



Before the Education Practices Commission of the State of Florida



RICHARD CORCORAN,
Commissioner of Education,

Petitioner,

vs.

LASHON JENICE MILLER,

Respondent.

EPC CASE No. 21-0132-RT
Index No. 21-104-FOF
DOAH CASE No. 19-6373PL
PPS No. 189-0979
CERTIFICATE No. 834897

Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on May 27, 2021 in Tallahassee, Florida, via video hearing, for consideration of the Recommended Order entered in this case by YOLONDA Y. GREEN, Administrative Law Judge. Respondent was not present and was represented by Emily Moore, Esquire, who was present. Petitioner was represented by Anastasios Kamoutsas, Esquire and Ron Weaver, Esquire.

Findings of Fact

1. The findings of fact set forth in the Recommended Order are approved and

adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

Conclusions of Law

3. The Education Practices Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 1012, Florida Statutes.

4. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

Penalty

Upon a complete review of the record in this case, the Commission determines that the Recommended Order issued by the Administrative Law Judge be ACCEPTED.

It is therefore **ORDERED** that:

5. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on two (2) employment years of probation with the conditions that during that period, the Respondent shall:

- a. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.

- b. Have Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

- c. Pay to the Commission during the first 6 months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.

- d. Violate no law and shall fully comply with all district school board policies, school

rules, and State Board of Education rules.

e. Satisfactorily perform all assigned duties in a competent, professional manner.

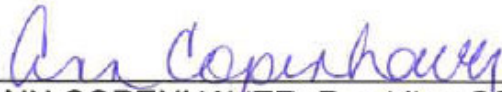
f. Bear all costs of complying with the terms of a final order entered by the Commission.

g. Complete in-service coursework in the area of De-escalation Techniques, and provide documentation verifying successful completion to the probation compliance officer during the first year of the probation period.

h. Complete National Education Association micro-credentials courses of Ethics – Responsibility for Professional Competence and Classroom Management – Addressing Challenging Behaviors, and provide documentation verifying successful completion to the probation compliance officer during the probation period.

This Final Order takes effect upon filing with the Clerk of the Education Practices Commission.

DONE AND ORDERED, this 28th day of May, 2021.



ANN COPENHAVER, Presiding Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to Jacqueline Lashon Jenice Miller, 335 East Highway 318, Citra, FL 32113 and Emily Moore, Esquire, Florida Education Association, 213 South Adams Street, Tallahassee, FL 32301 by Certified U.S. Mail and by electronic mail to Bonnie Wilmot, Deputy General Counsel, Suite 1544, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 and Ron Weaver, Esquire, P.O. Box 770088, Ocala, FL 34477 this 28th day of May, 2021.



Faith Lenzo, Clerk
Education Practices Commission

COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER OF
EDUCATION,

Petitioner,

Case No. 19-6373PL

vs.

LASHON JENIECE MILLER,

Respondent.

_____ /

RECOMMENDED ORDER

On December 8 and 9, 2020, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings (“DOAH”), conducted a hearing pursuant to section 120.57(1), Florida Statutes (2020), via Zoom conference.

APPEARANCES

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

For Respondent: Emily Moore, Esquire
Florida Education Association
213 South Adams Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

Whether Respondent violated sections 1012.795(1)(g) and 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rules 6A-10.081(2)(a)1. and 6A-10.081(2)(c)1., as alleged in the Administrative Complaint; and, if so, what disciplinary penalty should be imposed.

PRELIMINARY STATEMENT

On August 14, 2019, Petitioner, Richard Corcoran, as Commissioner of Education (“Petitioner” or “Commissioner”), filed an Administrative Complaint against Lashon Jeniece Miller (“Respondent” or “Ms. Miller”), alleging violations of sections 1012.795(1)(g) and 1012.795(1)(j) and rules 6A-10.081(2)(a)1. and 6A-10.081(2)(c)1. Respondent timely filed an Election of Rights form, disputing the allegations and requesting a hearing.

On December 2, 2019, Petitioner referred this matter to DOAH for assignment of an ALJ. This matter was initially scheduled for hearing for March 17, 2020. After four continuances, the final hearing in this matter was held on December 8 and 9, 2020.

Prior to the final hearing, the parties filed a Joint Pre-hearing Statement. To the extent relevant, the parties' stipulated facts have been incorporated in the Findings of Fact below.

At the final hearing, Petitioner presented the testimony of: Joy Baxley, Leda L. Davis, Jennifer J. Foster, Gina Gazzaniga, Kendra K. Hamby, Irenia Hawthorne, Nancy Manning, Nancy P. Neal, Troy Sanford, and Candice R. Scott. The undersigned admitted Petitioner’s Exhibits 1 through 26 into evidence. Respondent testified on her own behalf and presented the testimony of Patricia L. Poag. Respondent’s Exhibits 1 through 8 were admitted into evidence.

The three-volume Transcript was filed with DOAH on January 14, 2021. After a request for extension of time was filed and granted, the parties timely filed Proposed Recommended Orders (PROs). The PROs have been considered in preparation of this Recommended Order.

Except where otherwise specified, all references to the Florida Statutes and Florida Administrative Code in this Recommended Order are to those in effect in 2018. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013)(holding that statutes and rules in effect at the time of the allegations apply, unless otherwise specified).

FINDINGS OF FACT

Based on the evidence, testimony, and stipulated facts, the following Findings of Fact are made.

1. The Commissioner is the head of the state agency, the Florida Department of Education, responsible for investigating and prosecuting allegations of misconduct against individuals holding Florida educator certificates. Upon a finding of probable cause, Petitioner is then responsible for filing a formal complaint and prosecuting the complaint pursuant to chapter 120, if the educator disputes the allegations in the complaint.

2. Respondent holds Florida Educator Certificate No. 834897, covering the areas of elementary education, English for Speakers of Other Languages (“ESOL”), and varying exceptionalities, which is valid through June 30, 2023.

3. At the time of the allegations in the Administrative Complaint, Respondent was employed as an exceptional student education (“ESE”) teacher at Wyomina Park Elementary School (“WPES”) in the Marion County School District (“MCSD”).

4. Ms. Miller has served as an elementary education teacher since the 2000-01 school year. Thus, she has a 20-year career with MCSD. From 2008 to 2018, Respondent taught third, fourth, and fifth grades at Reddick Collier Elementary (“Reddick Collier”). Since she holds certification in ESE, she also taught ESE inclusion students in her general education classrooms. However, she has never taught a classroom of only ESE students.

5. In 2018, Respondent’s value-added model (commonly referred to as VAM) scores rendered her ineligible to continue teaching at Reddick Collier

because it was one of the District's lowest performing schools. As a result, she was involuntarily transferred to WPES.

6. Ms. Baxley testified that Respondent was initially assigned to teach students with academic issues, not behavioral issues. The initial assignment was consistent with her experience and previous work with ESE inclusion students. Respondent had maintained certification in ESE so that she could better serve academically low-performing ESE students in a general education inclusion environment.

7. While Respondent had training in an inclusion environment, she did not have training or certification in Treatment and Education of Autistic and Communication Handicapped Children ("TEACCH") or Crisis Prevention Intervention de-escalation techniques for use with students with behavioral issues. Ms. Baxley believed that Respondent had been trained to work with children with behavioral issues.

8. After the initial assignment, students were reassigned between Ms. Miller and Patricia Poag. Respondent became responsible for only students with behavioral issues. Some of the students assigned to Respondent had extensive behavioral issues to the extent they required medication treatment.

9. Respondent's new assignment was a kindergarten through second grade self-contained ESE class of 12 to 13 students. Generally, a self-contained ESE classroom is a group environment with students who have special needs. Respondent's students required increased supervision, structure, visuals, and very specific direct instruction. Respondent, Ms. Davis, and Ms. Poag testified that the classroom assignment was very "challenging, overwhelming, and distressing."

10. The new classroom structure included six or seven more students than previously assigned. Respondent had one paraprofessional to assist with supervision of the students. Respondent requested additional staff support, but never received it.

11. In addition to learning to navigate the struggles with the student's behavioral issues, Respondent was struggling with paperwork. Respondent made the effort to get help with completing necessary documents and learning how to complete IEP's and behavior plans. She had no experience in completing these documents, or in working with "severe maladaptive behaviors" before being assigned to WPES.

Allegations Involving Classroom Management

12. As an ESE instructor, Ms. Miller's primary responsibility was to ensure compliance with services or accommodations required for ESE students assigned to her classroom.

13. Gina Gazzaniga is the MCSD ESE specialist. Her primary responsibility is to ensure compliance with services/accommodations required for all ESE students. Ms. Gazzaniga visited Respondent's classroom. While in Respondent's classroom, Ms. Gazzaniga observed students run on tables, throw items, and elope from the classroom unsupervised.

14. Ms. Gazzaniga testified that while students were engaged in this conduct, Respondent did not intervene. Ms. Gazzaniga also testified that when students eloped from the classroom, they would typically go to the Guidance office or the Dean's office.

15. Ms. Gazzaniga had the Behavior Team (behavior tech, behavior specialist and analyst, and school academic coaches) assist with structure and behavior/classroom management strategies in Respondent's classroom. The team implemented procedures to help prevent students from eloping. However, Respondent would change the practices the behavior team implemented. Respondent testified that some of the practices put into place were not effective. For example, when tables were lowered, the students increased their jumping from table to table. In addition, the assistance button was not within the reach of the teachers in the classroom. Ms. Gazzaniga's

overall assessment was that she saw “limited improvement, or refusal to follow taught strategies.”

16. Other members of the WPES administration expressed concerns about Respondent’s classroom management. While visiting Respondent’s classroom, Ms. Baxley, along with Kendra Hamby, saw student █████ pulling the hair of █████ a █████ student, dragged █████ a █████ student, by █████ hair as █████ screamed. Ms. Baxley testified that she heard Respondent say “stop.” Ms. Baxley then approached the students and removed █████’s hand from █████ so that █████ would “stop pulling █████ around like a caveman on the floor.” Ms. Baxley testified that Respondent did not intervene to help █████ but rather “she just stood there.” Ms. Hamby testified that “Ms. Miller was standing there, not intervening, not saying or doing anything. So that was extremely concerning.”

17. On another occasion, while in Respondent’s classroom, Ms. Baxley saw students hitting each other with containers. Ms. Baxley testified that Respondent did nothing to intervene. Respondent testified that she approached the students and instructed them to return the containers.

18. Jennifer Foster was a paraprofessional assigned to Respondent’s classroom. On one occasion two students were running around the room, fighting, and chasing each other. Ms. Foster tried to “get in the middle to separate them and they both ran behind the big solid wooden table.” When Ms. Foster went in front of the table in an effort to separate them, the two students picked up the table and tossed it over on the side. Ms. Foster was able to move one foot out of the way, but the table landed on her other foot. Ms. Foster testified “I eventually got up and hobbled over to push the panic button and asked for assistance.” Her foot was injured as a result of the incident involving the students. Ms. Foster indicated that Respondent did not assist her.

Allegations Involving Failure to Supervise Students

19. In addition to concerns about classroom management, the Administrative Complaint alleged Respondent failed to supervise students. One of those incidents involved [REDACTED]

20. [REDACTED] was one of Respondent's kindergarten students. [REDACTED] is an ESE student with a medical condition. On [REDACTED], a teacher informed Assistant Principal Troy Sanford that Respondent's student, [REDACTED], was found standing at the exit door of a hallway that opens to the playground.

21. Mr. Sanford saw [REDACTED] approaching the exit doors to the playground alone at 11:24 a.m. [REDACTED] stood there alone until 11:29 a.m., at which time the teacher spoke to [REDACTED]. After consulting with another teacher, Ms. Hawthorne, about where [REDACTED] belonged, the teacher took [REDACTED] to Respondent's classroom.

22. Respondent denied allowing [REDACTED] to stand alone in the hallway for several minutes. She testified that while standing at her classroom door, awaiting the arrival of students coming from the restroom, [REDACTED] began to walk from Ms. Davis toward her. This was customary for her students if children needed additional time in the restroom. As [REDACTED] got close to Respondent, [REDACTED] began climbing on the top shelf of a bookcase in the classroom. Since their routine was for the students to come into the classroom, she assumed [REDACTED] would follow the customary practice and enter the classroom. Respondent testified that she made a judgment call to turn her attention to [REDACTED] to ensure [REDACTED] safety and prevent harm to [REDACTED]. Instead of entering the classroom, [REDACTED] walked down the hallway. Based on the totality of the circumstances, Respondent's actions were reasonable.

23. A second incident involved a different student. Two first-grade teachers, Nancy P. Neal and Ireina Hawthorne, were outside on the playground with their students. When recess was over, they were gathering their students and doing a head count to go back inside to their classrooms when they noticed there was "an extra child" in line. The student did not belong in their classroom. The student was nonverbal so they could not

determine to which classroom he belonged. Ms. Hawthorne assumed that ■ belonged in Respondent's class and took the student to Respondent's classroom. When Ms. Hawthorne took the student to Respondent's classroom, Respondent "ushered ■ into the classroom."

24. Respondent testified that she was in the hallway, counting her students before going to her classroom. She explained that she had a substitute paraprofessional, Ms. Foster, who did not know all of her students. In addition, this was the first time she had Ms. Foster serve as a substitute. To help remedy the issue regarding the student left outside, Respondent asked her assigned paraprofessional not to take breaks or lunch during recess. Whether Respondent was in her classroom (as stated by Ms. Hawthorne) or in the hallway, the student was left outside without her supervision, which could be harmful to the student's safety.

25. A third incident related to supervision involved student ■ On ■, ■ entered Ms. Gazzaniga's office and hid under a table. The evidence offered at hearing demonstrated that when the student eloped from the classroom, Respondent immediately followed the student into the guidance office. However, she did not see the ■ so she continued to search for ■. A minute or so later, Ms. Gazzaniga saw Respondent walk down the hallway towards the main office. Respondent later learned the student was in the guidance office at the time she initially searched that location. However, Ms. Gazzaniga did not alert Respondent that ■ was in ■ office. Ms. Gazzaniga testified that she "kept an eye on ■ while ■ was there." After a short time, Ms. Gazzaniga went over to ■ and spoke to ■. ■ came from under the table and went to the doorway of the office. At the same time, Respondent was walking back down the hallway and saw ■ and took ■ back to her classroom. The credible evidence demonstrates that Respondent made reasonable efforts to locate the student by searching for ■ immediately after ■ elopement from the room.

DP-3 Assessment

26. On [REDACTED], Ms. Scott gave Respondent a Developmental Profile Third Edition (“DP-3”) to complete for student [REDACTED].

27. Students who are developmentally delayed must have a DP-3 completed for re-evaluation to determine what ESE services need to be continued. A DP-3 is an assessment tool used to evaluate nonverbal or low achieving students that have not reached the cognitive level to take an IQ test. MCS D uses the DP-3 to assess the student’s level of achievement.

28. The DP-3 assesses five areas of development, including the child’s cognitive functioning, physical development, communication skills, social, emotional, and adaptive skills. The assessment is completed by completing a series of questions on whether a student can or cannot perform a particular task.

29. Respondent returned the DP-3 to Ms. Scott on [REDACTED].

30. Respondent circled items indicating a “yes” response. During the hearing, however, Respondent acknowledged the student would not be capable of performing the tasks. In addition, Ms. Scott did not believe [REDACTED] could perform the skills for which Respondent answered yes.

31. Based on the evidence offered at hearing, some of the responses Respondent provided on the DP-3 were inaccurate.

Performance Assessments

32. Throughout her career, Respondent had been assessed as progressing or effective related to instructional practice as an educator.

33. For the [REDACTED] informal classroom teacher instructional assessment performed by Ms. Baxley, Ms. Cino, and Mr. Sanford, Ms. Miller was

assessed as unsatisfactory in multiple areas.¹ However, in the areas of criticism, it was also noted that Ms. Miller was engaged in instruction of students. Interestingly, she was criticized for a child wandering to her desk, and then, criticized for leaving the group of students she was working with to redirect the wandering student. In another instance, the observers were critical of a Positive Behavioral Interventions Support plan but Ms. Miller was never trained in the area of behavioral management.

34. For the 2019 informal classroom teacher evaluation, Ms. Miller was assessed effective in each category, including areas where she was assessed unsatisfactory in [REDACTED]

Disciplinary Action at WPES

35. For the first time in her career, Respondent received disciplinary action while working at WPES.

36. On or about [REDACTED], Respondent was issued an oral reprimand for purported failure to supervise the students assigned to her.

37. On or about [REDACTED], Respondent was issued a written reprimand for misconduct for purported falsification of documents.

38. On or about [REDACTED], Respondent was issued a written reprimand for alleged failure to supervise a student assigned to her.

39. On or about [REDACTED], Respondent was issued Step One progressive discipline for substandard performance due to behavioral concerns in her classroom and failure to report grades.

40. On or about [REDACTED], Respondent was issued a Step Two verbal reprimand regarding substandard performance.

¹ In [REDACTED], Ms. Miller was assessed unsatisfactory in the following areas: 2b. establishing a culture for learning, managing student behavior; 3b. using questioning and discussion techniques; and 3c. engaging students in learning.

41. On or about [REDACTED], Respondent was issued a Step Three progressive discipline written reprimand regarding substandard performance.

42. Respondent's educator certificate has no prior discipline.

CONCLUSIONS OF LAW

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

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

45. Petitioner is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012.

46. This is a proceeding in which Petitioner seeks to impose discipline against Respondent's educator certification. As a result, Petitioner bears the burden of proving the specific allegations of wrongdoing that support the charges alleged in the Administrative Complaint 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). Because disciplinary proceedings are considered penal in nature, Petitioner must prove the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

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

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony

must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re 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. v. Shuler Bros. Inc.*, 590 So. 2d 986, 989 (Fla. 1991).

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

a. Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

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

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial

may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

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

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

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

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

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

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

49. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in favor of the licensee. *Elmariah v. Dep't of Prof'l Reg.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *Taylor v. Dep't of Prof'l Reg.*,

534 So. 2d 782, 784 (Fla. 1st DCA 1988). Disciplinary statutes and rules must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden their application. *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 99-100 (Fla. 1st DCA 2008); *Dyer v. Dep't of Ins. & Treas.*, 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

50. 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); *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). 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 Shore Vill. Prop. Owner's Ass'n, Inc. v. Dep't of Envtl. Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); *Delk v. Dep't of Prof'l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

51. The Administrative Complaint seeks to discipline Respondent on charges that she violated sections 1012.795(1)(g) and 1012.795(1)(j), in pertinent part, as follows:

(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:

* * *

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

* * *

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

52. As to Count One, there was not clear and convincing evidence that Respondent's actions seriously reduced her effectiveness. To the contrary, after adjustments were made and Respondent was reassigned to a different classroom, her assessments reflected effective performance in each category. The testimony offered at hearing clearly and convincingly demonstrated that Respondent's actions were, in part, rooted in her lack of training to serve in the classroom to which she was assigned. The clear and convincing evidence from two teachers who knew Respondent's background and worked with her, was that she did not have sufficient training in managing students with behavioral challenges, she had never completed documents related to assessment of students, and she had never instructed students in a classroom with only ESE students.

53. In his PRO, Petitioner asserted that "reduction in effectiveness may be shown in some instances simply from the nature of the misconduct. *Purvis v. Marion Cty. Sch. Bd.*, 766 So. 2d 492 (Fla. 5th DCA 2000); *Walker v. Highlands Cty. Sch. Bd.*, 752 So. 2d 127 (Fla. 2d DCA 2000); *Summers v. Sch.*

Bd. of Marion Cty., 666 So. 2d 175, 175 (Fla. 5th DCA 1995).” The undersigned is not persuaded by Petitioner’s argument.

54. Count Two cannot constitute an independent violation, but rather is dependent upon a corresponding violation of the rules constituting the Principles of Professional Conduct.

55. Counts Three and Four of the Administrative Complaint seek to discipline Respondent on charges that she violated rules 6A-10.081(2)(a)1. and 6A-10.081(2)(c)1., which state:

(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) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

56. As to Count Three, Petitioner has proven by clear and convincing evidence that Respondent failed to make reasonable effort to protect a student from conditions harmful to ■■■ safety when she left a nonverbal student on the playground without supervision.

57. As to Count Four, the Administrative Complaint alleges Respondent failed to maintain honesty in all professional dealings by providing false answers on the DP-3 assessment for [REDACTED] Rule 6A-10.081(2)(c)1. does not define the term “honesty.” If a term is not defined in rule or statute, its common ordinary meaning applies. *Cole Vision Corp. v. Dep't of Bus. & Prof'l Reg.*, 688 So. 2d 404, 410 (Fla. 1st DCA 1997). It is appropriate to refer to dictionary definitions when construing statutes to determine the plain and ordinary meaning of the words used therein. *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009). Merriam Webster’s online dictionary defines “honesty” as “adherence to the facts; fairness and straightforwardness of conduct.” See "Honesty," <https://www.merriamwebster.com/dictionary/honesty> (last visited March 25, 2021). Petitioner has proven by clear and convincing evidence that Respondent's answers on the DP-3 were false. The answers provided on the assessment could have led to the student not receiving the services needed. Respondent had not been trained on completing the DP-3 and she believed that her incomplete form would not be used for the student. However, she submitted the form with false information. Thus, it has been established that Respondent failed to maintain honesty in her professional dealings and committed the violation alleged in Count Four.

58. By establishing the specific violations alleged in Counts Three and Four, Petitioner has established the general violation of the Principles of Professional Conduct alleged in Count Two.

59. Florida Administrative Code Rule 6B-11.007(2) establishes the range of penalties for violations of sections 1012.795(1)(g) and 1012.795(1)(j) and rules 6A-10.081(2)(a)1. and 6A-10.081(2)(c)1. The version of the rule in effect at the time of Respondent’s offenses provided 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,” “restrict scope of practice,” “fine,” and “administrative fees and/or costs” with applicable terms thereof as additional penalty provisions in each case in which neither a suspension or revocation is imposed, the penalty shall include a letter of reprimand. The terms “suspension” and “revocation” shall mean any length of suspension or revocation, including permanent revocation, permitted by statute, and shall include comparable denial of an application for an educator’s certificate.

(g) Engaging in personal conduct which seriously reduces effectiveness as a district school board employee in violation of section 1012.795(1)(g), F.S. (Probation to Revocation).

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

* * *

1. Failing 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. (Reprimand to Revocation).

* * *

15. Failing to maintain honesty in all professional dealings. [subparagraph 6A-10.081(2)(c)1., F.A.C.] (Reprimand to Revocation).

60. The Commission may consider the following as aggravating or mitigating factors:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;

- (e) The number of times the educator has been previously disciplined by the Commission;
- (f) The length of time the educator has practiced and the contribution as an educator;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty upon the educator's livelihood;
- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;
- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;
- (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (o) Actual negligence of the educator pertaining to any violation;
- (p) Penalties imposed for related offenses under subsection (2), above;
- (q) Pecuniary benefit or self-gain inuring to the educator;
- (r) Degree of physical and mental harm to a student or a child;
- (s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
- (t) Any other relevant mitigating or aggravating factors under the circumstances.

61. Respondent has shown mitigation by affirmative evidence of good teaching skills. She has served as an educator for approximately 20 years without any prior disciplinary action against her educator certificate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is **RECOMMENDED** that the Education Practices Commission enter a final order finding that:

1. Respondent violated the statues and rules as referenced above;
2. Respondent be placed on probation for a period of two years, with conditions to be determined by the Education Practices Commission.

DONE AND ENTERED this 31st day of March, 2021, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2021.

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.