

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS
COMMISSIONER OF EDUCATION,

Petitioner,

vs.

Case No. 19-2366PL

QUENTIN PETERSON,

Respondent.

_____ /

RECOMMENDED ORDER

On August 27, 2019, Administrative Law Judge (ALJ) Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH) conducted a disputed-fact hearing in this case in Bradenton, Florida.

APPEARANCES

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

For Respondent: Brandon Vacari, Esquire
Herdman & Sakellarides, P.A.
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STATEMENT OF THE ISSUES

Whether Respondent, a middle school teacher, violated section 1012.795(1)(d) and (1)(j), Florida Statutes, and Florida Administrative Code Rule 6A-10.081(2)(a)1., (2)(a)5., (2)(a)8.,

(2)(c)1., (2)(c)8., and (2)(c)9., as alleged in the Amended Administrative Complaint (AAC); and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On March 7, 2019, Richard Corcoran, as Commissioner of Education (the Commissioner or Petitioner), filed an AAC against Quentin Peterson (Respondent). The eight-count AAC alleged Respondent was guilty of committing gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education; violating the Principles of Professional Conduct for the Education Profession; failing to make reasonable effort to protect a student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety; intentionally exposing a student to unnecessary embarrassment or disparagement; exploiting a relationship with a student for personal gain or advantage; failing to maintain honesty in all professional dealings; submitting fraudulent information on a document in connection with professional activities; and making a fraudulent statement or failing to disclose a material fact in his own or another's application for a professional position. The charges arose from an alleged inappropriate relationship with a student, and an application for employment in another school district.

Respondent completed the Amended Election of Rights form by

requesting a 45-day period to negotiate a settlement agreement followed by a hearing if no settlement could be reached.

On April 10, 2019, Petitioner filed a Motion to Re-open File, attaching the AAC and the Amended Election of Rights form.^{1/} Following a noticed telephonic motion hearing, the case was re-opened as DOAH case number 19-2366PL. Following one continuance,^{2/} the hearing was held on the above listed date.

At the final hearing, the parties stipulated to paragraphs 1 and 2 of the AAC, each of which is adopted and incorporated herein. Petitioner presented the testimony of the Manatee County School District (MCSD) Investigator Troy Nelson; Florida Department of Law Enforcement (FDLE) Crime Laboratory Analyst Jeffrey Carson; Palmetto Police Department (PPD) Chief Scott Tyler; former PPD Detective Chad Oyler; MCSD School Resource Officer assigned to Lincoln Middle School (LMS), Jennifer Moore; Sarasota County School District (SCSD) Principal Dr. Laurie Breslin; and SCSD Superintendent Dr. C. Todd Bowden. Petitioner's Exhibits 1 through 18 (pages 39 through 47), 20, 25, and 26 were admitted in evidence.^{3/}

Respondent was not present to testify, but was represented by counsel. Respondent's counsel presented the testimony of two witnesses: pastor of the Mount Olive Missionary Baptist Church in Palmetto, David Mazon, Sr.; and Respondent's aunt, Pam Bellamy. Respondent's counsel did not present any exhibits.

A one-volume Transcript of the final hearing was filed on September 9, 2019. After an Order was issued granting an extension of time until September 27, 2019, both parties timely submitted proposed recommended orders (PRO). To the extent that either PRO contains information outside the record of this proceeding, that information has not been considered in the preparation of this Recommended Order.

The relevant and material actions that form the basis for the AAC occurred between April 2017 and June 2018. 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 their 2016 version, unless otherwise specified.

FINDINGS OF FACT

Based upon the demeanor and credibility of the witnesses and other evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Respondent holds Florida Educator Certificate number 1299379, covering the area of music. The certificate is valid through June 30, 2020.

2. At all times pertinent hereto, Respondent was employed as a Music Teacher at LMS in the Manatee County School District.

3. 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.

4. The Commissioner is responsible for investigating and prosecuting misconduct allegations against individuals who hold Florida teaching certificates and who are alleged to have violated standards of teacher conduct. § 1012.796(6), Fla. Stat.

Background

5. On April 28, 2017, Respondent submitted a resignation letter to MCSD, and later that same day rescinded this resignation letter.

6. Based on a prior investigation, on May 17, 2017, Respondent was issued a letter of reprimand by the LMS principal for poor judgement and poor classroom management.

7. MCSD Office of Professional Standards started another investigation of Respondent in May 2017.

8. In June 2017, PPD served a subpoena on Respondent, and seized his electronic devices.

9. On August 4, 2017, Respondent was temporarily reassigned to MCSD transportation office.

10. On August 17, 2017, MCSD placed Respondent on paid administrative leave.

11. In August 2017, Investigator Nelson completed an investigation report that went to MCSD senior administrators, including the superintendent and its legal counsel.

12. A practice of MCSD is that once an investigation is opened involving a union member, that union member is represented by a union paid counsel. MCSD communicates solely through the employee's counsel. At the time, Respondent was a union member, and was represented by counsel during the pertinent MCSD's investigations.

13. On August 30, 2017, Respondent was not present when his counsel met with Investigator Nelson and MCSD general counsel. They advised Respondent's counsel of the evidence found regarding Respondent, and that MCSD was going to move forward with the termination of Respondent's employment. Respondent's counsel was informed that Respondent could resign his teaching position in lieu of termination.

14. Respondent submitted a letter of resignation to the Manatee County School Board (Board), dated September 1, 2017, providing for his resignation to become effective on September 12, 2017. Further, this letter provided that Respondent would not seek "reemployment" with MCSD. The Board was scheduled to meet on September 12, 2017, and would have

considered any termination requests.

15. Once Respondent resigned, MCSD did not have any further jurisdiction over Respondent.

16. Dr. Breslin served as an assistant principal at SCSD's Booker High School (Booker) when Respondent applied for a position there shortly after he resigned from MCSD. She was on the committee that interviewed the various candidates, including Respondent, and decided to hire Respondent.

17. Respondent was hired by SCSD and taught at Booker. During his probationary period, Respondent was released from his SCSD employment.

Material Allegations

18. The material allegations upon which the charged violations are predicated are, in their entirety, as follows:

3. During the 2016-2017 school year, Respondent engaged in an inappropriate relationship with K.A., a sixteen year old female student, as evidenced by a picture of Respondent and K.A. kissing.

4. On or about September 5, 2017, in the midst of a district investigation into inappropriate relationships between Respondent and female students, Respondent resigned in lieu of termination from his teaching position with the district, to be effective September 12, 2017.

5. On or about September 22, 2017, Respondent submitted an application for a teaching position with Sarasota County Public Schools. Respondent fraudulently answered 'no' to the following questions:

Have you ever:

- a) failed to fulfill a teaching or administrative contract?
- b) had any disciplinary action taken against you by any Board of Education?
- c) been removed or dismissed from any position?
- d) resigned in lieu of termination?

19. On the last page of Respondent's SCSD application, he certified that his answers were true and to the best of his knowledge.

Pictures

20. In June 2017, pursuant to a search warrant, the PPD seized Respondent's laptop computer and two cell phones, and sent them to FDLE for analysis. FDLE Analyst Carson was assigned to retrieve any pictures and/or text messages from Respondent's devices. FDLE Analyst Carson issued the results via a report to the PPD. The FDLE report was not admitted into evidence.

21. Mr. Oyler (and other PPD officers) reviewed the FDLE report, including the pictures^{4/} taken from Respondent's devices, and found no evidence of an inappropriate relationship as alleged by a female LMS student. However, Mr. Oyler observed pictures of Respondent with another young (female) person.

22. Mr. Oyler contacted LMS Resource Officer Moore to determine the identity of this other young female.

23. Officer Moore, a 17-year employee of PPD, has been a resource officer assigned and stationed at LMS since 2013. In early 2016, Respondent was investigated for "some allegations," and Officer Moore had a conversation with Respondent about his interactions with female students. Officer Moore advised Respondent to:

So you just protect yourself. Make sure you're keeping the door [to his classroom] open if you can between classes with view so the other [band/orchestra] teacher has observation. Don't be alone with students, especially female students. Make sure you're protecting yourself and making smart choices about it.

24. Officer Moore knows N.A., the mother of K.A.^{5/} During the 2016-2017 school year, Officer Moore and N.A. both worked at LMS. Officer Moore would see K.A., a MCSD student, when she came to LMS to wait for her mother. Additionally, Officer Moore socialized with the A. family at various parties, including K.A.'s graduation from high school in May 2018.

25. At the hearing, Officer Moore was shown a picture retrieved from Respondent's devices of two people kissing, specifically Petitioner's Exhibit 18, page 39 (hereafter referred to as the "kissing photograph"). When shown the kissing photograph, Officer Moore expressed no doubt or

hesitation in identifying the two persons kissing: Respondent and K.A. Further, Officer Moore identified Respondent and K.A., individually or together, in the remaining pictures of Petitioner's Exhibit 18, pages 40-47. Officer Moore's testimony is found credible.

26. Investigator Nelson conducted two investigations of Respondent, and met with him five or six times. When shown the pictures retrieved from Respondent's devices, Investigator Nelson expressed no doubt or hesitation in identifying Respondent in all of the pictures found in Petitioner's Exhibit 18, including the kissing photograph. Investigator Nelson's testimony is found credible.

27. Respondent's counsel, through questioning of Mr. Oyler intimated that K.A. manipulated and uploaded multiple altered images to Respondent's electronic devices. Mr. Oyler provided that he had heard K.A. "saying that she modified the images," or that she had "doctored the photos."

28. K.A. did not testify in this hearing, nor did any other students. However, Mr. Oyler interviewed K.A. during the course of the PPD investigation. Initially K.A. denied having any relationship with Respondent. However, when Mr. Oyler presented K.A. with all the pictures found in Petitioner's Exhibit 18, her reaction left Mr. Oyler with the impression that K.A. and Respondent had "more of a romantic, physical

relationship." Mr. Oyler's testimony is found credible.

29. Pastor Mazon was asked the following question: "Do you recognize the male in that photograph [the kissing photograph]?" He answered "Not really, not from that angle . . . no, not really." He was then asked specifically: "Does that appear to be Mr. Peterson [Respondent] in that photograph?" Pastor Mazon responded: "It would be hard for me to tell from the side view like that. I would have to see it from the front." And when shown the same kissing photograph in color and asked if the male was Respondent, Pastor Mazon replied: "That's still a hard call for me. You know, skin tone. But then I see a scar from - on behind the ear, which I never saw, which I never - - that's kind of hard for me, yeah. . . . I wouldn't be able to identify him in that fashion." Pastor Mazon was unable to confirm or deny that Respondent was in the kissing photograph, yet he positively identified Respondent in each remaining picture of Petitioner's Exhibit 18. Pastor Mazon's testimony lacks clarity and credibility as he waffled on identifying Respondent in the first picture, but had no hesitation in the remaining pictures.

30. Ms. Bellamy, Respondent's aunt, testified that she did not recognize the male in the kissing photograph. In the remaining pictures, Ms. Bellamy confirmed Respondent was in the pictures on pages 40 and 42 of Exhibit 18, but was not in the

pictures on pages 41 or 43 through 47. Ms. Bellamy did confirm that Respondent was in the picture in Petitioner's Exhibit 20. As Respondent's relative, Ms. Bellamy's testimony appears to be selective and is not found credible.

Sarasota County School District

31. Petitioner's Exhibit 17, which was admitted without objection, provided that Respondent was under contract with MCSD to serve as an instructional employee for the 2017-2018 school year.

32. Petitioner's Exhibit 12, Respondent's resignation letter, which was admitted without objection, provided that Respondent resigned his MCSD position for the 2017-2018 school year, effective September 12, 2017. Further, Respondent agreed to not seek reemployment with MCSD.

33. Dr. Breslin was an assistant principal at Booker in Sarasota, Florida, for the 2017-2018 school year. She served on the committee that interviewed candidates for a teaching position at Booker.

34. Dr. Breslin reviewed and relied upon Respondent's SCSD application, and interviewed Respondent (with the other committee members) for the Booker teaching position. Further, Dr. Breslin performed the reference checks regarding Respondent's application. Dr. Breslin was instrumental in the decision to hire Respondent for the position at Booker.

35. Dr. Breslin was never provided a copy of Respondent's letter of reprimand or his MCSD resignation letter. Further, during SCSD's interview process, Dr. Breslin was not told that Respondent had been under investigation by MCSD. Dr. Breslin confirmed that by Respondent's failure to tell her (or the committee) of these (the letter of reprimand, his resignation letter from MCSD, and/or the investigation), Respondent gave a false presentation. Had Dr. Breslin known of any of these, Respondent would not have been brought in for an interview and would not have been hired.

36. Dr. Bowden testified that Respondent was released from his SCSD teaching contract during his probationary period. Typically, SCSD does not provide a reason for an employee's release. However in this case, Respondent's employment was terminated based on his arrest.

37. Dr. Bowden also testified that Respondent's failure to advise SCSD of his resignation from MCSD, his letter of reprimand, and that he was under investigation was tantamount to falsification of his application to work for SCSD.

38. Respondent was represented by competent counsel, during MCSD's investigation and his ultimate resignation from MCSD.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has

jurisdiction over the parties and the subject matter of this case pursuant to section 120.569 and 120.57(1), Florida Statutes.

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

41. Petitioner seeks to impose license discipline. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner has the burden to prove the allegations by clear and convincing evidence. See Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

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

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

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). "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. v. Shuler Bros., Inc., 590 So. 2d 986,
988 (Fla. 1st DCA 1991).

43. The grounds proven in support of Petitioner’s
assertion that Respondent’s license should be disciplined must
be those specifically alleged in the AAC. See e.g., Trevisani
v. Dep’t of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005);
Cottrill v. Dep’t of Ins., 685 So. 2d 1371 (Fla. 1st DCA 1996);
Kinney v. Dep’t of State, 501 So. 2d 129 (Fla. 5th DCA 1987);
Hunter v. Dep’t of Prof’l Reg., 458 So. 2d 842 (Fla. 2d DCA
1984). Due process prohibits Petitioner from taking
disciplinary action against a licensee based on matters not
specifically alleged in the charging instruments, unless those
matters have been tried by consent. See Delk v. Dep’t of Prof’l
Reg., 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

44. As discussed at hearing, section 120.57(1)(c) states
in part that “[h]earsay evidence may be used for the purposes of
supplementing or explaining other evidence, but it shall not be
sufficient in itself to support a finding.” The testimony of
Mr. Oyler of what he heard K.A. state is hearsay, and did not
form the basis of any finding of fact.

45. Exhibits 8, 25, and 26 were objected to by Respondent
as hearsay. The documents were admitted because chapter 120
allows the admission of hearsay, with the caveat that hearsay

can only be used to supplement or explain other competent evidence, but cannot itself support a finding of fact. The exhibits supplemented or explained other evidence presented at hearing.

46. Count 1 charges Respondent with committing gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education, in violation of section 1012.795(1)(d). The evidence was clear and convincing that Respondent violated this statute by engaging in an inappropriate relationship with a student as evidenced by the kissing photograph. The kissing photograph displays Respondent and K.A. in a romantic kiss, with eyes closed, while K.A.'s hand lay on the side of Respondent's face.

47. Respondent contends that the standard of proof was not met as to this allegation (or the others) because the picture(s) fails to prove an inappropriate relationship between Respondent and a student. Respondent suggests that the "context surrounding the kiss" is necessary. It is not. No contextual explanation could legitimize the romantic kiss between Respondent and K.A. In this case, the standard of proof was met. The kissing photograph, removed from Respondent's electronic devices, demonstrates an inappropriate relationship between a teacher (Respondent) and a MCS D student.

48. By virtue of their leadership capacity, teachers are

traditionally held to a high moral standard in a community. Tenbroeck v. Castor, 640 So. 2d 164 (Fla. 1st DCA 1994). Given the amount of time spent with and the access to students who are underage, it is imperative that teachers act in a manner that sets a positive example. Teachers should never take advantage of their position of authority and control over students they encounter. Appropriate boundaries are an essential part of a teacher's responsibilities. Respondent crossed the line by failing to maintain an appropriate and necessary teacher-student relationship.

49. Count 2 charges Respondent with violating section 1012.795(1)(j) by violating the rules setting out the Principles of Professional Conduct for the Education Profession. Count 2 is derivative of the rule violations charged in Counts 3 through 5.

50. Count 3 charges a violation of rule 6A-10.081(3)(a) for failure to "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." No students testified in this case, nor did Respondent. There was no testimony or evidence of "conditions harmful to learning and/or to the student's mental and/or physical health and/or safety." This violation was not proven.

51. Count 4 charges a violation of rule 6A-10.081(2)(a)5. for intentionally exposing a student to unnecessary

embarrassment or disparagement. K.A. did not testify in this case. While it is clear that Respondent's relationship with K.A. was inappropriate, there was simply no testimony or evidence that K.A. was unnecessarily embarrassed or disparaged by the kissing photograph, the other pictures or the relationship. This violation was not proven.

52. Count 5 charges a violation of rule 6A-10.081(2)(a)8. for exploiting a relationship with a student for personal gain or advantage. Respondent's inappropriate relationship with K.A., as proven via the kissing photograph, in and of itself, proves this violation.

53. Count 6 charges a violation of rule 6A-10.081(2)(c)1. for failing to maintain honesty in all professional dealings. Respondent was told he was under investigation and had his laptop computer and two cellphones seized via a search warrant. Further, Respondent, via his counsel, was notified of the evidence that PPD had, and was advised that his MCSD employment would be terminated or he could resign in lieu of termination. Respondent's failure to provide information to a potential employer (SCSD) regarding either the PPD or MCSD investigation and failure to disclose that Respondent resigned in lieu of employment termination is compelling evidence that Respondent failed to maintain honesty in all his professional dealings.

54. Count 7 charges a violation of rule 6A-10.081(2)(c)8.

for submitting fraudulent information on a document in connection with professional activities. Respondent's application for SCSD employment (Petitioner's Exhibit 13) was objected to on the basis of relevancy and uncorroborated hearsay. The SCSD application is plainly relevant, and the hearsay objection was addressed through Dr. Breslin's testimony. Respondent's application contained fraudulent information, in that he answered "no" to the question asking whether he ever resigned in lieu of termination. Dr. Breslin testified Respondent had a 2016-2017 MCSD employment teaching contract and resigned that position, but failed to provide that information to SCSD. Petitioner proved this violation.

55. Count 8 charges a violation of rule 6A-10.081(2)(c)9. for making a fraudulent statement or failing to disclose a material fact in his own or another's application for a professional position. Respondent was told he was under investigation, not only by PPD, but also MCSD. Respondent had his laptop computer and two cellphones seized via a search warrant. Further, Respondent, via his counsel was notified of the evidence that PPD had, and was advised that his MCSD employment would be terminated or he could resign in lieu of termination. Respondent's failure to provide that information to a potential employer (SCSD) proves a failure to maintain honesty in all professional dealings.

56. Section 1012.795(1) authorizes the Commission to suspend, revoke (for a specific number of years or permanently), or otherwise discipline a teaching certificate holder, where it is shown that he or she:

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

* * *

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

57. Florida Administrative Code Rule 6B-11.007(2), provides the following penalty ranges for the violations proven in this case:

(d)1. Being guilty of gross immorality or an act involving moral turpitude as defined by rule 6A-10.083, F.A.C., of the State Board of Education in violation of section 1012.795(1) (d), F.S.

2. When a student or school activity is involved.

Suspension - Revocation

* * *

(i) Violating the Principles of Professional Conduct in violation of section 1012.795(1) (j), F.S. by:

* * *

17. Engaging in plagiarism or other fraud or dishonesty in professional activities in violation of paragraphs 6B-1.006(5) (a), (g), (i), F.A.C.

Suspension - Revocation

* * *

22. Other violations of the Principles of Professional Conduct and the F.A.C.

Probation - Revocation

(j) Other violations of Section 1012.795, F.S.

Probation - Revocation

58. Rule 6B-11.007(3) sets out aggravating and mitigating factors for deviations from the penalty range. Consideration of the aggravating and mitigating factors does not warrant a deviation, especially given the breadth of the penalty range in the rule, but it does suggest that a stiff penalty would be appropriate for multiple violations, any one of which includes revocation in the permissible penalty range. Respondent has offered no evidence or rationale that would support a lesser penalty.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order finding Respondent guilty on Counts 1, 2,

and 5 through 8, and permanently revoking his Educator Certificate.

DONE AND ENTERED this 24th day of October, 2019, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of October, 2019.

ENDNOTES

^{1/} On October 10, 2018, a prior case on the original Administrative Complaint (Pam Stewart, as Commissioner of Education versus Quentin Peterson, DOAH Case No. 18-4716PL), was relinquished to Petitioner following the filing on October 4, 2018, of an Agreed Upon Motion to Hold Case In Abeyance (motion). The basis for this motion was a pending criminal case involving Respondent and similar issues alleged in the Administrative Complaint. The AAC removed certain allegations that would or could have interfered with the administrative action and the ongoing criminal proceeding.

^{2/} The continuance was necessitated by a death in the ALJ's immediate family on July 25, 2019.

^{3/} Multiple exhibits were admitted over objection, subject to corroborating evidence to substantiate that which was in the exhibit(s). Testimony was received to corroborate the exhibits.

^{4/} The pictures found on Respondent's electronic devices had to be taken prior to June 2017 when the search warrant was served and the items seized.

^{5/} To protect the identity of students, all students and their parents are referred to herein by their initials.

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.