the principal, which she did. Ms. Harris told Ms. Wertman that she would report the incident.

10. On several occasions, Mr. Shannon would use his key to enter Ms. Wertman's locked classroom unannounced. While Mr. Shannon, as the assistant principal for seventh grade, had authority to observe seventh-grade teachers and evaluate them, Ms. Wertman never received any evaluations from any of these visits. She stated:

And he would just take his aide key and he'd walk in and he'd stalk around the classroom and holding his belt buckle and he kind of like threw his weight around, like just his body language.

Ms. Wertman felt intimidated and uncomfortable with these visits. On one of these occasions, Mr. Shannon told her fourth-period students:

You know, you guys should really listen to Ms. Wertman. You have a really, you know, sexy teacher You have a fine looking teacher here.

11. Ms. Wertman felt that she was being sexually harassed by Mr. Shannon and that Ms. Harris was allowing it to go on. She thought that if this was how the school system operated, she could not teach any longer. She quit her job on the last day before the Christmas break. She did not return to teaching during the rest of that school year and the year following.

12. S.D., formerly an eighth-grade student at Congress, also testified about an incident involving Mr. Shannon. She testified that he told her that he "wished she was old enough," that he told her she "couldn't handle him," and that he "grabbed her [best friend's] behind." That testimony, however, was not clear and convincing.

13. First, her testimony was a bit unclear as to when and where the statements were made. She said the statements were made in a conference room with another assistant principal present. But at another point in her testimony, she said that Mr. Shannon made the comment "walking through the hallway just saying that he wished I was old enough."

14. Second, while she alleged that at least one other student and another assistant principal were present when the statements were made, there were no corroborating statements or testimony from them that they heard the statements or why they might not have heard them if they were made.

15. Third, there were inconsistencies between her written statement given on the date of the incident and her later testimony at hearing. In her written statement, she stated that Mr. Shannon touched her face, but said nothing about him inappropriately touching her friend. At hearing, she stated that he had earlier "grabbed her [best friend's] behind," but said nothing about him touching her face. If Mr. Shannon had "grabbed the behind" of her friend, it seems remarkable that that incident would not have been part of her original written statement.

16. Finally, Mr. Shannon testified that S.D. was being confrontational and that there was nothing sexual about the conversation. He testified that S.D. had balled up her fists and that comments that he "wished she was old enough" and about her "not being able to handle him" were related to her aggressiveness. At one point during cross-examination, S.D. seemed to concede that this might be the case:

Q: Isn't it true when he said he wished you were old enough, again, that was in response

to you coming at him physically and him wishing you were not a minor at the time?

A: Yep.

S.D.'s testimony, taken as a whole, was simply not precise or explicit enough to leave a firm conviction as to the truth of her allegations.

17. On February 2, 2012, T.S., an eighth grader at Congress, encountered Mr. Shannon in the hall. Mr. Shannon put his arm around her and whispered in her ear, "You need a man." T.S. testified that Mr. Shannon's putting his arm around her did not make her feel uncomfortable, but that Mr. Shannon's whispering that "you need a man" in her ear did. T.S. testified that as far as she knew, in the crowded hallway with all of the students busy making their way to their classes, she was the only one that witnessed the conversation. At her next class, T.S. asked her reading teacher, Ms. Banks, if she "could keep a secret." When Ms. Banks told her she could, T.S. then replied, "well, I can just say it because they [the other students] know." After T.S. relayed what had happened, Ms. Banks directed T.S. to write a statement about the incident.

18. In February 2012, Mr. Shannon was investigated for alleged acts of sexual harassment.

19. In a letter from Ms. Mara Stafford, the director of Recruitment and Retention for the School District of Palm Beach

County, dated February 16, 2012, Mr. Shannon was advised that he was to be the assistant principal at Citrus Grove Elementary School. He did not begin working there, however, because he was subsequently called and told he would not be reporting to the new position.

20. On May 16, 2012, Mr. Shannon received a letter from Ms. Janis Andrews, chief academic officer of the School District of Palm Beach County, advising him that he would not be recommended for reappointment. The letter advised him that he could apply for vacant positions for which he qualified. His employment was thereby terminated a couple of weeks later at the end of his contract period.

21. Mr. Shannon applied for a teaching position with many schools. There was an opening at Carver, and he was interviewed by the principal there, Ms. Lena Wallace. Mr. Shannon was hired for the teaching position and was reassigned to Carver.

22. Mr. Shannon was issued a letter of reprimand by the School District dated August 20, 2012.

23. Mr. Shannon's actions and remarks toward Ms. Dempsey when he encountered her in the hall after the open house constituted sexual harassment.

24. Mr. Shannon's actions directed toward Ms. Wertman, his comments to her, and comments about her to her students, constituted sexual harassment and discriminatory conduct.

25. Mr. Shannon's actions directed toward Ms. Wertman and his comments to and about her, unreasonably interfered with Ms. Wertman's performance of her professional and work responsibilities.

26. Mr. Shannon's conduct toward T.S., an eighth-grade female student, constituted sexual harassment and failed to protect her from conditions harmful to learning or her mental health. However, there was insufficient evidence that he exposed her to unnecessary embarrassment or disparagement.

27. These inappropriate behaviors of Mr. Shannon seriously reduced his effectiveness as an employee in the School District.

28. There was no evidence that Mr. Shannon engaged in any inappropriate behaviors after he was given a teaching position at Carver beginning with the 2012-2013 school year. Ms. Wallace, aware of allegations against Mr. Shannon, advised him that if there were any incidents involving him, that she would "fire him immediately, and it would stick." Ms. Wallace testified that Mr. Shannon was very student-oriented, did everything that was expected of him, and worked professionally. At the time of the hearing, Mr. Shannon had been employed as a teacher at Carver for three school years.

29. There was no evidence that Mr. Shannon's teacher certificate has been subjected to prior discipline.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

31. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional or administrative personnel holding educator certificates. §§ 1012.795(1) and 1012.796(6), Fla. Stat.

32. Section 1012.01(3) provides in part:

"Administrative personnel" includes K-12 personnel who perform management activities such as developing broad policies for the school district and executing those policies through the direction of personnel at all levels within the district. Administrative personnel are generally high-level, responsible personnel who have been assigned the responsibilities of systemwide or schoolwide functions, such as district school superintendents, assistant superintendents, deputy superintendents, school principals, assistant principals, career center directors, and others who perform management activities.

33. Petitioner seeks to take action against Respondent's educator certificate as provided in sections 1012.795 and 1012.796. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v.

Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

34. Clear and convincing evidence has been said to require:

[T]hat 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.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

35. Respondent is substantially affected by Petitioner's intended decision to discipline his Florida educator certificate and has standing to maintain this proceeding.

COUNT 1

36. Section 1012.795(1)(d) provided that persons who are "guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education" may have their licenses disciplined by the Education Practices Commission.

37. The Ethics in Education Act, Chapter 2008-108, Laws of Florida, added the phrase "as defined by rule of the State Board of Education." It is unclear whether this new language was intended to modify only "an act involving moral turpitude" or if it instead modifies the entire phrase "gross immorality or an

act involving moral turpitude." The absence of a comma after the word "immorality" suggests that it modifies the entire phrase. In any event, when construing penal statutes, any statutory ambiguity should be resolved in favor of Respondent. Cilento v. State, 377 So. 2d 663, 668 (Fla. 1979) (where criminal statute is ambiguous, construction most favorable to accused should be adopted). Cf. also § 775.021, Fla. Stat. ("The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."). The first portion of section 1012.795(1)(d) is only violated if an educator is guilty of gross immorality as defined by rule of the State Board of Education.

38. At the time of the offenses charged, the State Board of Education had not defined the term "gross immorality" by rule.^{2/} No evidence was presented that Respondent's behavior met any such rule definition. No evidence shows that Respondent was guilty of gross immorality as defined by rule of the State Board of Education.

39. At the time of the offenses charged, the State Board of Education had defined the term "moral turpitude," at least as it relates to crimes. Florida Administrative Code Rule

6A-5.056(6) entitled, "Criteria for Suspension and Dismissal" provided:

(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.

40. This is almost identical to the definition of moral turpitude adopted by the Florida Supreme Court in Florida Bar v. Davis, 361 So. 2d 159 (Fla. 1978) ("A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general. Unless the offense is one which by its very commission implies a base and depraved nature, the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances").

41. Even if it was assumed that a definition of moral turpitude as a category of crimes was applicable here, none of the conduct proven, when considering all attendant circumstances, constituted an act of baseness, vileness, or depravity.

42. Petitioner failed to prove by clear and convincing evidence that Respondent violated section 1012.795(1)(d).

COUNT 2

43. Section 1012.795(1)(g) provided that the Education Practices Commission may suspend the educator certificate of a person who, upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

44. While there was no direct testimony regarding reduction of effectiveness presented at hearing, under some circumstances, such evidence is not necessary. Seriously reduced effectiveness may be shown simply from the nature of the misconduct. See, e.g., Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000) (lying under oath and resisting arrest was misconduct that supported inference that effectiveness was impaired); Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000) (commotion in class, including intoxicated student, showed class was out of control such that no evidence of impaired effectiveness was necessary, misconduct "spoke for itself"). The conduct of Respondent here, sexual and racial harassment of teachers while in a supervisory assistant principal position, causing one teacher to stop teaching in the middle of the school year, is of such a nature to justify an inference that his effectiveness as an employee was necessarily seriously impaired.

45. Petitioner proved by clear and convincing evidence that Respondent violated section 1012.795(1)(g).

COUNT 3

46. Count 3 alleges that Respondent is in violation of section 1012.795(1)(j), in that he has violated the Principles of Professional Conduct for the Education Profession. Counts 4 through 8 go on to allege specific violations of these principles. Count 3, therefore, does not constitute a distinct disciplinary violation.

COUNT 4

47. Count 4 alleges that Respondent violated Florida Administrative Code Rule 6B-1.006(3)(a),^{3/} which at the time of the alleged offense provided:

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.

48. Respondent's actions of putting his arm around T.S., an eighth-grade female student, and whispering to her that she "need[ed] a man" was completely inappropriate coming from an assistant principal. The statement disturbed T.S. and made her feel uncomfortable. Respondent failed to make reasonable effort to protect T.S.'s mental health.

49. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(3)(a).

COUNT 5

50. Count 5 alleges that Respondent violated rule 6B-1.006(3)(e), providing that an individual shall not intentionally expose a student to unnecessary embarrassment or disparagement.

51. While Respondent's conduct toward T.S. was clearly inappropriate, there was no evidence that it was observed by any other student or staff. T.S. herself did not appear embarrassed by the incident, because rather than speaking to her teacher privately, she told what had happened in front of all of the students in her class and apparently had already told some of them earlier. There was no other evidence that Respondent otherwise intentionally exposed T.S. to unnecessary embarrassment or disparagement.

52. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6B-1.006(3)(e).

COUNT 6

53. Count 6 alleges that Respondent violated rule 6B-1.006(3)(g), which provided that an individual shall not harass any student on the basis of sex and shall make reasonable effort to assure that each student is protected from harassment.

54. Respondent's conduct toward T.S. was sexual in nature, which under the circumstances constituted harassment on the basis of sex.

55. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(3)(g).

COUNT 7

56. Rule 6B-1.006(3)(h) provided that an individual:

Shall not exploit a relationship with a student for personal gain or advantage.

57. The testimony of T.S. that Mr. Shannon put his arm around her and whispered in her ear, "You need a man," was credited. However, this single incident, while clearly inappropriate, was insufficient to clearly show that Mr. Shannon was exploiting his relationship with T.S. for personal gain or advantage.

58. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6B-1.006(3)(h).

COUNT 8

59. Rule 6B-1.006(5)(d) provided that an individual:

Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

60. Respondent's sexual and racial comments and actions toward Ms. Dempsey and Ms. Wertman constituted harassment and

discriminatory conduct. This conduct unreasonably interfered with Ms. Wertman's performance of her professional and work responsibilities, causing her to resign her position before the end of the school year.

61. Petitioner proved by clear and convincing evidence that Respondent violated rule 6B-1.006(5) (d).

PENALTIES

62. The Education Practices Commission adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.795 in Florida Administrative Code Rule 6B-11.007.

63. Rule 6B-11.007(2) (f) provided that probation to revocation was the appropriate range of penalty for "engaging in personal conduct which seriously reduces effectiveness as a district school board employee" in violation of section 1012.795(1) (g).^{4/}

64. Rule 6B-11.007(2) (i)16. provided that probation to revocation was the appropriate range of penalty for "[f]ailure to protect or supervise students in violation of paragraph 6B-1.006(3) (a), F.A.C."

65. Rule 6B-11.007(2) (i)10. provided that reprimand to revocation was the appropriate range of penalty for harassment of a student on the basis of sex in violation of paragraph 6B-1.006(3) (g).

66. Rule 6B-11.007(2)(i)11. provided that reprimand to revocation was the appropriate range of penalty for "[h]arassment or discrimination which interferes with an individual's performance or work in violation of paragraph 6B-1.006(5)(d), F.A.C."

67. Rule 6B-11.007(2) further provided that the guideline penalties shall be interpreted to include "probation," "fine," and "administrative fees and/or costs," with applicable terms, as additional penalty provisions. The rule provided that "revocation" shall mean any length of revocation and shall include a comparable period of denial of an application for an educator certificate.

68. Rule 6B-11.007(3) provided:

(3) Based upon consideration of aggravating and mitigating factors present in an individual case, the Commission may deviate from the penalties recommended in subsection (2). The Commission may consider the following as aggravating or mitigating factors:

- (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.

69. No aggravating or mitigating circumstances are present here to the extent necessary to warrant deviation from the wide range of penalties already permitted within the guidelines.

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 Respondent, Monroe Shannon, in violation of sections 1012.795(1)(g) and (j) and implementing rules 6B-1.006(3)(a), 6B-1.006(3)(g), and 6B-1.006(5)(d).

It is further RECOMMENDED that the Education Practices Commission impose upon Mr. Shannon a fine of \$500.00 for each offense, for a total fine of \$2,000.00, and revoke his educator certificate for a period of two years.

It is further RECOMMENDED that educational employment upon recertification be subject to three years of probation as provided by section 1012.796(7)(d) with conditions determined by the Education Practices Commission to be reasonably necessary to ensure that there will be no threat to students and that he will be capable of resuming the responsibilities of an educator.

DONE AND ENTERED this 31st day of July, 2015, in
Tallahassee, Leon County, Florida.



F. SCOTT BOYD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 2015.

ENDNOTES

^{1/} All references to Florida Statutes or administrative rules are to the versions in effect during the 2011-2012 school year, except as otherwise indicated.

^{2/} Florida Administrative Code Rule 6A-10.083 became effective on May 27, 2015, establishing standards relating to gross immorality and acts of moral turpitude for purposes of section 1012.795(1)(d).

^{3/} During the 2011-2012 school year, Florida Administrative Code Rule 6A-10.081(3)(a) did not yet exist. Rule 6B-1.006(3)(a), the substantively identical rule at that time, was not renumbered until January 11, 2013. The other counts in the Administrative Complaint were similarly misdrafted. More attention by Petitioner would save the undersigned considerable time; however, the facts alleged and the text of the rule allegedly violated were clear for each count, and Respondent was not misled or harmed by these defects in pleading.

^{4/} Section 1012.795 was renumbered by chapter 2008-108, section 32, Laws of Florida. Although the rule was subsequently amended in 2009, it continues to reference the old numbering of the paragraphs in the statute. While the references in the rule

should be updated, the nature of the offenses is set out in full in the rule, and Respondent is not prejudiced by the mislabeling.

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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.