

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 15-0954PL

EDWARD THOMAS,

Respondent.

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RECOMMENDED ORDER

On April 30, 2015, Administrative Law Judge Lisa Shearer Nelson conducted a duly-noticed hearing pursuant to section 120.57(1), Florida Statutes (2014), in Blountstown, Florida.

APPEARANCES

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

For Respondent: Edward Thomas, pro se  
No. 1  
3557 Post Street  
Jacksonville, Florida 32205

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent violated section 1012.795(1)(g) and (j), Florida Statutes (2012), and Florida Administrative Code Rule 6A-10.081(3)(a), and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 4, 2014, Petitioner, Pam Stewart acting as Commissioner of Education, filed an Administrative Complaint against Respondent, Edward Thomas, alleging that he had violated section 1012.795(1)(g) and (j), and rule 6A-10.081(3)(a). Through the use of an Election of Rights form, on January 5, 2015, Respondent elected a hearing pursuant to section 120.57(1), and on February 19, 2015, the case was forwarded to the Division of Administrative Hearings for the assignment of an administrative law judge.

On February 24, 2015, a Notice of Hearing was issued scheduling the disputed-fact hearing for April 30, 2015. A telephonic pre-hearing conference was also conducted on April 22, 2015, in order to explain the process for conducting the hearing to Respondent, who is pro se, and to address any pre-hearing issues that may be pending.

The hearing was conducted as scheduled. Petitioner presented the testimony of Wilson McClellan, Barbara Hathaway, Georgia Barbee, Warren Tanner, and P.G. (a minor student), and Petitioner's Exhibits 1-15 were admitted into evidence. Respondent testified on his own behalf, and Respondent's Exhibit 1 was admitted over objection. On rebuttal, Petitioner presented

the testimony of Vicki Davis and additional testimony from Warren Tanner.

The one-volume Transcript of the hearing was filed with the Division on May 14, 2015. Both parties timely filed Proposed Recommended Orders which have been carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the demeanor and credibility of the witnesses and other evidence presented at hearing, and upon the entire record of this proceeding, the following facts are found:

1. Respondent holds Florida Educator's Certificate 739881, covering the areas of Physical Education and Exceptional Student Education, which is valid through June 30, 2015. He has held a certification in Florida since 2005. Respondent is African-American.

2. At all times relevant to the charges in the Administrative Complaint, Respondent has been employed as an In-School Suspension (ISS) Teacher at the CARE Program in the Calhoun County School District (District).

3. The CARE acronym is shorthand for character, achievement, respect, and education. The CARE Program is a second-chance school for students who have been suspended for more than ten days, have been suspended for drug offenses, or who are currently in a juvenile facility. The first time a student

is assigned to the CARE Program, it is for a 90-day term. If the student does well, he or she returns to their regular school. The second referral is for a period of 180 days; the third for a year. The CARE Program generally has approximately 30-40 students at a time. In November 2012, the program had approximately 31-32 students.

4. The CARE Program is located at a facility that used to house a vocational complex, next to the adult school. Also housed in this complex is the In-School Suspension (ISS) class, where students serve in-school suspensions of less than ten days. Students are referred to the ISS class for behavior such as tardiness and being disruptive in the classroom. The number of students in the ISS classroom varies, because it depends on how many students have been referred. There is a limit to how many students can be in the ISS class, because each school has a cap on the number of students it can refer at any given time. Testimony varied as to how many students were present at the time of the incident giving rise to this case. The most reasonable and credible testimony indicates that on November 14, 2012, there were approximately 15-20 students in the ISS class. There was adequate room in the ISS classroom for the number of students in the class.

5. Some time prior to the incident giving rise to this case, part of the complex where the CARE Program and the ISS

class were housed underwent construction. As a result, several staff members working in the complex had tires punctured because of construction debris in the area. The District would reimburse employees for repairs to tires that were punctured if the employee submitted the documentation related to the repair. Respondent had requested two new tires, as opposed to repair of his tires. Although the record is not clear when Respondent made his request, there was some delay in any action being taken to address it.

6. Wilson McClellan was the superintendent of the District from 2000 to 2004, and then again from 2008 to 2012, after which he retired. Mr. McClellan, who is Caucasian, was an educator in Calhoun County for approximately 25 years. He had worked with Respondent in a summer recreation program at some point before Respondent was hired by the District. Mr. McClellan had told Respondent that if there was an opening in Calhoun County, he would give Respondent a call and let him know.

7. On November 13, 2012, Mr. McClellan was defeated in his bid for re-election as superintendent. The next day, he visited the CARE Program and spoke with several of the staff there, presumably to touch base with people with whom he had worked. He came to the CARE Program around midday, and class was in session. While he was there, Mr. McClellan went to speak with Respondent about Respondent's pending request for reimbursement for his

tires. While repairs had been authorized, no other staff member had requested new tires. Mr. McClellan told Respondent that he would need to submit documentation for the reimbursement for action by the School Board, as opposed to the superintendent, because Mr. McClellan did not feel comfortable authorizing the expenditure when no one else had requested reimbursement for new tires instead of repair of existing ones.

8. Mr. McClellan knocked on the door to the ISS classroom and he and Respondent went into the small office adjacent to it. When he told Respondent about the need to submit the reimbursement matter to the Board, Respondent became angry and walked back into his classroom. Respondent told McClellan, in the presence of his students, that if he had a different last name and a different color, then the results would have been different. McClellan denied Respondent's claim and left the classroom.

9. Mr. Thomas's classroom had an inside door, going into a hallway, and an outside door that led to a covered pavilion area with picnic tables. Also adjacent to the area with the picnic tables is Barbara Hathaway's office. Ms. Hathaway served as the Dean of Students for the CARE Program, a position that functions much like a principal does in a traditional school. When Mr. McClellan left the classroom, he went to the area with the

picnic tables. Ms. Hathaway saw him there and came out to speak with him.

10. While Ms. Hathaway and Mr. McClellan were speaking, Respondent came out of his classroom and asked Ms. Hathaway to get someone to cover his class because he was "pretty hot" and needed to walk. According to Ms. Hathaway, Respondent was agitated and upset. She did not understand him to mean he was overheated based on temperature, but rather that he was upset or angry, and her testimony is credited. Without waiting for coverage for his class, Respondent walked away from the classroom and the area where Mr. McClellan and Ms. Hathaway were standing and up the sidewalk.

11. Ms. Hathaway left to ask another staff member to cover the classroom and was going to walk back outside when she heard Mr. Thomas speaking loudly. She could not hear what Mr. Thomas said, but his tone was agitated. She noticed that the ISS classroom door to the outside was open, and the students could hear the heated conversation between their instructor and the superintendent, so she opened the inside door and told a student to shut the outside door. Ms. Hathaway thought from the students' reactions that they were enjoying the interchange between Mr. McClellan and Mr. Thomas. She used her phone to call for a resource officer because she felt the situation was agitated and that someone should be present to intervene.

12. After Ms. Hathaway walked inside to arrange for coverage for the classroom, Mr. Thomas had walked back down the sidewalk to Mr. McClellan. He repeated to Mr. McClellan that in this county, if he had a different last name and a different color, it would probably be a different result. Mr. McClellan became impatient and said, "shut up Ed, I am just not wanting to hear any more about that." Mr. Thomas walked closer to him, glared and said, "if you ever say shut up again to me, I will be the last black man you ever say that to."<sup>1/</sup> Mr. Thomas is a large, imposing figure, and according to Mr. McClellan, he spoke in a loud, angry voice and "bowed up" in a threatening gesture; however, he was never close enough to the superintendent to actually strike him.

13. While Ms. Hathaway could not hear the actual language being used, both Ms. Barbee, who came to cover the ISS classroom, and the students in the classroom were able to hear the colorful exchange. Ms. Barbee testified that she did not remember the actual conversation, but that there was "some cussing and hollering." Her statement written the day of the incident indicates that Mr. Thomas used the term "f\*\*k." Likewise, P.G., one of the students in the classroom, testified that Mr. Thomas told Mr. McClellan, "don't tell me to shut the f\*\*k up," and for him to "shut the f\*\*k up." P.G. believed the students in the room were shocked at the interchange.<sup>2/</sup>



14. After this exchange, Respondent once again walked away from Mr. McClellan and up the sidewalk away from his class. On both occasions, Respondent was five to six classroom lengths away from his classroom, and unable to monitor in any way the actions of his students.

15. Ms. Hathaway, as noted above, was not present for this heated exchange and did not hear what was said. When she returned outside, Mr. Thomas was standing on the sidewalk up the hill from the classroom. She spoke to Mr. McClellan, who told her about the conversation with Mr. Thomas. What he told her involved the reimbursement issue and not any complaint about overcrowding. About that time Warren Tanner, the school resource officer, came around the corner. When he arrived, he saw Ms. Hathaway and Mr. McClellan sitting on a bench under the pavilion, and Mr. Thomas was standing at the end of the driveway at the end of the building. Mr. Tanner asked what had happened, and Mr. McClellan told him that Mr. Thomas had threatened him.

16. Mr. Thomas walked back down the hill to where the others were standing, and Mr. McClellan told him to go home for the rest of the day. Mr. Thomas went into his classroom briefly, then came out and asked Mr. McClellan if he was sending him home for the rest of the day, and was told, "yes." Mr. Thomas got in his truck to leave, then got out and asked Mr. Tanner if this was

going to be a complaint, and Mr. Tanner told him, not at this time.

17. Mr. McClellan returned to his office and called David House, the school board attorney. He related the events of the morning and told Mr. House that, in light of past behavior by Mr. Thomas and the current incident, he was considering terminating Mr. Thomas.

18. Later that afternoon, Vicki Davis, assistant superintendent for the District, called Mr. Tanner and asked him to collect statements from those who witnessed or heard the morning's events. Mr. Tanner got statements from Mr. McClellan, Ms. Hathaway, Ms. Barbee, and several students in Mr. Thomas's class.<sup>3/</sup> On Thursday, November 15, 2012, Mr. McClellan wrote to Mr. Thomas advising him that he was suspended with pay, effective immediately.

19. Respondent had been the subject of discipline previously, and there had been concerns expressed about his behavior during his employment in Calhoun County. For example, in January 2008, he received a formal reprimand for allegedly confronting a fellow teacher in front of students in a loud, belligerent, and profane manner.<sup>4/</sup> On June 3, 2008, Respondent received a second reprimand for allegedly leaving a magazine with an unclothed woman on the cover in the Health Building bathroom where it could be viewed by students. On January 13, 2011, Neva

Miller, the principal of Blountstown Middle School, wrote a lengthy letter to Superintendent McClellan detailing several alleged incidents involving Mr. Thomas that caused her to "express concerns that I have as to the effectiveness and concerning anger control abilities of Edward Thomas." A two-page document titled "Ed Thomas Issues Calendar Year 2011" was placed in his personnel file, recounting a series of concerns regarding alleged deficiencies in his performance. On February 23, 2012, Ms. Hathaway, as Dean of the CARE Program, documented an alleged incident involving a ninth-grade student.<sup>5/</sup>

20. On December 11, 2012, Mr. McClellan's successor, Superintendent Ralph Yoder, issued a Notice of Charges for Dismissal to the Calhoun County School Board, recommending Respondent be suspended without pay and dismissed from employment by the District. The Notice of Charges stated, "Mr. Thomas has a history of engaging in insubordinate, hostile and confrontational behavior toward faculty members and administrators, which began in 2007 and culminated in an incident that occurred on November 14, 2012, involving the former Superintendent of Schools, Mr. Tommy McClellan. Mr. Thomas has been repeatedly instructed by persons in authority to correct his behavior, but he has failed to do so."

21. The Notice goes on to describe 13 separate incidents and references several others. Only the incident involving

Mr. McClellan on November 14, 2012, is alleged in the Administrative Complaint, and Petitioner presented no evidence to prove what happened with respect to the other incidents. No findings are made concerning the validity of the other allegations in the Notice of Charges. It is considered solely to show that the District took action with respect to Respondent's employment.

22. Likewise, it is unclear what, if any, proceedings were conducted with respect to the Notice of Charges before the school board. Respondent acknowledged that his employment was terminated as of December 11, 2012, the day the Notice was issued.

#### CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2014).

24. Respondent's Proposed Recommended Order suggests that this proceeding is for the purpose of reviewing the employment action taken by the Calhoun County School Board. However, as indicated in the Administrative Complaint and as explained to Respondent both during the pre-hearing conference and at the hearing, this is a proceeding in which Petitioner seeks to discipline Respondent's educator certificate. Because

disciplinary proceedings are considered penal in nature, Petitioner is required 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).

25. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elect. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991).

26. Section 1012.796 describes the disciplinary process for educators, and provides in pertinent part:

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An

administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in

the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

27. The Administrative Complaint makes the following factual allegations against Respondent:

3. On or about November 13, 2012, during class, Respondent was confronted by the

Calhoun County School District's (District) Superintendent. The Superintendent provided information to Respondent regarding a reimbursement from the District, and an argument ensued. Respondent engaged in the argument in the presence of students and faculty. Respondent was loud, confrontational, and used profanity, including the word "[f\*\*k]," toward the Superintendent.

4. As a result of Respondent's conduct alleged in paragraph 3 of this Administrative Complaint, the District suspended Respondent's employment with pay on or about November 15, 2012, and Respondent's employment was terminated by the District on or about December 11, 2012.

28. Based upon these factual allegations, Count 1 of the Administrative Complaint charges Respondent with violating section 1012.795(1)(g); Count 2 charges Respondent with violating section 1012.795(1)(j); and Count 3 charges Respondent with violating rule 6A-10.081(3)(a).

29. Petitioner proved the facts alleged in paragraphs 3 and 4 in all material respects. Mr. McClellan's discussion with Respondent regarding the need to submit his claim for reimbursement to the board was not a "confrontation." Nor is it fair to say that an argument ensued, as that implies both parties were engaged in the disagreement. Here, the evidence presented indicates that the "argument" was pretty one-sided. However, the allegations regarding Respondent's conduct are supported by clear and convincing evidence.



30. Section 1012.795(1)(g) provides that cause for discipline exists when Respondent, "[u]pon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district." Teachers are held to a high moral standard in the community. The public expects them to serve as role models for the children with whom they work. Adams v. Prof'l Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981). Respondent was working as an ISS teacher, with students who had been placed in his class for a variety of behavioral issues. In this setting, it is particularly important that a teacher's behavior be temperate and controlled. Respondent, by his reaction to the information presented to him by Mr. McClellan, displayed precisely the same type of behavior that could have placed a student in his classroom. Moreover, he made no effort to control his anger, but displayed his frustration in front of staff and students alike, even to the point of injecting racial motivations into what should have been a simple, short, professional exchange.

31. It is understandable that Respondent may have been frustrated by the length of time since he submitted his claim for reimbursement with no resolution. For the sake of discussion, frustration would also be understandable if legitimate claims of overcrowding went unaddressed. However, there is a proper method, place, and time for expressing frustration. Respondent's

reaction was unacceptable, especially in front of students and staff. Count 1 has been established by clear and convincing evidence.

32. Count 2 asserts that Respondent violated section 1012.795(1)(j), by violating the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules. A finding that Respondent is guilty of violating Count 3 by definition means that a violation of Count 2 has been established. In light of the discussion of Count 3 below, Count 2 has been established by clear and convincing evidence.

33. Count 3 charges Respondent with violating rule 6A-10.081(3)(a), which provides:

(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.

34. Rule 6A-10.081 was not in effect at the time of the alleged conduct giving rise to the allegations against Respondent. Childers v. Dep't of Env'tl. 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."). However, its predecessor, rule 6B-1.006, contained identical provisions with respect to the subsections charged. There is no substantive

difference in the provision, clearly placing Respondent on notice of the nature of the charge against him. Werner v. Dep't of Ins. & Treasurer, 689 So. 2d 1211, 1213-1214 (Fla. 1st DCA 1997); Cottrill v. Dep't of Ins., 685 So. 2d 1371 (Fla. 1st DCA 1996).

35. Respondent's behavior clearly violates this principle of professional conduct. Respondent became angry while teaching his class because of the information conveyed to him by the superintendent. As noted above, his angry outburst was inappropriate. Respondent not only displayed his anger in front of his students, but he walked out of the classroom and left it unattended because of his personal frustration. While he asked Ms. Hathaway to have someone watch his class, he did not wait to make sure someone was in place before walking off, leaving a classroom full of students with disciplinary issues unattended.

36. Moreover, his angry outburst is the antithesis of an appropriate learning environment. Respondent did not only fail to protect his students from conditions harmful to learning, he created those conditions. Count 3 has been demonstrated by clear and convincing evidence.

37. The Education Practices Commission has adopted disciplinary guidelines for the imposition of penalties when violations of section 1012.795 and/or rule 6A-10.081 have been established. Fla. Admin. Code R. 6B-11.007(2). For the violation alleged in Count 1, the penalty range is probation to revocation.

For the violation alleged in Count 3, the penalty range is also probation to revocation.

38. Rule 6B-11.007(2) provides that the guidelines shall be interpreted to include probation, a letter of reprimand, the Recovery Network Program, restriction of the scope of practice, fines, and administrative fees and/or costs. Rule 6B-11.007(3) also includes aggravating and mitigating factors to be considered in determining an appropriate penalty and determining whether a deviation from the guidelines should be imposed. A review of the aggravating and mitigating circumstances does not indicate that there is any need to deviate from the wide range of penalties within the guidelines for these offenses.

39. Respondent testified in his own defense in this proceeding. He did not seem to understand that his behavior was inappropriate, no matter how frustrated he might have been at that moment. His focus seemed to be on the faults of others rather than any deficiency in his own behavior. Respondent would most likely benefit from some counseling or anger management training to learn how to channel his feelings appropriately. The penalty recommended by Petitioner is generally appropriate.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission

enter a Final Order finding that Respondent has violated section 1012.795(1)(g) and (j), as well as Florida Administrative Code Rule 6A-10.081(3)(a). It is further recommended that the Commission suspend Respondent's teaching certificate for one year; that he submit to an evaluation for anger management by the Recovery Network on terms to be set by the Education Practices Commission; and that upon re-employment as an educator, Respondent be placed on probation for a period of three years, with terms and conditions to be set by the Commission.

DONE AND ENTERED this 19th day of June, 2015, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of June, 2015.

#### ENDNOTES

<sup>1/</sup> Mr. Thomas claimed that Mr. McClellan told him, "shut up boy, I don't want to hear anymore." Respondent's claim is rejected. Use of the term "boy" to a grown man is clearly derogatory. It is unlikely that Respondent would have focused on being told to "shut up" rather than the use of the term "boy" had Mr. McClellan

used it. Mr. Thomas claimed that he also complained to Mr. McClellan about overcrowding in the classroom, which was the source of his irritation. Mr. McClellan remembered Respondent complaining about class size in the past but did not remember it being mentioned that day. His testimony is credited.

<sup>2/</sup> Petitioner's Exhibit 8 contains statements of other students present in the classroom at the time of Mr. Thomas's outburst. However, those students did not testify at hearing and their statements have not been considered in determining the facts of this case, as Mr. Thomas was not afforded the opportunity to cross-examine any of the students other than P.G.

<sup>3/</sup> Mr. Thomas claimed that Mr. Tanner only took statements from Caucasian students, and that African-American students were not allowed to give a statement. It is true that the statements by students offered into evidence are all from white students. However, Mr. Thomas was not present when the statements were taken, as he had been sent home for the day. According to Mr. Tanner, he went into the classroom and told the students that he was directed to take statements, and asked all of those willing to give him a statement to raise their hand. He took statements from all of those who raised their hand. Mr. Thomas presented no evidence to support his claims.

<sup>4/</sup> Petitioner offered no evidence to prove that the basis for the reprimands, counseling sessions, letters of concern and Notice of Charges actually occurred, and no finding is made that they did in fact occur. The contents of these documents would be hearsay. However, the documents are admissible to demonstrate that the concerns were expressed, as opposed to substantiating the validity of those concerns.

<sup>5/</sup> This document does not indicate that it is a reprimand, but appears to be. It states that it is a warning against future similar behavior, and details a more temperate method of dealing with behavioral issues. The document states that it will be placed in his personnel file, and that Mr. Thomas has the right to share his version of the events, which would also be placed in the personnel file. Mr. Thomas did not object to the admissibility of this document, and no party offered a statement of Mr. Thomas made in response to the document.

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.