STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF EDUCATION,

Petitioner,

vs. Case No. 17-3861PL

ADAM SOULLIARD,

Respondent.
_____/

RECOMMENDED ORDER

This case was heard on September 6, 2017, in Gainesville, Florida, before E. Gary Early, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 770088
Ocala, Florida 34477-0088

For Respondent: Eric J. Lindstrom, Esquire
Egan, Lev, Lindstrom & Siwica, P.A.
Post Office Box 2231
Orlando, Florida 32802

STATEMENT OF THE ISSUES

Whether Respondent violated section 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rule 6A-10.081(2)(a)1., as alleged in the Administrative Complaint; and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On January 13, 2017, the Commissioner of Education issued an Administrative Complaint against Respondent which alleged:

> 3. Upon employment, Respondent was made aware of the following Alachua County School District Policy regarding supervision of students:
>
> > Subject to the approval of the principal or his designee, a teacher may leave the campus of his particular school if appropriate arrangements are made to insure that students are not left unsupervised. Approval is required for each circumstance or situation. The principal or his designee will not unreasonably deny such a request. A teacher will use this privilege only in unusual circumstances.
>
> 4. On or about April 7, 2016, Respondent received an email from the school Principal reminding teachers that "if you choose to allow students in your room during lunch, you are assuming responsibility for supervising them."
>
> 5. Despite the policy and direction described in paragraphs 3 and 4 herein, on or about May 12, 2016, Respondent left students in his classroom unattended during lunch for approximately 15 minutes. Respondent left campus during that time for purposes of buying his own lunch.
>
> 6. While unsupervised as alleged in paragraph 5 herein, a male student, B.S., sexually assaulted a female student, B.H., in Respondent's classroom closet.

Respondent timely filed an election of rights by which he exercised a settlement option and, if agreement could not be

reached, requested a formal hearing.[1/] On July 7, 2017, the matter was referred to the Division of Administrative Hearings for a formal evidentiary hearing.

The hearing was scheduled for September 6, 2017. On August 28, 2017, the parties filed their Joint Pre-hearing Statement of Stipulated Facts, which contained two stipulations of fact, each of which is adopted and incorporated herein.

The final hearing was convened on September 6, 2017, as scheduled. At the final hearing, Petitioner presented the testimony of David Shelnutt, principal of Gainesville High School (GHS); Candi Conyers, clerical assistant in the GHS dean's office; Stephen C. Bauer, a physical education (P.E.) teacher at GHS; Robin Gantt, dean of students at GHS; Paul White, assistant superintendent for Operations for Alachua County Schools; William Calsam, III, supervisor of human resources for Alachua County Schools; and Syvetta Flowers, mother of female student B.H. Petitioner's Exhibits 3, 4, 7, 8, 12 through 17, 19 through 21, 25, 28, and 29 were received into evidence.

Respondent testified on his own behalf and presented the testimony of Michael B. DeLucas, who was, at the time of the alleged incident, assistant principal for Student Services at GHS; Alison Nadelberg, an ESE teacher at GHS; Kevin Kaufman, an

ESE teacher at GHS; and Susan Gornto, an ESE teacher at GHS. Respondent's Exhibits 1 through 3 and 15 were received in evidence.

A one-volume Transcript of the proceedings was filed on October 5, 2017. By rule, parties are allowed 10 days after filing of the transcript at DOAH to submit proposed recommended orders (PROs). On October 9, 2017, Respondent filed an unopposed motion to extend the time for filing PROs by 10 days. The motion was granted. Both parties timely filed their PROs on October 25, 2017, and both have been considered in the preparation of this Recommended Order.

The actions that form the basis for the Administrative Complaint occurred on May 12, 2016. This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013). Accordingly, all statutory and regulatory references are to the versions in effect on that date, unless otherwise specified.

FINDINGS OF FACT

1. The Florida Education Practices Commission is the state agency charged with the duty and responsibility to revoke or suspend, or take other appropriate action with regard to teaching certificates, as provided in sections 1012.795 and 1012.796, Florida Statutes. § 1012.79(7), Fla. Stat. (2017).

2. Petitioner, as Commissioner of Education, is charged with the duty to file and prosecute administrative complaints against individuals who hold Florida teaching certificates and who are alleged to have violated standards of teacher conduct. § 1012.796(6), Fla. Stat. (2017).

3. Respondent holds Florida Educator's Certificate 880641, covering the areas of Middle Grades Integrated Curriculum, Physical Education, Social Science, and Exceptional Student Education (ESE), which is valid through June 30, 2022. At all times pertinent hereto, Respondent was employed as an ESE teacher at GHS in the Alachua County School District.

4. Respondent began his teaching career at GHS in 2002 teaching ESE classes.

5. The incident that forms the basis for this proceeding occurred on May 12, 2016, during the 2015-2016 school year.

6. Teachers employed by the Alachua County School Board are subject to the Collective Bargaining Agreement between the Alachua County School Board and the Alachua County Education Association, the local teachers' union. Article IX, Section 21(a), of the Collective Bargaining Agreement, which was in effect during the 2015-2016 school year, provides that:

> Subject to the approval of the principal or his designee, a teacher may leave the campus of his particular school if appropriate arrangements are made to insure that students are not left unsupervised.

> Approval is required for each circumstance or situation. The principal or his designee will not unreasonably deny such a request. A teacher will use this privilege only in unusual circumstances.

7. At the beginning of each school year, before students report, a faculty pre-planning meeting is held at GHS to go over information provided by the school district. Supervision of students is among the topics of discussion, and teachers are advised that they are not to leave students unsupervised in their classrooms. The reason for the instruction is obvious -- GHS, being responsible for the safety of its students, should take all reasonable measures to ensure their safety on campus.

8. In addition to the instruction provided at the pre-planning meeting, GHS sent periodic emails to teachers throughout the year reiterating that students were not to be left unsupervised in classrooms.

9. On April 5, 2016, an email was sent directed to the general problem of unsupervised students "walking around A, B, and C hallways" during the lunch periods. The email noted that some teachers allowed students to come to their classrooms during the lunch period for mentoring, which was recognized as a laudable activity. One teacher responded the next day expressing appreciation for the reminder, noting that "[t]here are students all over upstairs in A & B wings. They also hang out in the stairwells, especially on the West end."

10. On April 7, 2016, Mr. Shelnutt sent an email to all teachers reiterating that it was "fantastic" that teachers allowed students in their classrooms during the lunch period, but that students were not to be "roaming around." The email emphasized that "if you chose to allow students in your classroom during your lunch, you are assuming responsibility for supervising them."[2/]

11. During the lunch shifts, school employees were routinely stationed in areas where general education students were allowed to eat lunch in order to provide adult supervision while their teachers took their 30-minute lunch break. As will be described herein, ESE students were subject to a different lunchtime regimen.

12. During the 2015–16 school year, Respondent was assigned to teach a self-contained class of 4 to 7 students with intellectual disabilities. The "self-contained" setting means that students generally remained in the Gaines building on the GHS campus with other students with disabilities.

13. Respondent's students were intellectually disabled, but functioned at a higher level than their ESE peers in other classrooms, who had more severe disabilities. Respondent's students identified more with general education students, and were much more likely to interact with general education students than with those in the other ESE classrooms.[3/]

14. The Gaines building was a "community of classrooms," in that a teacher could request and receive assistance from teachers or paraprofessionals in the other two classrooms in the building.

15. The ESE classrooms surround a small courtyard at the Gaines building. The courtyard has a table and seating, and students would most often sit there to eat their lunch. One of the three ESE teachers usually oversaw the courtyard, and the courtyard could be seen from the ESE classroom windows. There is also a basketball court and track behind the Gaines building, which were occasionally used by ESE students before and after school, and during lunch period.

16. The school day at GHS has six periods. Respondent taught ESE students for five of the six daily periods. During the period when Respondent's ESE students were at their P.E. class, Respondent was assigned to teach a general education history class.

17. Mr. Shelnutt indicated that "[e]very teacher [at GHS] should have a 30-minute duty free lunch in addition to a planning period." Mr. DeLucas testified that Respondent was in "a very unique situation. The other self-contained rooms had multiple paraprofessionals. He did not have multiple paraprofessionals."[4/] Consequently, Respondent was the only

teacher in his classroom and was assigned students every period of the school day with no planning period.

18. Because of the circumstances, if it became necessary for Respondent to leave the classroom, he would ask one of the teachers or paraprofessionals from the other ESE classrooms to watch his class.

19. Unlike the situation that was the subject of the April 5, 2017 and April 7, 2017, emails referenced above, which appears to describe a general education student lunch period, ESE "self-contained" students were allowed to get their lunches and then return to their classrooms, to avoid the crowds and the lines. It was apparently not uncommon for special needs students to go to the cafeteria during the 20-minute break between the end of A-Lunch at around 11:55 a.m. and the beginning of B-Lunch at 12:15 p.m. when there is not a standard lunch shift.

20. Respondent's only break in the school day was during his students' lunch period, from 12:15 p.m. to 12:45 p.m. Since ESE students typically had lunch in the Gaines building courtyard or their classrooms, even Respondent's "duty free lunch" was not free of duties.

21. On May 12, 2016, Respondent released his students -- which on that day were only B.S., B.H., and N.C. -- around 12:05 p.m. to get lunch from the cafeteria. Respondent's

students had been watching a movie, and wanted to finish the movie during the lunch period. Respondent agreed to let the students return to his classroom to finish watching the movie.

22. Before the students returned to the classroom, Respondent received a telephone call from the baseball booster club president regarding an upcoming banquet. When the students returned to the classroom, Respondent continued the telephone call outside.

23. When Respondent ended the telephone call, he realized that the lunch period was "counting down." Respondent left the Gaines Building, with the students unattended in his classroom, and drove to a sandwich shop several blocks away. There was no explanation as to why Respondent did not ask one of the other ESE teachers or paraprofessionals to watch his classroom.

24. During Respondent's absence from the classroom, another of Respondent's students, J.H., entered the classroom and saw male ESE student, B.S., emerging from a storage closet in Respondent's classroom, and thereafter discovered female ESE student, B.H., in the closet crying. J.H. went to the office and told Ms. Conyers what he had seen. Ms. Conyers radioed for a dean or an administrator to report to Respondent's classroom. Ms. Gantt and Mr. Bauer arrived at the classroom at about the same time. Ms. Gantt questioned B.H. as to what had happened, and Mr. Bauer went to the nearby basketball court where B.S. had

been reported to have gone. B.H. and B.S. were taken to the Dean's office for questioning. At some point after Ms. Gantt and Mr. Bauer arrived at Respondent's classroom, and approximately 15 minutes after his departure from campus, Respondent returned from the sandwich shop.

25. There was considerable evidence devoted to the events that occurred in Respondent's classroom closet during his absence. All of the evidence was hearsay. However, what was established (and agreed upon) is this: On May 12, 2016, while Respondent was absent from his classroom, during which time students were left unsupervised in the classroom, an event occurred that was of sufficient severity that the police were called in, that the police conducted an investigation, and that the police ultimately completed a sworn complaint charging B.S. with lewd and lascivious molestation of B.H.

26. Alachua County Public Schools charged Respondent with violating school board policies regarding student supervision, specifically a policy that required teachers to obtain the permission of the school principal before leaving school campus, and recommended his termination from employment.

27. Respondent contested the recommendation of termination. On February 16, 2017, the Alachua County School Board, the Alachua County Education Association, and Respondent executed a settlement agreement, providing that: (1) the

superintendent would rescind the recommendation for Respondent's termination; (2) Respondent would take an unpaid leave of absence beginning March 1, 2017, until June 6, 2017; (3) Respondent would agree to complete Safe Schools online training regarding classroom supervision and school safety; and (4) upon completion of the Safe Schools training, Respondent would be returned to paid status as an employee of Alachua County Schools.

28. Respondent fulfilled the terms of the settlement agreement and, with regard to the Safe Schools training, exceeded the required courses.

29. For the 2017–2018 school year, Respondent has been assigned as a P.E. teacher at the Sidney Lanier Center, a K-12 public school in Alachua County. Sidney Lanier is a specialized school for ESE students. The principal of Sidney Lanier was aware of the events of May 12, 2016, when Respondent was assigned.

30. It should be acknowledged that Respondent taught ESE classes at GHS for 14 years without incident. He had no prior discipline and received uniformly good evaluations. He was well regarded as a teacher and a coach, and was generally acknowledged to have had a positive impact on students' lives. Respondent expressed genuine remorse about leaving students unattended in his classroom, and credibly testified that he

would never again do so. The incident did not involve Respondent denigrating or disparaging students, or improperly or abusively making physical contact with students.

31. Nonetheless, Respondent violated a clear and direct requirement that he not leave students unattended. Although he believed his students would not engage in the activity described, such action on the part of a high school student was certainly not unforeseeable.

32. There was conflicting evidence as to whether B.H.'s mental health was actually affected by the incident. A preponderance of the evidence indicates that it had some negative effect. However, rule 6A-10.081(2)(a)1. "does not require evidence that Respondent actually harmed [a student]'s health or safety. Rather, it requires a showing that Respondent failed to make reasonable efforts to protect the student from such harm." Gerard Robinson, as Comm'r of Educ. v. William Randall Aydelott, Case No. 12-0621PL, RO at 76 (Fla. DOAH Aug. 29, 2012; Fla. EPC Dec. 19, 2012). Under the circumstances described herein, Petitioner proved that Respondent, though without specific intent or malice, failed to make reasonable effort to protect his students from conditions harmful to their mental or physical health, or safety, pursuant to rule 6A-10.081(2)(a)1.

CONCLUSIONS OF LAW

A. Jurisdiction

33. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

B. Standards

34. Section 1012.795(1), which establishes the violations that subject a holder of an educator certificate to disciplinary sanctions, provides, in pertinent part, that:

> (1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the

> Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:
>
> * * *
>
> (j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

35. Rule 6A-10.081(2)(a)1. provides that:

> (2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.
>
> (a) Obligation to the student requires that the individual:
>
> 1. 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.

C. Burden and Standard of Proof

36. Petitioner bears the burden of proving the specific allegations of wrongdoing that support the charges alleged in the Administrative Complaint by clear and convincing evidence before disciplinary action may be taken against the professional license of a teacher. Tenbroeck v. Castor, 640 So. 2d 164, 167 (Fla. 1st DCA 1994); § 120.57(1)(j), Fla. Stat.; see also Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern

and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Dep't of Ins. and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

37. 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). The clear and convincing evidence level of proof:

> [E]ntails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.
>
> > 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.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005). "Although this standard of proof may be met where the evidence

is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp., Inc. v. Shuler Bros., Inc., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

38. Section 1012.795 is penal in nature and must be strictly construed, with any ambiguity construed against Petitioner. Penal statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden the application of such statutes. Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997); see also Beckett v. Dep't of Fin. Servs., 982 So. 2d 94, 100 (Fla. 1st DCA 2008); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

39. The allegations set forth in the Administrative Complaint are those upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); see also Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits the imposition of disciplinary sanctions based on matters not specifically alleged in the notice of charges. See Pilla v. Sch. Bd. of Dade Cnty., 655 So. 2d 1312, 1314 (Fla. 3d DCA 1995); Texton v. Hancock, 359 So. 2d 895, 897 n.2 (Fla. 1st DCA 1978); see also Sternberg v. Dep't of Prof'l Reg., 465 So. 2d 1324, 1325 (Fla. 1st DCA 1985) ("For the hearing officer and the Board to have then found Dr. Sternberg guilty of an offense with which he was

not charged was to deny him due process."). Thus, the scope of this proceeding is properly restricted to those issues of fact and law as framed by Petitioner. M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

D. Counts 1 and 2 - Section 1012.795(1)(j) and Rule 6A-10.081(2)(a)1.

40. Count 1 of the Administrative Complaint charged Respondent with violating section 1012.795(1)(j) by having violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules. Thus, Count 1 does not constitute an independent violation, but rather is dependent upon a corresponding violation of the rules constituting the Principles of Professional Conduct.

41. Count 2 of the Administrative Complaint charged Respondent with violating rule 6A-10.081(2)(a)1. by failing to make reasonable effort to protect his students from conditions harmful to their mental or physical health, or to their safety.

42. The evidence in this case demonstrates that Respondent left students unsupervised in his classroom for a period that was more than momentary, and that a reasonably foreseeable event occurred that resulted in negative effects as to at least one of the students. By so doing, Respondent breached his duty to supervise the students under his care as established by the

collective bargaining agreement and the statutes and rules that govern Florida teachers. See, e.g., Doe v. Escambia Cnty. Sch. Bd., 599 So. 2d 226, 227-228 (Fla. 1st DCA 1992). As such, Respondent failed to make reasonable effort to protect his students from conditions harmful to their mental or physical health, or safety.

E. Penalty

43. Florida Administrative Code Rule 6B-11.007(2) establishes the range of penalties for violations of various statutory and regulatory provisions as follows:

> (2) The following disciplinary guidelines shall apply to violations of the below listed statutory and rule violations and to the described actions which may be basis for determining violations of particular statutory or rule provisions. Each of the following disciplinary guidelines shall be interpreted to include "probation," "Recovery Network Program," "letter of reprimand," "restrict scope of practice," "fine," and "administrative fees and/or costs" with applicable terms thereof as additional penalty provisions. The terms "suspension" and "revocation" shall mean any length of suspension or revocation, including permanent revocation, permitted by statute, and shall include a comparable period of denial of an application for an educator's certificate.

44. Section 1012.795(1)(j) is not one of the specific statutory provisions listed in the penalty guidelines. Rather, it is incorporated in rule 6B-11.007(2)(j), as among the "[o]ther violations of Section 1012.795, F.S.," with a guideline

penalty of "Probation – Revocation or such penalty as is required by statute."

45. Rule 6B-11.007(2)(i)16. lists a guideline penalty of "Probation – Revocation" for "[f]ailure to protect or supervise students" in violation of rule 6A-10.081(3)(a).[5/]

46. Rule 6B-11.007(3) establishes aggravating and mitigating factors to be applied to penalties calculated under the guidelines. As set forth by the parties in their PROs, there are both aggravating and mitigating factors evident in this case. Although there are several mitigating factors, and fewer (though significant due to the consequences) aggravating factors, on the whole they balance themselves out in this case. Thus, no deviation from the established penalty range is warranted.[6/]

47. Petitioner has suggested the penalty appropriate in this case to be suspension of Respondent's educator's certificate for a period of six months, that he be issued a letter of reprimand, that Respondent be required to take a college level course in classroom management, and that he be placed on probation for a period of two years following his suspension, citing Brogan v. Sanders, Case No. 98-0705 (Fla. DOAH Aug. 26, 1998; Fla. EPC Mar. 31, 1999) as a comparable case.

48. The situation in Brogan v. Sanders shares a number of similarities to the situation here, but with some important differences. While both teachers left children without supervision, Mr. Sanders was in charge of an in-school suspension class, with children already determined to be disciplinary problems. Of equal or greater importance, as found by the Brogan v. Sanders administrative law judge, was that Mr. Sanders lied about his actions on the day in question (RO at 28); that Mr. Sanders had received a relatively minor prior disciplinary penalty (written reprimand) from the school board for the incident (RO at 41); and that Mr. Sanders was not forthright concerning his responsibility in that matter, did not admit his responsibility to stay with the students, and attempted to lay the blame elsewhere (RO at 45.k.).

49. In stark contrast to the actions of Mr. Sanders, Respondent was forthright about the event, accepted responsibility for his action, and expressed sincere remorse. Respondent has already accepted a de facto suspension from teaching of more than three months,[7/] and met or exceeded the other disciplinary penalties, including educational coursework, meted out by the Alachua County School Board.

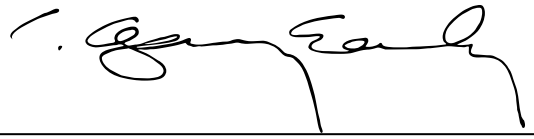
50. The general penalty suggested by Petitioner is not unreasonable in isolation, but there should be recognition and consideration of the de facto suspension already served, the

completion of educational coursework, and of Respondent's unwavering acceptance of responsibility and remorse.

RECOMMENDATION

Upon consideration of the Findings of Fact and Conclusions of Law reached herein, it is RECOMMENDED that the Education Practices Commission enter a final order finding that Respondent violated rule 6A-10.081(2)(a)1. It is further recommended that Respondent's educator's certificate be suspended for a period of 30 days, that he be issued a letter of reprimand, and that he be placed on probation for a period of two years following his suspension, which penalty is within the range of penalties established in rule 6B-11.007(2).

DONE AND ENTERED this 21st day of November, 2017, in Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of November, 2017.

ENDNOTES

[1/] The Election of Rights form bore no date stamp or other indicia of the date of its receipt by Petitioner. However, there was no suggestion that the Election of Rights was untimely, and its referral to DOAH suggests that it was not.

[2/] Although the April 7, 2016 email was entitled "A-Lunch Students," whose lunch period ended at 11:49 a.m., there would be no reasonable or plausible reason to believe that it did not apply equally to all lunch periods, nor would it be reasonable to believe that the duty to supervise described in the email applied to fewer than all of the students at GHS.

[3/] There was evidence that Respondent's students were a subset of Community-Based Training (CBT) students. CBT students are high-functioning ESE students who, though not on a regular diploma track, spent part of their school day working in the community in order to acquire skills that would allow them to be self-sufficient after leaving high school. Respondent's students were not ready to go out into the community, but were able to do things around campus where there was more control and focus.

[4/] Mr. Kaufman, whose class of five students included the most severely disabled children, had four paraprofessionals, for a student to staff ratio of 1:1.

[5/] Rule 6A-10.081 was transferred from Florida Administrative Code Rule 6B-1.006 on January 11, 2013. The penalty guidelines rule continues to cite to rule 6B-1.006 in setting penalty ranges. Rule 6A-10.081(2)(a)1. is substantively identical to the last iteration of rule 6B-1.006(3)(a). Since the facts alleged and the text of the rule allegedly violated were clear for Count 2, and since there is no evidence that Respondent was misled or harmed by the citation in the penalty guidelines to a rule that is no longer in effect as numbered, the penalty guideline in rule 6B-11.007(2)(i)16. shall be applied to the violation of rule 6A-10.081(2)(a)1.

[6/] Given the very broad penalty range of probation to revocation, there is little deviation available.

[7/] There was discussion that the leave without pay from March 1, 2017 until June 6, 2017 was not a "suspension," but it nonetheless had the same effect, i.e., to prevent Respondent from teaching and from being paid.

COPIES FURNISHED:

Gretchen Kelley Brantley, Executive Director
Education Practices Commission
Department of Education
Turlington Building, Suite 316
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Eric J. Lindstrom, Esquire
Egan, Lev, Lindstrom & Siwica, P.A.
Post Office Box 2231
Orlando, Florida 32802
(eServed)

Ron Weaver, Esquire
Post Office Box 770088
Ocala, Florida 34477-0088
(eServed)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Marian Lambeth, Bureau Chief
Bureau of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

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.