

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

vs.

Case No. 20-0664PL

NIKKI WARRIS,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge ("ALJ") Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings ("DOAH") on October 27 and 28, 2020, by Zoom conference.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Charles T. Whitelock, P.A.
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Fort Lauderdale, Florida 33316

For Respondent: Mark S. Wilensky, Esquire
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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether Respondent violated section 1012.795(1)(f), (g), and (j), Florida Statutes, and Florida Administrative Code Rules 6A-10.081(2)(a)1., 5., and 8., and 6A-10.081(2)(b)1., and 3., as alleged in the Amended Administrative Complaint.

If it is found that Respondent has committed any of the statute or rule violations alleged, the penalty that should be imposed must also be determined.

PRELIMINARY STATEMENT

On April 18, 2019, Petitioner, Richard Corcoran as Commissioner of Education for the State of Florida ("Petitioner"), filed an Administrative Complaint against Respondent, Nikki Warris ("Respondent"). The original Administrative Complaint was later superseded by the Amended Administrative Complaint, alleging violations of section 1012.795(1)(f), (g), and (j), and rules 6A-10.081(2)(a)1., 5., and 8. and, 6A-10.081(2)(b)1., and 3. Respondent timely filed an Election of Rights form disputing the allegations and requesting a hearing pursuant to section 120.57(1), Florida Statutes. On February 7, 2020, the matter was referred to DOAH for assignment of an ALJ.

The final hearing was originally set for April 16, 2020, but was continued at the joint request of the parties, with good cause having been shown. The hearing commenced on October 27, 2020, and concluded on October 28, 2020. Petitioner's Exhibits 1 through 6, 8, 9, 11, and 12 were admitted into evidence. Respondent's Exhibits 3 and 18 were also admitted into evidence. Petitioner presented the testimony of Kristin Saffici; Rachel Capitano ("Principal Capitano"); Justine Young; Denise D'Augelli; and Renee and Charles Horn (sometimes collectively "C.V.'s parents"). Respondent testified on her own behalf, and also presented the testimony of H.L.; J.T.; A.E.; Gary Chapman ("Officer Chapman"); and Joseph Guadagnino.

The two-volume Transcript of the proceeding was filed with DOAH on November 12, 2020. During the hearing, the parties requested to have 30 days from the filing of the transcript to submit their proposed

recommended orders, which the undersigned granted. The undersigned granted an additional extension based on an unforeseen emergency that reasonably restricted Respondent's counsel from meeting the agreed-upon submission deadline. The parties both submitted their proposed recommended orders in conformity with the ultimate deadline of December 21, 2020. The undersigned has carefully considered both submissions in the preparation of this Recommended Order.

All statutory references shall be to the 2018 version of the Florida Statutes, unless stated otherwise.

FINDINGS OF FACT

Based on the demeanor and credibility of the witnesses, the documentary evidence admitted, and the record as a whole, the following facts are found:

1. Respondent held Florida Educator's Certificate Number 1294936, covering the areas of English, English for Speakers of Other Languages (ESOL), and Reading, which was valid through June 30, 2020.
2. At all times material to the allegations in the Amended Administrative Complaint, Respondent was employed as a Reading Teacher at Don Estridge High Tech Middle School ("Don Estridge") in the Palm Beach County School District.

C.V.'s Relevant Background

3. During the 2017-2018 school year, C.V. was an eighth-grade student at Don Estridge. Respondent was his intensive reading teacher. Intensive reading is a remedial course for students who are reading below grade level.

4. Prior to working with Respondent, C.V.'s grades were below average. He received D's and F's in school.

5. In 2016, C.V.'s mother, Renee Horn, married C.V.'s stepfather, Charles Horn. Prior to that marriage, C.V. was an only child living alone with his mother from the time he was two years old. C.V.'s stepfather also had

children from a previous relationship. At the time C.V. met Respondent, his parents observed that he was having a difficult time adjusting to their newly-blended family.

6. C.V.'s parents allowed him to spend time with his biological father. However, in their parental judgment, they believed that it was in C.V.'s best interest to limit visitation with his biological father.

7. C.V.'s parents observed that C.V. displayed signs of non-characteristic fragility and volatility while he was under the instruction of Respondent, which concerned them. C.V.'s parents believed that the demonstrated emotional changes in C.V. were related to his friendship with Respondent and his resistance to the parents' desire to draw more boundaries with respect to that friendship.

8. C.V. did not testify. Therefore, the source, or sources, of the behavioral issues observed by his parents and other adults around him were not conclusively established.

Respondent's Relevant Background

9. Respondent viewed herself as a teacher who was relatable to her students. She was an enthusiastic and energetic educator who enjoyed taking the time to help students whom she described as having previously slipped through the cracks.

10. Respondent regularly provided extra help to students who requested it. Her door was open to any of her students who desired additional assistance with their school work. She regularly provided academic help to students during her lunch break.

Tutoring

11. C.V. first began receiving extra help with his school work from Respondent during his lunch period. In addition to C.V., Respondent regularly had between five and 15 other students in her classroom during the seventh-grade lunch period. This was also the time allotted to Respondent for her own lunch break. There was also a group varying between five and ten

students whom she allowed to come to her classroom to work while she was teaching another class. Additionally, C.V. came to Respondent for help with his work in the mornings before school started. After C.V. began spending extra time working with Respondent, his grades improved. C.V.'s parents were aware of the correlation between the help from Respondent and the improvement in C.V.'s academic performance.

12. In December of 2017, C.V.'s mother contacted Respondent and asked her to tutor C.V. outside of school on a private basis in exchange for payment.

13. Respondent communicated with C.V.'s mother through email and text messages. Respondent authorized C.V.'s mother to give Respondent's cell phone number to C.V. so that he could communicate with her directly for educational purposes while the mother was at work. There was no evidence of the content of any text messages between Respondent and C.V.

14. C.V. rode the school bus as his mode of transportation to return home after school. He was unable to stay after school for tutoring and still take the bus to get home.

15. Although it was common for teachers to tutor students at a public library located near Don Estridge, Respondent found that when doing so, she often had to wait with students after tutoring sessions at the library for parents to arrive to provide transportation. This sometimes interfered with Respondent's ability to pick up her own children from preschool on time.

16. For that reason, Respondent tutored C.V. after school at his home. She ensured that others were present at the home during tutoring sessions. Respondent also continued helping C.V. at school outside of his scheduled time in her class on an unpaid basis.

17. With the consent of C.V.'s mother, Respondent transported C.V. from the school to his home either after helping him at school or when she was going to his home to tutor him.

18. There was one occasion when Respondent drove C.V. to school for which it was unclear whether the parents gave her permission to do so.

19. Believing that C.V. had developed an unhealthy attachment to Respondent, C.V.'s parents desired to limit his interaction with her. However, they did not terminate the tutoring sessions. Additionally, C.V.'s mother initiated contact between Respondent and C.V. on matters unrelated to academics amid the parents' efforts to create boundaries in the relationship.

C.V.'s Time Spent in Respondent's Classroom

20. In order to come to her classroom during their designated lunch periods, students were required to have a pass signed by Respondent. Those students who came to Respondent's classroom during lunch regularly reused the same pass to eliminate the need for her to create a new pass each time. C.V., along with other students, had such a pass issued by Respondent.

21. Several witnesses testified that C.V. had a sticker on the back of his student identification card, which they characterized as a permanent pass placed there by Respondent, enabling C.V. to visit her classroom at any time. However, the provenance and meaning of the sticker were never conclusively established.

22. On several occasions, C.V. left his elective music class to do work from other classes in Respondent's classroom. He did so with the coordinated permission of Respondent and the music teacher. Respondent believed that it was reasonable for C.V. to do so because her classroom provided a quieter environment for his studies and he was ahead in the music class because of his existing background in piano.

23. When C.V.'s parents learned how much time C.V. was spending in Respondent's classroom during the school day, they thought that it was excessive.

Church Attendance and Sharing Religious Beliefs

24. Respondent served as an unpaid worship leader and co-runner of the children's ministry at a church where her father was the pastor.

Neither she, nor any other person, served in a role designated to recruit members to the church. Respondent did not receive any incentive from the church to bring in new members.

25. Respondent played music of various genres in her classroom. Sometimes she played Christian music.

26. Respondent wore a cross necklace to school. When asked, she was open with students about the general fact that she was a Christian and that she attended church.

27. Witnesses observed flyers with information about Respondent's father's church on her desk. It was not established that any students received, or even saw, the flyers.

28. Some of Respondent's students have attended her father's church. When a student expressed interest in the church, Respondent did not give the student information about the church without express permission from a parent.

29. With the permission of his parents, C.V. attended Respondent's father's church on several occasions. His parents attended the church with him on one occasion. Also, with the permission of his parents, C.V. was transported to and from church by Respondent or her husband and spent time with Respondent's family at her home after church.

30. At some point, C.V. told some of his classmates that he attended Respondent's church. The nature of C.V.'s comments to his classmates about attending church with Respondent remains unclear. The evidence did not establish that Respondent directed him to do so.

31. Admittedly out of frustration, Respondent posted a Psalm on the door outside of her classroom before leaving Don Estridge on her last day. She had contemplated handing the Psalm to Principal Capitano, but chose to place it on the door instead. A teacher observed the Psalm on the door, and an assistant principal removed it.

Overnight Visits

32. On one occasion, C.V. spent the night at Respondent's home with her family while his mother was out of town on a business trip. Having the impression that C.V. was unhappy at the prospect of going on the trip, Respondent and C.V.'s mother arranged for C.V. to stay with Respondent and her family for the weekend.

33. C.V. spent the night at Respondent's home on a second occasion, which was also coordinated between Respondent and C.V.'s mother.

34. C.V. expressed that he wanted to live with Respondent and that he knew more about her than her husband.

Exchanging Gifts

35. C.V.'s mother gave Respondent a number of gifts during the time when she was C.V.'s teacher. As a Christmas gift, C.V.'s mother gave Respondent a \$100 gift card and two lipsticks. Later, she gave Respondent dresses for her daughters. Finally, for Valentine's Day, she gave Respondent a stuffed animal and a thermal water bottle. Respondent considered the series of gifts to be very generous.

36. C.V.'s birthday was in February. Respondent wanted to reciprocate the generosity of C.V.'s mother by buying C.V. clothes for his birthday. Respondent sought permission from C.V.'s mother to purchase him clothing, which his mother declined. Believing that C.V.'s mother declined the gifts out of social politeness, Respondent ultimately bought him clothing for his birthday.

Virginity Conversation

37. One day during class, some of Respondent's students were discussing the topic of virginity among themselves. Respondent was not a party to the conversation until C.V. asked her at what age she thought kids should lose their virginity. Respondent believed that this was an age-appropriate topic for her 12- and 13-year old students to be curious about, but she declined to answer the question. She then told C.V. that it was not an appropriate

question for her and that he should ask his mother instead. Although numerous witnesses testified to what they thought Respondent said to her students about virginity, Respondent is the only witness who was present during the conversation. Her testimony on the subject was credible.

38. Principal Capitano testified that if a student brings up the topic of virginity to a teacher, the teacher should respond by saying that it is not an appropriate conversation to have.

Meeting with the Guidance Counselor and Aftermath

39. On March 12, 2018, Respondent became concerned that C.V. was exhibiting behavior that caused her to fear that he was considering harming himself. Although she did not believe that C.V. wanted to go, Respondent escorted him to see one of the school's guidance counselors, Kristen Saffici. Respondent took this action because she believed it was her obligation to do so based on C.V.'s behavior, which she considered potentially self-injurious.

40. Counselor Saffici and Principal Capitano agreed that bringing C.V. to a guidance counselor was the appropriate course of action for Respondent under the circumstances.

41. Respondent remained in the meeting with Counselor Saffici and C.V. Respondent told Counselor Saffici about her impressions of the problems C.V. was having. Over the course of explaining the background of what she believed to be C.V.'s problems, Respondent stated that she "loved him like a son." Counselor Saffici thought that the statement was inappropriate. From Respondent's perspective, saying that she loved C.V. like a son was a device she regularly employed with students to offset, or soften, a concurrent critical statement.

42. During the meeting, Counselor Saffici observed that C.V. appeared withdrawn and sullen. He had his backpack on the table with his head down on the backpack and did not make eye contact. Respondent consoled C.V. by rubbing his head. Counselor Saffici believed that Respondent's behavior toward C.V. was not appropriate. Counselor Saffici, however, did not perceive

the behavior to be sexual in nature. Based on her observations, Counselor Saffici believed that Respondent had no mal intent. It was her opinion that Respondent had C.V.'s best interest at heart.

43. Following the meeting with Counselor Saffici, the school resource officer, Gary Chapman, interviewed C.V. independently to determine whether C.V. was a threat to himself or others. Officer Chapman concluded that C.V. was not considering self-harm at that time. Based on the interview, Officer Chapman's understanding was that C.V.'s emotional distress was related to his desire to see his biological father more often.

44. C.V.'s parents met with Principal Capitano, Counselor Saffici, and Officer Chapman. Having determined that there was no reason to suspect a sexual relationship between Respondent and C.V., Officer Chapman closed his investigation.

45. Principal Capitano told Respondent not to have further contact with C.V. The next day, C.V. came, unexpectedly, to Respondent's classroom to see her. Respondent spoke to him, but tried to get him to leave without alarming him or being rude. After C.V. left, Respondent immediately advised Principal Capitano and Counselor Saffici that he came to her classroom, and Respondent sought their guidance on what to do. Feeling that she did not have clear direction on what to do if C.V. came back, Respondent posted a Psalm on her door and left Don Estridge after her first-period class.

46. In a letter dated March 16, 2018, Principal Capitano recommended Respondent's termination as a probationary employee at Don Estridge, effective March 27, 2018. The letter did not specify a reason for Respondent's termination, but stated: "Probationary Contract Employees may be dismissed without cause or may resign without breach of contract." Principal Capitano, however, testified that she recommended Respondent's termination because she believed that Respondent had violated the Code of Ethics. Specifically, Principal Capitano thought that Respondent put herself in a position where her relationship with a student was causing him duress.

47. Following the events of March 12, 2018, C.V.'s parents arranged for C.V. to talk to a therapist. Thereafter, they observed improvements in his behavior. The content of the discussions C.V. had with his therapist was not conclusively established.

Overall Nature of C.V. and Respondent's Relationship

48. C.V.'s parents believed that C.V. saw Respondent as a girlfriend. However, they never thought that Respondent considered the relationship romantic or that anything sexual occurred.

49. Some of Respondent's colleagues thought that her relationship with C.V. was uncomfortable or lacked appropriate boundaries.

50. C.V.'s mother, viewed Respondent as a positive role model.

51. In encouraging Respondent's relationship with C.V. in some respects, while attempting to establish more boundaries in others, C.V.'s parents were trying to balance the dramatic improvement in C.V.'s grades with what they believed to be C.V.'s unhealthy attachment to Respondent.

52. Respondent believed that C.V. was very bright, but not applying himself in school. It was her desire to help him fulfill his potential. On a social level, she thought that he was a polite young man who shared hobbies with her husband and interacted well with her daughters.

CONCLUSIONS OF LAW

53. DOAH has jurisdiction over the subject matter of this case and the parties hereto pursuant to sections 120.569 and 120.57(1).

54. The Florida Education Practices Commission is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012.

55. In this proceeding, Petitioner seeks to impose discipline against Respondent's educator certification. Because disciplinary proceedings are considered penal in nature, Petitioner is required to prove the allegations in

the Administrative Complaint by clear and convincing evidence. *See Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

56. 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)). "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. 1991).

57. The material allegations in this case are contained in paragraphs 3 through 10 of the Amended Administrative Complaint:

3. During the 2017-2018 school year, the Respondent exploited her position as a teacher to solicit or encourage her students and their parents to attend or join her father's church in Boca Raton. Of particular note was her inappropriate involvement with an 8th grade student, C.V. The involvement included, but was not limited to the Respondent:

- a. Tutoring the student in violation of the collective bargaining agreement;
- b. Allowing overnight stays at her house;

- c. Having the student attend church with the Respondent;
- d. Transporting the student to and from school;
- e. Issuing a permanent pass to the student to come any time to her classroom;
- f. Having the student spend his lunch time with her rather than his peers;
- g. Arranging the student's schedule to be with her rather than attend music class;
- h. Sharing intimate [intimate] details about her life, including when she lost her virginity;
- i. Repeatedly telling him that she "loved him like a son."

4. In addition, and over the course of the school year, Respondent exploited her professional relationship with CV for her own personal interests and religious beliefs. After months of enticing CV to have his parents attend her father's church, the parents finally relented and went with CV to a service in mid-February. Thereafter, Respondent promised CV that he could be saved. However, when the parents advised the Respondent that they would rather CV not be further involved in the father's church, Respondent told CV that his mother said he couldn't be saved (because his parents didn't want to attend her father's church services).

5. A week or so later, Respondent had CV address the entire class about his involvement in Respondent's father's church. As a result, and according to the Respondent, the entire class and several parents agreed to attend her father's church service. CV's parents, who were concerned about his emotionally inappropriate relationship with his teacher, requested Respondent to cease such further activity outside the classroom with their son.

6. However, Respondent continued to constantly text or call CV for matters unrelated to his education. Even after the parent(s) requested Respondent to stop the constant communication,

Respondent persisted. On one occasion, Respondent informed CV's mother that she wanted to buy him an expensive set of shoes for his birthday. When the parents told her that was unacceptable, Respondent used her tutoring time with CV to take him shopping and purchased a costly set of clothing for him. CV, who later told the Guidance Counselor that he knew more about the Respondent than anyone and wanted to live with her, would only wear the clothes purchased by the Respondent. On other occasions, Respondent used the tutoring time to attend her father's church with CV.

7. Respondent continued her inappropriate communications with CV which included Respondent suggesting that CV was depressed over his relationship with his family. On March 12, 2018, the Respondent brought CV to the school's Guidance Counselor claiming CV threatened to harm himself to get his mother's attention. Respondent stated she immediately notified his mother, who purportedly stated this was just attention-seeking behavior. Respondent advised the counselor that she "loves CV like a son" and that he recently asked to live with the Respondent and her family. Respondent advised that CV has been depressed and sad of late because his parents recently began limiting her time with him.

8. The counselor immediately brought the Respondent to meet with and inform the principal of the situation. Upon learning of the relationship between Respondent and CV, Respondent was directed to cease and desist from all communication and contact with CV outside of school and his family. Respondent was also directed not to take CV home or for tutoring. The parents met with the counselor and principal the following morning. They complained that the Respondent and CV have an emotionally inappropriate relationship and were concerned about discussions between Respondent and CV. The parents recently advised CV that boundaries needed to be established with the

Respondent outside the classroom setting causing CV to react in a negative fashion.

9. Following the meeting, a schedule change was implemented, moving CV from the Respondent's classroom. Further CV's "permanent" ID pass to the Respondent's classroom was cancelled. CV was directed to report to the common area in the morning and lunch with his peers. Respondent was directed not to communicate with CV or allow him to spend lunch time in her classroom. Respondent became visibly upset and left the school during the second period on March 14th, 2018.

10. On March 15th Respondent contacted the Guidance Counselor to seek clarification on communication with CV. According to the Respondent, CV claimed his parents stated that the Respondent was in "big trouble." The principal reminded the Respondent of the non-communication directive issued on March 12th. Later that day, Respondent was overheard playing Christian music in her classroom and observed passing out church flyers to students. Respondent had also posted a fifty stanza Psalm (David Praises the Lord for Rescuing Him) on the outside of her classroom door. Respondent was notified by the principal that she was under investigation and sent home for three days. After leaving the classroom, multiple copies of a church flyer entitled YOUTH MEET AND GREET advertising a grand opening for ages 10- middle school the following evening at her father's church. An investigation followed.

11. On April 3rd, 2018, Respondent was provided written notice that her employment with the district was terminated effective March 27, 2018 for Ethical Misconduct. Respondent's aforementioned conduct and subsequent termination of her employment resulted in a loss of Respondent's effectiveness in the school district as an educator.

12. Following the Respondent's termination from her employment, CV was harassed by other students, claiming he had a "relationship" with the Respondent which caused her to be fired. CV was required to subsequently seek professional counseling.

58. In considering the proof offered to establish these allegations, the undersigned is bound by the limitations on the use of hearsay evidence in administrative proceedings, as set forth in section 120.57(1)(c), which states, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

59. Various forms of hearsay were offered into evidence, all subject to being reconsidered and weighed by the undersigned in light of the above-referenced law.

60. C.V. did not testify in this case. Most of the statements attributed to him by other witnesses were uncorroborated hearsay not subject to any exception. Accordingly, such evidence was not considered by the undersigned as a basis for findings of fact.

61. Findings of fact were made, however, with respect to the non-hearsay statements relating to Respondent telling C.V. that she "loves him like a son," and, as to the conversation between Respondent and C.V. about virginity. In both instances, the statements were admitted as verbal acts having independent legal significance in proving, or disproving, the charges in the Amended Administrative Complaint. Because these statements and conversations were specified in the material allegations of the Amended Administrative Complaint as part of the factual predicate underlying the charges against Respondent, they have independent legal significance and were not offered for the truth of the matters asserted. *See A.J. v. State*, 677 So. 2d 935 (Fla 4th DCA 1996); *Cephas v. State Dep't. of HRS*, 719 So. 2d 7 (Fla. 2d DCA 1998). The same logic underlies the admission of C.V.'s

statements that he wanted to live with Respondent and that he knew more about her than her husband. These statements were not admitted for their truth, but for the purpose of showing that they were made.

62. Count 1 of the Amended Administrative Complaint charges Respondent with a violation of section 1012.795(1)(g), which authorizes discipline when, upon investigation, the certificate holder has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of a school board.

63. Petitioner did not prove Count 1 by clear and convincing evidence. No evidence was presented to indicate that Respondent was an ineffective employee. To the contrary, the uncontroverted evidence established that Respondent worked diligently with all of her students and that C.V.'s academic performance improved markedly under her instruction.

64. Count 2 of the Amended Administrative Complaint charges Respondent with violating section 1012.795(1)(j), which authorizes discipline when a certificate holder has violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules. This count cannot constitute an independent violation, but rather, is dependent upon a corresponding violation of the rules constituting the Principals of Professional Conduct.

65. Petitioner did not prove Count 2 by clear and convincing evidence, for reasons that will be explicated in full as to the specific State Board of Education rules cited in the remaining counts.

66. Count 3 of the Amended Administrative Complaint charges Respondent with violating rule 6A-10.081, in that she, "failed to make a reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety."

67. Petitioner did not prove Count 3 by clear and convincing evidence. First, the evidence showed that Respondent made every effort to create conditions that were favorable to C.V.'s learning. Secondly, there is no

evidence in the record tending to show any causal connection between Respondent's conduct and C.V.'s mental or physical health. Although there was ample evidence that some of Respondent's conduct was considered inappropriate by her peers, and that C.V. was displaying emotionally volatile behavior during his relationship with Respondent, there was no admissible evidence of a nexus between the two. Similarly, with respect to C.V.'s statements about wanting to live with Respondent or believing that he knew more about her than her husband, the evidence did not show that the statements were true or that Respondent did anything to encourage them.

68. Count 4 of the Amended Administrative Complaint charges Respondent with violating rule 6A-10.081(2)(a)5. "in that Respondent intentionally exposed a student to unnecessary embarrassment or disparagement."

69. Petitioner did not prove Count 4 by clear and convincing evidence. There was no evidence adduced at the hearing showing that C.V. was exposed to embarrassment or disparagement by any intentional conduct on Respondent's part.

70. Count 5 of the Amended Administrative Complaint charges Respondent with misconduct "in violation of Rule 6A-10.081(2)(a)8 in that Respondent exploited student(s) for personal gain or advantage."

71. Petitioner did not prove Count 5 by clear and convincing evidence. Although it is undisputed that Respondent tutored C.V. in exchange for payment, there was no evidence presented that she exploited him for personal gain or advantage. The word "exploit," in the context of the rule, means "to make use of meanly or unfairly for one's own advantage." *Merriam-Webster Online Dictionary*, "exploit". <http://www.merriam-webster.com> (last visited Jan. 12, 2020). However, no evidence was presented to support the contention that Respondent made use of the tutoring relationship to her unfair advantage or to the detriment of C.V. The evidence shows that while Respondent was tutoring C.V. outside of school in exchange for payment, she

continued to provide him with additional assistance with his studies above and beyond his scheduled instructional time in her classroom. She provided the additional assistance without compensation. Although Respondent admittedly invited students to her father's church with the permission of their parents, there was no evidence that she received a benefit of any kind for their attendance.

72. Count 6 of the Amended Administrative Complaint charges Respondent with misconduct in violation of rule 6A-10.081(2)(b)1. in that she, "failed to take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated."

73. Petitioner did not prove Count 6 by clear and convincing evidence. There is no evidence in the record that Respondent's actions ever created the impression, or the reasonable possibility of the impression, that her religious views represented the institutional philosophy of Don Estridge. There is no evidence that she presented her Christianity and church attendance as anything other than her personal faith. There is no evidence that Respondent ever discussed her faith or her father's church with students unless they asked her. Additionally, the record is clear that Respondent only provided information about attending her father's church to students with the permission of their parents. With respect to Respondent posting a Psalm on her classroom door, there was also no evidence tending to show that this was anything other than an expression of her personal views that were separate from the secular educational mission of Don Estridge.

74. Count 7 of the Amended Administrative Complaint charges Respondent with misconduct "in violation of Rule 6A-10.081(2)(b)3 in that Respondent used her institutional privileges for personal gain or advantage."

75. Petitioner did not prove Count 7 by clear and convincing evidence. There is no evidence in the record showing that Respondent used her institutional privileges for personal gain or advantage. Although Respondent

received remuneration for tutoring C.V. outside of school, which was an economic gain, there is no evidence that she used her institutional privileges for her own benefit. It is undisputed that C.V.'s mother initiated contact with Respondent to establish the tutoring relationship. After C.V. attended the tutoring sessions and received additional uncompensated help from Respondent, his grades improved significantly. There is no evidence that she leveraged her position as a teacher in pursuit of personal gain or advantage. Finally, the allegation that Respondent used her position as a teacher to recruit students to attend her father's church for personal gain is speculative and not buttressed by any evidence in the record.

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 Amended Administrative Complaint and all charges contained therein.

DONE AND ENTERED this 15th day of January, 2021, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 15th day of January, 2021.

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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.