

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS
COMMISSIONER OF EDUCATION,

Petitioner,

vs.

Case No. 18-5534PL

*CORRECTED AS TO

COLLEEN QUINN,

PARAGRAPH 50 CITATION

Respondent.
_____ /

CORRECTED RECOMMENDED ORDER

Administrative Law Judge Hetal Desai with the Division of Administrative Hearings (DOAH) held the final hearing in this case on January 29 and March 8, 2019, in St. Petersburg, Florida.

APPEARANCES

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

For Respondent: Carol Buxton, Esquire
Florida Education Association
1516 East Hillcrest Street, Suite 109
Orlando, Florida 32803

STATEMENT OF THE ISSUES

Whether Respondent violated (1) section 1012.795(1)(g), Florida Statutes (2017),^{1/} (committing conduct seriously reducing her effectiveness as an employee of the district school board); (2) Florida Administrative Code Rule 6A-10.081(2)(a)1. (failure

to make reasonable effort to protect students from conditions harmful to learning and/or to students' mental and/or physical health and/or safety); or (3) Rule 6A-10.081 (2)(c)1. (failure to maintain honesty in all professional dealings), when she provided a "Graphic Organizer" to certain Exceptional Student Education (ESE) students during the 2017 Florida Standards Assessment test (FSAT); and if so, what is the appropriate disciplinary action.

PRELIMINARY STATEMENT

In March 2018, Petitioner, Pam Stewart, as Commissioner of Education^{2/} (Department) filed an Administrative Complaint charging Respondent with violations arising from conduct by Respondent, Colleen Quinn, during the 2017 FSAT. Ms. Quinn disputed the charges in a timely filed election of rights form, and asked for a hearing.

The matter was transferred to DOAH on October 19, 2018, assigned to the undersigned, and set for hearing.

The parties filed a Joint Pre-hearing Stipulation on October 8, 2019, containing stipulated facts which are incorporated below where appropriate.^{3/} Citations to these stipulated facts are indicated as "Jt. Stip. Fact, ¶."

The final hearing was not completed on the original date noticed, January 29, 2019, and was continued for a second day of hearing held March 8, 2019.

At the beginning of the final hearing, the Department made an ore tenus motion to amend the Administrative Complaint, and Respondent had no objection. The motion to amend was granted, the original Administrative Complaint was amended, and the Amended Administrative Complaint (Complaint) was filed on February 1, 2019.^{4/}

The Complaint alleges four counts: (1) violation of section 1012.795(1)(g), alleging Respondent has been found guilty of personal conduct which seriously reduces effectiveness as an employee of the school board; (2) violation of section 1012.795(1)(j), alleging Respondent violated Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules; (3) violation of Rule 6A-10.081(2)(a)1, alleging Respondent failed to make reasonable effort to protect students from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety; and (4) violation of Rule 6A-10.081(2)(c)1, alleging Respondent failed to maintain honesty in all professional dealings.

The Department called the following individuals as witnesses: Kathleen Visconti (appearing by phone), Dave Rosenberger, Scott Eline, John Frank, Kim Vongsyprasom, and Joanna Bernal. Petitioner's Exhibits 1 through 21, and

Exhibit 23 were admitted in evidence. Respondent offered her own testimony, and the testimony of Richelle Turner and Stacy Christian. Respondent's Exhibits 1 through 6 were admitted into evidence. Official recognition was taken of the District's 2016-17 school calendar, which was offered by the parties at the hearing.

The Transcript was filed with DOAH in two parts: on February 19, 2019 (first day of hearing held January 29, 2019); and March 25, 2019 (second day of hearing held on March 8, 2019). The parties requested and were given an extension to file their proposed recommended orders (PROs) and an enlargement of the 40 page-limit set forth in Florida Administrative Code Rule 28-106.215. Both parties timely filed their PROs on April 8, 2019, and Respondent filed an amended version of her PRO on April 9, 2019. All post-hearing submittals have been considered.

FINDINGS OF FACT

Parties and People

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

2. Ms. Quinn holds Florida Educator's Certificate 1110154, which is valid through June 30, 2023, covering the areas of

English for Speakers of Other Languages, ESE, and Middle Grades Integrated Curriculum and Reading. (Jt. Stip. Fact, ¶ 2).

3. During the 2016-2017 school year, Ms. Quinn was employed as a Varying Exceptionalities (VE) Specialist at Pinellas Park Middle School (PPMS) in the Pinellas County School District (District). (Jt. Stip. Fact, ¶ 3, as amended at the hearing).^{5/} At the time of the allegations in the Complaint, Respondent had approximately eleven years of experience as an educator with the District beginning in 2008 as a VE Teacher at District middle schools, up to December 2015, when she started her present position of VE Specialist at PPMS. (Jt. Stip. Fact, ¶ 3, as amended at the hearing).

4. Kathleen Visconti is the accommodation specialist for the Bureau of K-12 Subset at the Department. Her duties include communicating with Florida school districts about disability accommodations, and reviewing and editing test administration manuals.

5. Scott Eline is the Assessment Specialist for the District. He coordinates the administration of the FSAT in the District, as well as course exams.

6. Dave Rosenberger has been the PPMS principal since 2014.

7. Kim Vongsyprasom has been an assistant principal at PPMS since December 2014. As part of her duties, Assistant

Principal Vongsyprasom supervises the ESE Department at the PPMS. Prior to becoming an assistant principal, she was the VE Specialist at PPMS (the same position currently held by Ms. Quinn) for twelve years. During the 2016-17 school year she was Ms. Quinn's direct supervisor.

8. Joanna Bernal has been an assistant principal at PPMS since July 2015. Assistant Principal Bernal served as the Testing Coordinator for PPMS for the 2016-2017 FSAT.

9. At PPMS the assistant principals may have overlapping duties. As explained by Assistant Principal Bernal, each assistant principal had "big rocks" or areas of supervision. For example, Assistant Principal Bernal was the administrator in charge of assessment testing for all of PPMS, but she also had other duties such as supervision for all of eighth grade. Assistant Principal Vongsyprasom was in charge of transportation for all of PPMS, and another assistant principal was in charge of scheduling for all PPMS students.

10. The ESE department was not a "big rock," because one administrator was not responsible for all ESE students - it had multi-person oversight. Assistant Principal Bernal's oversight of the eighth grade, for example, included responsibility for eighth grade ESE students, even though Assistant Principal Vongsyprasom was over the ESE Department.

Ms. Quinn's Duties and IEP Responsibilities

11. Ms. Quinn serves as the Chair of the ESE Department, and is supervised by Assistant Principal Vongsyprasom.

12. Ms. Quinn works with all the ESE teachers and staff to determine what accommodations are needed and appropriate for each ESE student. Ms. Quinn is responsible for overseeing compliance with accommodations requirements for students with disabilities at PPMS, including those who have Individual Education Plans (IEPs).

13. As background, an IEP is a legal document required by the Individuals with Disabilities Education Act, a federal law which requires schools to provide special education and related services to children with disabilities. § 20 U.S.C. § 1400. Failure to adhere to an ESE student's IEP can result in the District's liability for violations of state and federal laws.

14. The IEP provides directions for accommodating an ESE student so that he or she can be as equal as possible to a non-ESE student in an educational setting. Accommodations can be provided both in the classroom and for assessment testing situations.

15. Ms. Quinn is not a classroom teacher and does not have students assigned to her. Rather, she has a caseload of students with disabilities for which she manages their paperwork, including drafting IEPs. She, however, does not have

final authority regarding what accommodations are listed in an IEP.

16. Rather, each IEP is individualized and specifically created for each ESE student based on that student's needs. This is done through an interactive process made up of a team (IEP team) of individuals that meet and review the ESE student's performance, progress, attendance, behavioral issues, and other relevant data in order to fashion appropriate accommodations for classroom learning and testing. The IEP team determines the ESE student's ability to function in the real world and the classroom.

17. Each IEP team includes required participants including the parent, the student's case manager, an ESE teacher, a general education teacher, and an interpreter for the evaluations. Sometimes a local education agent (LEA) is also involved to ensure all parties involved with that child get the appropriate information regarding that student's IEP. The LEA serves as a liaison between the family and the District to make sure the school is adhering to the IEP in accordance with legal requirements.

18. The IEP document containing the accommodations is drafted using a computer system known as "PEER." Although there was a suggestion by counsel that PEER is an acronym for "Portal

to Exceptional Education Resource," there was no evidence at the hearing supporting this definition.

19. Regardless, each IEP may contain standard accommodations and/or "unique accommodations." Once the IEP team checks certain boxes on the IEP, PEER provides a drop-down menu populated with suggested standard accommodations. The IEP team can then select which accommodations are required for that ESE student. Anyone on the IEP team can recommend an accommodation, but the team must come to an agreement to finalize the accommodations listed on the IEP. Unique accommodations must be approved by the District and/or the Department.

20. The IEP has one section for accommodations in the classroom, and a separate section for accommodations for assessment testing. The IEPs presented at the hearing were each slightly different for each student, but each IEP had a section marked "Assessment Accommodations" or "For Students Participating in Assessments with Accommodations." This section has accommodations related to the following four categories: Presentation, Responding, Scheduling, and Setting.

21. Most relevant to the allegations made by the Department against Ms. Quinn is the section titled "Responding." All of the IEPs provided at the hearing, except for one, allowed the accommodation of "Organizers, outlines, checklists and other

writing supports.” This accommodation was one of the standard accommodations listed in the drop-down menu in the PEER system.^{6/}

FSAT Testing

22. The FSAT is the state-wide student assessment program examination that is administered in Florida public schools.

§ 1008.22, Fla. Stat. The District is responsible for administering the FSAT in public schools in Pinellas County.

Id.

23. The FSAT is made up of multiple testing areas including an English Language Arts (ELA) component. The ELA portion of the FSAT is made up of a reading section and a separate writing section.

24. Mr. Eline, as the District Assessment Coordinator, was responsible for administering the FSAT in the District. He described the FSAT as “the standards by which students are measured for adequate yearly progress to determine whether they’re performing at grade level proficiency above or, perhaps, below.”

25. Assistant Principal Bernal was responsible for administering the FSAT at PPMS.

26. Ms. Quinn was responsible for providing appropriate accommodations during the FSAT to ESE students at PPMS that required such accommodations. She did not proctor the exam.

27. The test is graded on a range from one through five, with one being the lowest and five being the highest. All students taking the FSAT must score a three or higher to be considered proficient in that area. This includes the ESE students at PPMS that were required to take the exam.

28. There is a strict protocol for administering the FSAT. For a student whose test is invalidated, the school would have no data as to the proficiency regarding that testing area for the next school year.

29. All District schools must participate in the FSAT. The Department bases school accountability, in part, on FSAT scores. FSAT scores also factor into teacher evaluations, and potentially teacher pay. Teachers who can show significant growth of their students' test scores may be entitled to a bonus.

30. All teachers involved in proctoring of the FSAT must attend a training presentation. Assistant Principal Bernal was in charge of the training during the 2016-17 school year. There is a dispute as to whether Ms. Quinn attended this training.

31. There is no credible evidence Ms. Quinn attended the training. Although the Department offered into evidence a sign-in sheet for those who attended a training session, Ms. Quinn's name was not on it. The sign-in sheet only had Assistant Principal Bernal's signature as having attended for PPMS.

Likewise, there is no evidence Ms. Quinn had signed (or was required to sign) the security agreement form required by those who are involved in the chain of custody of the FSAT booklets, or for those who are proctoring of the exam. See FSA Manual, Appendix D, 289-295.

32. Ms. Quinn is also not listed as one of the recipients in the email sent by Mr. Eline on December 6, 2016, to FSAT test coordinators. This email contains a slide presentation on "Spring 2017 Florida Standards Assessments Training Materials for Paper-Based Assessments - Grades 4-7 ELA Writing; Grade 3 ELA Reading."

33. The only testimony that Ms. Quinn had FSAT training was supposition from Assistant Principal Bernal who testified all PPMS teachers and FSAT proctors were required to take the training. Those who attended the training were provided a FSAT manual with their name written on it. After the training, Assistant Principal Bernal had the manuals for those who did not attend the training. She concluded that Ms. Quinn must have attended the training because after the training she did not have a manual with Ms. Quinn's name on it. But Ms. Quinn was neither a teacher nor a proctor. The conclusion that if a teacher missed the training, then Assistant Principal Bernal would still have that teacher's manual, assumes Ms. Bernal had a manual with Ms. Quinn's name on it--a fact not established at

the hearing. As such, the undersigned finds Ms. Quinn did not attend the FSAT training for the 2016-17 year.

Accommodating the ESE Students at PPMS for the FSAT

34. Because of the low rate in FSAT proficiency scores for ESE students at PPMS, Ms. Quinn began researching a possible solution or accommodation that would assist the ESE students during the FSAT testing period. She began looking into possible aids for the ESE students at the beginning of the 2016-17 school year.

35. The unrefuted evidence establishes Ms. Quinn reviewed all aspects of the ESE student testing experience, including physical placement (grouping) during the test, anxiety levels of students, testing dates, and student deficits. She reviewed all of the listed accommodations in the PEER system for assessments. She reviewed various databases and federal sources for disability accommodations to find an accommodation for ESE students so that they might obtain scores more in line with their non-ESE peers.

36. Based on her research, she began exploring the use of "organizers, outlines, checklists, and other writing supports" which was a listed accommodation on the IEPs of some of the ESE students for assessments.

37. In October 2016, Ms. Quinn emailed District personnel including Debbie Thornton with questions regarding FSAT

accommodations. In response she received the 2015 Accommodations for Florida's Statewide Student Assessments (2015 Accommodations Manual). The manual was issued by the Department's Bureau of Exceptional Education and Student Services. The entire manual focuses specifically on accommodating ESE students on statewide assessments.

38. Contrary to Ms. Visconti's testimony that the 2015 Accommodations Manual is outdated, it is still available on the Department's website. See Fla. Dep't of Ed., 2015 Accommodations for Florida's Statewide Student Assessments, <http://www.fl DOE.org/core/fileparse.php/7567/urlt/statewideassessmentaccommodations.pdf> (last visited May 23, 2019). Moreover, there is no convincing evidence the District or Ms. Quinn knew the 2015 Accommodation Manual was outdated. In fact, there is no evidence anyone at the Department, the District level or PPMS (including Assistant Principal Vongsyprasom), advised Ms. Quinn that the Accommodations Manual was invalid.^{7/}

39. The undersigned finds Ms. Quinn's reliance on the 2015 Accommodations Manual was reasonable under the circumstances.

40. The 2015 Accommodations Manual provides in relevant part:

MAKING DECISIONS ABOUT STATEWIDE
ASSESSMENT ACCOMMODATIONS

The IEP [] team makes decisions about accommodations for an individual student with a disability when they evaluate the impact of the student's disability and need for accommodations in classroom instruction and assessment activities. The content and format of the statewide assessments are important considerations in the decision-making process. The following guidelines are recommended for making decisions about accommodations for statewide assessments:

1. Accommodations should facilitate an accurate demonstration of what the student knows or can do.
2. Accommodations should not provide the student with an unfair advantage or interfere with the validity of a test; accommodations must not change the underlying skills that are being measured by the test.
3. Accommodations must be the same or nearly the same as those needed and used by the student in completing classroom instruction and assessment activities.
4. Accommodations must be necessary for enabling the student to demonstrate knowledge, ability, skill or mastery.

* * *

<p>Classroom accommodations are used by the student regularly for academic work and assessments. In accordance with testing guidelines, these same accommodations - if proven successful in the classroom and <u>if allowable</u>-may be used during the administration of statewide assessments.</p>

* * *

Accommodations are documented on an IEP [] based on the needs of the student and should not be dictated by testing dates or deadlines. Accommodations should be determined necessary by the IEP [] team for regular use by the student in the classroom as well as on assessments.
If a student uses accommodations for classroom instruction that are not permitted on the statewide tests; the parent must be notified.

2015 Accommodations Manual, 11.

41. Ms. Quinn understood the above guidelines to mean that accommodations utilized in the classroom should be utilized, when allowed, in the assessment setting. Ms. Quinn, however, was unsure as to what would constitute an allowable FSAT accommodation.

42. On October 4, 2016, Ms. Quinn contacted Mr. Eline at the District level, in preparation for the 2017 FSAT. She asked questions about different accommodations and how to provide them for the FSAT without giving the ESE students an unfair advantage. Eventually, the emails focused on the standard accommodation listed in the IEPs as "organizers, outlines, checklists and other writing supports."

43. There is no evidence that Mr. Eline told Ms. Quinn to address the issue with the administration at PPMS. Rather, initially, Ms. Quinn's questions were forwarded to Debra Helton-Boza, who was in charge of ESE compliance for the District.

44. Ms. Quinn did not receive an answer to her questions. Instead, Ms. Helton-Boza provided Ms. Quinn with excerpts from various sources including: the 2010 edition of "Accommodations, Assisting Students with Disabilities," the 2014-2015 edition of the "FCAT/FCAT 2.0. NGSSS EOC Assessment Accommodations," the 2015 Accommodations Manual, and online resources.

45. Ms. Quinn still did not have a clear answer from the District regarding "allowable" accommodations for the FSAT, so she emailed Mr. Eline again on October 25, 2016.

46. On the morning of November 30, 2016, Mr. Eline forwarded the questions to the Department. At 1:38 p.m. on November 30, 2016, Kathleen Visconti of the Department responded that the mathematics grids/guides were an acceptable accommodation for the FSAT, but that she needed more information about using "sample problems and tasks" and "organizers, outlines, checklists, and other writing supports" as testing accommodations.

47. Mr. Eline forwarded Ms. Visconti's response to Ms. Quinn. When Ms. Quinn asked Mr. Eline if she should contact Ms. Visconti, he told her that all communications with the Department should go through him. Ms. Quinn complied by emailing Mr. Eline more information about her questions.

48. At no time did Ms. Quinn have direct contact with anyone at the Department.

49. An email conversation between Mr. Eline and Ms. Quinn ensued on the afternoon of November 30, 2016, and lasted into the evening. During this exchange, Mr. Eline (who was not in charge of ESE students or accommodations for ESE students) opined he did not think an organizer would be allowable, but that he would ask the Department.

From: Eline Scott
Sent: Wednesday, November 30, 2016 3:51 PM
To: Quinn Colleen
Subject: RE: ESE/FSA accommodations

I will forward your questions on to Kath but in all my years as a high school testing coordinator and now at the district, providing organizers, outlines, checklists, or examples of problems are not allowable accommodations on any statewide assessment. As you have indicated, this would provide the student with an unfair advantage on the assessment.

These accommodations may be permissible with a teacher in a classroom setting but typically not authorized on a statewide assessment and aren't documented as approved accommodations in the FSA test administration manual.

Regardless, I will forward this to Kath at FDOE and ask for clarification.

Thanks,
Scott

(emphasis added by Petitioner).

50. In a separate email exchange, Mr. Eline and Ms. Visconti discussed Ms. Quinn's questions regarding an organizer.

From: Eline Scott
Sent: Wednesday, November 30, 2016 3:58 PM
To: Visconti, Kath
Subject: RE: ESE/FSA accommodations

Hi Kath,

If you could please clarify any other information I may have omitted, I will forward it to the teacher.

Thanks,
Scott
(T: 114) (PE#14, p. 172).

From: Visconti, Kath
Sent: Wednesday, November 30, 2016 4:14 PM
To: Eline Scott
Subject: RE: ESE/FSA accommodations

Hello Scott,

It's no problem, I'm happy to help. I just wanted to make sure I had most accurate information before giving the response. From the description she recently gave about the organizers and the example problems to the students, I would have to say that no, they are not allowable accommodations.

A part of the writing script says that the planning sheets can be used to create a web or map, but an organizational map cannot be provided to the student to aid them. If the student has a problem during the assessment, the most that a proctor is allowed to do is give verbal encouragement, though the encouragement cannot be used to assist a student in producing, correcting, or editing responses.

Please let me know if you have any additional questions. Thanks!

Kath

Kath Visconti
Bureau of K-12
Florida Department of Education
(850)245-0786

(emphasis added by Petitioner) (4:14 p.m. email).

51. The parties dispute whether Ms. Quinn received this email. Although there is an email from Mr. Eline to Ms. Quinn at 5:10 p.m. on November 30, 2016 (5:10 p.m. email), it simply states "FYI." It does not indicate there is an attachment, nor does it contain any of Ms. Visconti's 4:14 p.m. email message. Based on Ms. Quinn's demeanor and testimony, coupled with the appearance of the 5:10 p.m. email, the undersigned finds Ms. Quinn did not receive this message and did not know that Ms. Visconti said "no" to the use of an organizer as an accommodation for the FSAT.

52. The email exchange between Ms. Visconti and Mr. Eline establishes the District had no definite answer to Ms. Quinn's question as to whether an organizer was an "allowable" accommodation until 4:14.p.m. on November 30, 2019.

53. Ms. Quinn continued her email conversation with Mr. Eline. These emails establish Ms. Quinn's intent was to know how to abide by the IEPs assessment accommodations without "getting ourselves into trouble."

54. The email conversation between Mr. Eline and Ms. Quinn ended on December 1, 2016, at 8:51 a.m., when Ms. Quinn stated that she sent several pictures from PEER showing what the drop-down menus contained as accommodations, including one regarding organizers. Based on the emails she received, Ms. Quinn did not think Mr. Eline had given her a definitive answer to her question about using an organizer as an accommodation.

55. During their email exchange, Mr. Eline also referred Ms. Quinn to the Spring 2017 FSA Paper-Based Test Administration Manual (2017 FSAT Manual). The 2017 FSAT Manual addresses the process for administering the FSAT to all students. The 2017 FSAT Manual says nothing about replacing the 2015 Accommodations Manual, nor does it allow someone in Ms. Quinn's position to ask the Department questions directly about specific accommodations. Rather it instructs in relevant part:

School personnel should communicate with their district offices about any questions or concerns prior to test administration; district personnel should contact FDOE if guidance or clarification is needed.

2017 FSA Manual, 1. Ms. Quinn complied with this instruction.

56. The 2017 FSA Manual does not define what kind of organizer was an allowable accommodation during the testing process, but does address assessment accommodations in general.

It states in relevant part:

Students with Disabilities

Students with disabilities participate in the statewide assessment program by taking one of the following:

1. FSA without accommodations,
2. FSA with accommodations, or
3. Florida Standards Alternate Assessment.

All determinations regarding participation in the statewide assessment program must be documented in the student's IEP or Section 504 plan.

* * *

General Information about Accommodations

Appendix A provides information concerning allowable accommodations for students with disabilities and for ELLs. The test administrator and the school assessment coordinator are responsible for ensuring that arrangements for accommodations have been made prior to the test administration dates.

* * *

If students with current IEPs, Section 504 plans, or . . . plans have allowable accommodations documented, test

administrators may provide accommodations as described in Appendix A and may modify the script as necessary to reflect the allowable accommodations.

57. Appendix A does not address the use of "Organizers, outlines, checklists and other writing supports." Rather it repeats the guidelines in the 2015 Accommodation Manual, including:

3. Accommodations must be the same or nearly the same as those needed and used by the student in completing classroom instruction and assessment activities.

2017 FSA Manual, 62.

58. On January 24, 2017, Ms. Quinn advised Mr. Eline that the 2017 FSA manual was not helpful in answering the question about using an organizer as an accommodation. She also told him that the Department had not yet answered her question about the organizer accommodation. She then asked Mr. Eline if an organizer would be considered a "unique accommodation."

59. Again, Mr. Eline did not say "yes" or "no." Instead he stated it was his "inclination" that it was not allowable, but he would defer to Deb Thornton at the District. It is unclear whether Ms. Thornton ever responded to Ms. Quinn.

60. Although Ms. Quinn was aware there was a process for requesting "unique accommodations," she did not believe the use of an organizer was "unique" for numerous reasons. First, the use of organizers was one of the standard drop-down

accommodations listed in PEER, not requiring special approval by the Department. Second, because numerous ESE students had this accommodation listed on their IEPs, any organizer would not be unique (i.e., an exclusive or individual accommodation aid). Ms. Quinn's conclusion that the use of an organizer was not a "unique accommodation" was reasonable under the circumstances.

61. Not having a concrete answer as to whether the use of an organizer was an allowable accommodation, or what that organizer would look like, Ms. Quinn raised the issue during an ESE Department meeting in early 2017. This meeting was attended by an ESE ELA teacher, Stacy Christian; a behavioral specialist, Richelle Turner; and Assistant Principal Vongsyprasom.

62. During that meeting the participants discussed whether an organizer type accommodation could be provided to ESE students for use during the 2017 FSAT. There is a dispute as to what Ms. Quinn relayed to the group about her conversations with Mr. Eline.

63. Ms. Quinn's version of events is supported by that of Ms. Christianson and Ms. Turner. The undersigned finds Ms. Quinn did not imply or state at the meeting that she had received approval for using a graphic organizer.

64. Rather, at that meeting she voiced frustration that she could not get clear direction from the District or the Department regarding the use of such an accommodation. She then

asked the team members for input. None of the team members, not even Assistant Principal Vongsyprasom, questioned providing some type of organizer as an accommodation for the ELA portion of the FSAT to those students who had IEPs referencing such an accommodation.

65. The group at the meeting then discussed the form this type of accommodation might take. Ms. Turner advocated using an accommodation that mirrored the type used in the classroom. Ms. Christian relayed to the group that she used a chart that hung on her classroom wall to accommodate students with the "organizers, outlines, checklists, and other writing supports" accommodation on their IEPs. That chart was not in the room during the meeting, nor did Ms. Christian provide the team with a copy of the chart. It is unclear who, if anyone, at this meeting was familiar with Ms. Christian's chart.

66. After the meeting Ms. Christian reduced the wall chart to the size of a letter sized hand-out (Graphic Organizer). The Graphic Organizer was a two-sided sheet, with a flow chart titled "Argumentative Essay Planner" on one side and another flow chart titled "Explanatory Essay Planner" on the other side. The top bubble on each flow chart describes an "introduction paragraph" with an arrow to two or three bubbles titled "body paragraphs," and then an arrow to a bubble titled "conclusion

paragraph." Each bubble describes the types of sentences or thoughts that should be included in that paragraph.

67. Ms. Christian initially showed the Graphic Organizer to Ms. Quinn. Ms. Quinn did not approve its use, rather she asked Ms. Christian to show it to Assistant Principal Vongsyprasom.

68. Assistant Principal Vongsyprasom's testimony was that she was shown something by Ms. Christian, but did not review it. She also testified she was not authorized to approve FSA Accommodations.

69. Ms. Christian's credible and convincing testimony established she showed the Graphic Organizer to Assistant Principal Vongsyprasom, and told her Ms. Quinn wanted her approval. Assistant Principal Vongsyprasom reviewed the Graphic Organizer. When asked by Ms. Christian whether it was okay, Assistant Principal Vongsyprasom replied, "yes." The undersigned finds the testimony of Ms. Christian more believable.

70. Even if Assistant Principal Vongsyprasom's testimony that she did not look at what was shown to her by Ms. Christian is true, the undersigned finds the members of the ESE meeting, including Ms. Quinn, reasonably believed Assistant Principal Vongsyprasom approved the use of the Graphic Organizer for use as an accommodation on the ELA portion of the FSAT.

2017 FSAT

71. After Ms. Christian received approval from Assistant Principal Vongsyprasom regarding the Graphic Organizer, Ms. Quinn made copies of the reduced version of the chart/organizer she obtained from Ms. Christian for each of the students who had listed on their IEP "organizers, outlines, checklists, and other writing supports" under accommodations for testing assessments.

72. Ms. Quinn wrote each ESE student's name on the top of his or her copy of the Graphic Organizer, placed the documents in a manila folder with that student's test proctor's name on the folder, and distributed the folders to the appropriate proctor the morning of the ELA portion of the FSAT.

73. On February 28, 2017, PPMS administered the ELA portion of the FSAT. In total, 37 ESE students received a copy of the Graphic Organizer with their testing materials. Of these, all but one had on their IEPs listed "organizers, outlines, checklists, and other writing supports" as an assessment accommodation.

74. Ms. Quinn did not collect the Graphic Organizers after testing. Rather, each document was either taken home by the student or turned in with all other testing materials. Ms. Quinn made no attempt to hide her distribution of the Graphic Organizer.

75. On the day of the testing, or shortly thereafter, an ESE student's parent (who coincidentally was a District employee) discovered the Graphic Organizer and sent it to Principal Rosenberger's attention.

76. Assistant Principal Bernal also discovered copies of the Graphic Organizer in the testing materials being collected back from the proctors. She raised concerns with Principal Rosenberger, who in turn questioned Ms. Quinn.

77. Contrary to Petitioner's position that Principal Rosenberger "knew immediately that the graphic organizer was not allowed," see Pet'r PRO, ¶37, the emails show otherwise. Principal Rosenberger emailed Ms. Quinn at 7:14 p.m. on February 29, 2017, indicating he had been contacted by a parent, who was worried there was cheating going on during the FSAT. He noted, "So far, only ESE students appear to have them. I will need to know the source, and can I justify their use as an acceptable type of support, as a reasonable accommodation for ESE students on a standardized test? Your thoughts please, I need to nip this quickly."

78. In response, Ms. Quinn provided a lengthy explanation for the use of the Graphic Organizer. This response was prepared in collaboration with Ms. Turner and contained citations to various sources.

79. Principal Rosenberger cut and pasted the explanations Ms. Quinn had provided in an email he sent to Mr. Eline, noting "Ms. Quinn made a valid point that the graphic organizer viewed in isolation clearly paints the school in a poor light. She has requested that we include a rationale for its use. The reader should be reminded that only ESE students with testing accommodations indicated on their IEP had access to the document." There is no indication how Mr. Eline responded to Principal Rosenberger, or that Mr. Eline informed Principal Rosenberger that any kind of organizer was an unacceptable accommodation.

80. The Department alleges Ms. Quinn was dishonest in her conversations with Principal Rosenberger after the 2017 FSAT. Principal Rosenberger testified that Ms. Quinn implied Mr. Eline had given her permission to use the Graphic Organizer, but her emails to him showing her explanation do not indicate she received permission from anyone. Rather, they indicate, as did the testimony at the hearing that Mr. Eline did not give Ms. Quinn a firm "no." Even Principal Rosenberger admitted, "the recommendations from the district never specifically said 'no,'" although he inferred a "no" from the email Mr. Eline sent to Ms. Quinn at 3:50 p.m. on November 30, 2016.

81. On March 2, 2017, Principal Rosenberger notified Ms. Quinn the District office had rejected the use of the Graphic Organizer. He noted, "Basically the blank graphic organizer might have passed . . . however what was provided was so detailed that it appeared to be directions on how to complete the test. The [District] ESE office up here was consulted and they immediately declined it. Without a special review by [the Department], I do not think it was truly reviewed in detail, if nothing else we failed to follow the process[,] thus it is a violation."

82. Ultimately, the Department ruled the Graphic Organizer was not an appropriate accommodation for the ELA portions of the FSAT. The District invalidated the ELA test scores for all 37 ESE students who received a copy of the Graphic Organizer.

83. Upon further investigation, the District learned that 36 of the 37 ESE students were eligible for an "organizer" as an "approved" accommodation during an assessment test. The remaining ESE student did not have that accommodation listed on his or her IEP.

84. On or around April 6, 2017, Ms. Quinn was notified she would be questioned by John Frank, the administrator for the District's Office of Professional Standards. Although Mr. Frank's testimony and notes are largely hearsay, it is clear from the evidence at the hearing that Ms. Vongsyprasom was

unwilling to take any responsibility for the use of the Graphic Organizer. Ms. Quinn, on the other hand, acknowledged her role and fully cooperated with Mr. Frank's investigation.

85. The District and Ms. Quinn entered into a stipulation regarding the use of the Graphic Organizer, and Ms. Quinn was suspended for one day without pay.^{8/} The matter was referred to the Department's Education Practices Commission (EPC).

86. Although the evidence established that invalidation of FSAT scores are "a big deal" and "serious business," there is insufficient evidence to determine, what effect, if any, this had on the individual ESE students or their educational plan. Although there was testimony the ESE students with invalidated tests would require additional reading and writing instruction, it is unclear that the results would have been different had the test scores not been invalidated. The IEPs of the 37 students involved reflect that most, if not all, had not been deemed proficient on the ELA portion of the FSAT (i.e., their past scores were below a 3). Only ten percent of all ESE students showed grade level proficiency in ELA in the previous school year.

87. The Department argues, "Mrs. Quinn's defense and demeanor clearly indicated she has not taken ownership of what she did wrong." (Pet'r PRO, ¶52.) The evidence establishes otherwise. Ms. Quinn made no effort to hide the use of the

Graphic Organizer from anyone. She immediately responded to Principal Rosenberger's request for her reasoning behind the use of the Graphic Organizer. She accepted the District's discipline without dispute. She admitted that the inclusion of verbiage inside the flow chart bubbles was, in retrospect, an error. Moreover, during her testimony at the hearing she did not try to blame anyone else for the use of the Graphic Organizer.

88. Ms. Quinn has two other disciplines from the District, but neither involves testing violations. She has no previous violations brought by the Department or the EPC.

89. Ms. Quinn remains the chair of the ESE Department at PPMS. She continues to serve ESE students, parents and teachers. Although there was testimony Ms. Quinn is not allowed to proctor FSAT, she had not been proctoring the test previously.

CONCLUSIONS OF LAW

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

91. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional personnel. §§ 1012.795(1) and 1012.796(6), Fla. Stat.

92. Petitioner seeks to suspend Respondent's educator certificate. Such an action against a professional license is penal in nature and requires Petitioner to prove the allegations in the Complaint by clear and convincing evidence. Fla. Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015) (reaffirming that an agency must prove its reasons for imposing a fine or revoking a professional license by clear and convincing evidence because such a proceeding is penal in nature and implicates significant property rights).

93. 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 standard requires:

[T]he 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) (quotations omitted).

Count 1

94. Count 1 of the Complaint seeks to discipline Respondent on charges that she violated section 1012.795(1)(g) for having been found guilty of personal conduct that seriously reduced her effectiveness as an employee of the district school board.

95. There was not clear and convincing evidence Ms. Quinn's role had been reduced or that she was a less effective ESE Department Chair. As such, Petitioner has failed to establish a violation as alleged in Count 1 of the Complaint.

Count 2

96. Count 2 of the Complaint alleges that Respondent violated section 1012.795(1)(j) for violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules. Count 2 is derivative of the rule violations charged in Counts 3 and 4.

97. For the reasons cited below, Petitioner has failed to present clear and convincing evidence Petitioner has violated the Principles of Professional Conduct, and therefore has failed to establish the violation alleged in Count 2 of the Complaint.

Count 3

98. Count 3 of the Complaint alleges a violation of Rule 6A-10.081(2)(a)1, which states:

6A-10.081 Principles of Professional Conduct
for the Education Profession in Florida.

* * *

(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.

99. Taken as a whole, the evidence was not clear and convincing that Respondent distributed the Graphic Organizer to harm the ESE students. To the contrary, the evidence proved Respondent was simply trying to accommodate these students in accordance with what was listed in their IEPs.

100. Although the test results of those students who were provided the Graphic Organizer were invalidated, and the District and PPMS were placed in a negative light, there was no testimony regarding the effects of disqualification on individual students.

101. Accordingly, Petitioner failed to establish that Respondent allowed students to be harmed as alleged in Count 3 of the Complaint.

Count 4

102. Count 4 of the Complaint alleges a violation of Rule 6A-10.081(2)(c)1, which dictates professional educators, “[s]hall maintain honesty in all professional dealings.”

103. Petitioner did not establish by clear and convincing evidence Ms. Quinn acted in a dishonest way, or that she lied to anyone regarding the use of the Graphic Organizer. Before the testing, she did not hide the fact she was seeking an appropriate accommodation for the ESE students who had the “organizer” accommodation listed on their IEP. She did not hide the use of the Graphic Organizer from PPMS administration; Ms. Vongsyprasom was present at the ESE meeting where it was discussed, and was shown a copy of the actual Graphic Organizer. After the testing, Ms. Quinn did not try to cover up the distribution of the Graphic Organizer, nor did she try to point the finger at any of the participants in the ESE meeting.

104. Petitioner failed to establish Respondent was dishonest as alleged in Count 4 of the Complaint.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order dismissing the charges against Respondent.

DONE AND ENTERED this 29th day of May, 2019, in
Tallahassee, Leon County, Florida.

Hetal Desai

HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of May, 2019.

ENDNOTES

^{1/} Unless otherwise specified, the statutory and rule citations are to the 2017 versions, which were in effect on February 28, 2017, the time of the conduct alleged in the Administrative Complaint. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013).

^{2/} This case was previously styled with Pam Stewart as Commissioner of Education. On January 8, 2019, Richard Corcoran became the Commissioner of Education, and was substituted as the Respondent.

^{3/} The undersigned accepts the stipulation of facts, absent a showing of fraud, misrepresentation or mistake. See Delgado v. Ag. for Health Care Admin., 237 So. 2d 3d 432, 436-37 (Fla. 1st DCA 2018).

^{4/} The Complaint replaced the Accommodations Manual with the "2017 FSA test administration manuals" as the manuals on which to rely in providing accommodations during statewide assessments. (See Amended Administrative Complaint, ¶5, filed February 1, 2019).

^{5/} "Varying Exceptionalities" students are a subset of ESE students that have disabilities such as low intellect, health impairments, and other disabilities that hinder their educational performance. Ms. Quinn and the IEPs also mention students with "autism spectrum disorder" or "emotional behavioral disability." For the purposes of this recommended order all of these students will be referred to as "ESE students."

^{6/} Examples of accommodations listed in the IEPs presented at the hearing for the "Presentation" section include: "oral presentation of directions"; "directions repeated, clarified;" "verbal encouragement (e.g., 'keep working' 'make sure to answer every question'"); and sample problems and tasks. Similarly, examples of accommodations listed in the "Scheduling" section include: "Extended time (As much time during the school day to complete any started portion of any assessment); Time management tools like checklists, assignment planners or visual schedules." Accommodations listed under the "Setting" section pertain to small group settings and preferential seating. As explained at the hearing, some ESE students needed to be proctored by a familiar teacher, tested in a specific type of classroom, or tested (or not tested) with certain students.

^{7/} Interestingly, the original Administrative Complaint listed the 2015 Accommodations Manual as the manual which sets forth the rules and procedures to be followed in providing accommodations for the FSAT.

^{8/} Petitioner argued at the hearing that Ms. Quinn was bound by the facts contained in the District discipline stipulation. Although Ms. Quinn's acceptance of those facts may be inconsistent with her testimony, they do not preclude her from introducing evidence to the contrary, especially in a separate matter with a separate agency. See Lambert Bros., Inc. v. Mid-Park, Inc., 185 So. 3d 1266, 1269 (Fla. 4th DCA 2016) ("The principles of res judicata and collateral estoppel do not always nearly fit within the scope of administrative proceedings and should be applied with great caution. As the Florida Supreme Court observed, administrative procedures are often summary, parties are sometimes unrepresented by counsel, and permitting a second consideration of the same question may frequently be supported by other similar reasons which are inapplicable to judicial proceedings." citations and quotations omitted); Delray Med. Ctr. v. Ag. for Health Care Admin., 5 So. 3d 26, 29 (Fla. 4th DCA 2009) ("Florida courts do not apply the doctrine of

administrative finality when there has been a significant change of circumstances or there is a demonstrated public interest.”).

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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.