

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

vs.

Case No. 20-0994PL

DAVID SOLZ,

Respondent.

RECOMMENDED ORDER

This case was heard on July 28 and 29, 2020 by Zoom Conference, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUES

Whether Respondent should be subject to discipline as a result of the violations of section 1012.795(1)(j) and rule 6A-10.081(2)(c)4., as alleged in the Administrative Complaint and, if so, the nature of the sanctions.

PRELIMINARY STATEMENT

On September 5, 2019, the Commissioner of Education issued an Administrative Complaint against Respondent which alleged that:

During the 2017/2018 school year, Respondent engaged in a sexual relationship with Brooke Jahn, a married teacher who was a direct report to Respondent. During the course of their relationship, Respondent afforded Teacher Jahn preferential treatment as compared to similarly situated employees thereby creating a hostile work environment. Respondent's preferential treatment of Teacher Jahn included but was not limited to:

- a) Jahn was provided training not offered or made available to other teachers;
- b) Respondent had Jahn accompany him on at least one school related out of town trip without making the opportunity available to other teachers; and
- c) Rules regarding supervision of students were relaxed for Jahn as compared to other teachers.

On September 26, 2019, Respondent timely filed an Election of Rights by which he requested a formal hearing. On February 24, 2020, the matter was referred to the Division of Administrative Hearings for an evidentiary hearing.

The final hearing was first scheduled for April 14 and 15, 2020, and subsequently re-scheduled for July 28 and 29, 2020. The hearing was thereafter convened and conducted as scheduled.

At the commencement of the final hearing, Respondent's Motion to Strike Petitioner's Second Amended Witness List was taken up. The Motion was directed to a single witness added by Petitioner after the time set in the Order of Pre-hearing Instructions. Counsel for Petitioner indicated that he did not intend to call the subject witness. The Motion was then withdrawn, and further action on the Motion is moot.

At the final hearing, Petitioner presented the testimony of Paul Levitra, Leon County School District (LCSD) Director of Internal Auditing; Sue Kraul, LCSD Director of Elementary Schools; Deanna McAllister, LCSD Assistant Superintendent; Michele Vasquez, a teacher at Gilchrist Elementary School (GES); Wendy Bryars Baggett, a teacher at GES; Melissa O'Brien, a teacher at GES; John Hunkiar, LCSD Chief of Safety, Security, and Professional Practices; and Rocky Hanna, LCSD Superintendent. Petitioner's Exhibits 1, 3, 5, 6, 8 through 10, 12, 14, 15, 18, and 20 were received into evidence.

During the course of the hearing, Petitioner disclosed that two of the Commissioner's witnesses, Michelle Adams and Nathan Miller, were unable to appear. Ms. Adams could not appear for a reason that constitutes good cause. Mr. Miller failed to respond to a subpoena, though Petitioner did not see the need to have the subpoena enforced in circuit court. A post-hearing Procedural Order was entered providing Petitioner with the opportunity to depose the witnesses, if still deemed to be necessary, with their depositions to be filed as late-filed exhibits. No depositions were subsequently filed.

In his case-in-chief, Respondent presented the testimony of Dr. Jasmine Canady Smith, Principal at Oak Ridge Elementary School and, during the 2016-2017 school year, Assistant Principal at GES; Orande McKhan, Assistant Principal at Pineview Elementary School and, during the 2017-2018 school year, Guidance Counselor/Resource Teacher at GES; Rosemary

Wyatt, Guidance Counselor at GES; Melissa Sumner, Assistant Principal at Lincoln High School and, during the 2017-2018 school year, Assistant Principal at GES; Bevin Stevenson, Guidance Counselor at GES; Brooke Jahn (now Brooke Solz), Gadsden County Schools District Secondary Reading Specialist and, during the 2017-2018 school year, a third-grade teacher at GES; and Whitney Hobbs, a Duval County Schools elementary school teacher and, during the 2017-2018 school year, Ms. Jahn's intern/student teacher at GES. In addition, Respondent testified on his own behalf. Respondent's Exhibits 1 through 9 and 11 were received in evidence.

A four-volume Transcript of the proceedings was filed on September 1, 2020. Both parties thereafter timely filed Proposed Recommended Orders which have been duly considered by the undersigned in the preparation of this Recommended Order.

The actions that form the basis for the Administrative Complaint were generally alleged to have occurred during the 2017-2018 LCSD school year starting in August 2017, with the last date of significance being Respondent's and Ms. Jahn's attendance at the Instructional Leadership Team Summer Institute in Tampa, Florida on June 11 and 12, 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 shall be to the 2017 versions, unless otherwise specified.

FINDINGS OF FACT

1. The Florida Education Practices Commission is the state agency charged with the duty and responsibility to revoke or suspend, or take other

appropriate action with regard to teaching certificates as provided in sections 1012.795 and 1012.796, Florida Statutes (2020). § 1012.79(7), Fla. Stat.

2. Petitioner, as Commissioner of Education, is charged with the duty to file and prosecute administrative complaints against individuals who hold Florida teaching certificates and who are alleged to have violated standards of teacher conduct. § 1012.796(6), Fla. Stat. (2020).

Stipulated Facts

3. Respondent holds Florida Educator's Certificate 766965, covering the areas of Educational Leadership, Elementary Education, and School Principal, which is valid through June 30, 2023.

4. During the 2017-2018 school year, Respondent was employed as a Principal at GES in the LCSD, where he had been employed since 2008.

5. During the 2017-2018 school year, Brooke Jahn (now Brooke Solz) was employed as a classroom teacher at GES, and, therefore, under the Respondent's supervision. Ms. Jahn was married to a LCSD employee assigned to another school.

6. Ms. Jahn was an adult during all times material to this complaint.

7. On June 11 and 12, 2018, Respondent and Ms. Jahn attended the Instructional Leadership Team Summer Institute hosted by the Florida Department of Education at the Innisbrook Resort & Golf Club in Palm Harbor, Florida.

8. On or about July 11, 2018, Ms. Jahn requested a transfer from GES to another school within the LCSD.

9. On or about July 12, 2018, Mr. Solz reported to LCSD Superintendent Rocky Hanna that he was involved in a romantic relationship with Ms. Jahn.

10. On July 18, 2018, Superintendent Hanna placed Respondent on administrative leave with pay pending the pending the outcome of an investigation.

11. On August 31, 2018, Leon County Schools Superintendent Rocky Hanna issued Respondent a letter of reprimand.

12. On August 31, 2018, Mr. Solz was reassigned to the LCSD Department of Teaching and Learning, effective September 4, 2018.

13. On September 17, 2018, Professional Practices Chief John Hunkiar reported Mr. Solz to the Office of Professional Practices Services.

14. On November 8, 2018, the Florida Department of Education, Office of Professional Practices Services, initiated an investigation into alleged misconduct by Respondent.

15. On or about July 9, 2019, Mr. Solz was reassigned as the principal at Astoria Park Elementary School in Leon County.¹

Evidentiary Findings

16. The following findings of fact are supported by the record. Contrary testimony and evidence has been considered and rejected.

David Solz

17. Mr. Solz is, by all credible accounts, a “wonderful” principal and administrator, with a solid reputation as an LCSD administrator. Prior to this proceeding, he had not been the subject of any previous complaints or disciplinary actions during his 20-plus years in education.

18. Testimony and recorded statements that Mr. Solz gave preferential treatment to others, including Ms. Jahn, that he targeted or “formally” wrote up teachers that were not on his preferential list, or that he “only hires young, attractive teachers,” were neither credible nor persuasive. The more credible testimony demonstrated that Mr. Solz was even-handed in his approach to the teachers at GES. If someone showed an interest in moving up in the academic system, he was willing to support them. If they wanted to

¹ The Joint Pre-hearing Stipulation identified the date as July 9, 2018. The date was corrected to 2019 on the record at the hearing.

stay in the classroom, he was accepting. If they felt they needed time away, even up to a year, he was accommodating. He did not show favoritism, and he did not “punish” those who disliked him.

19. By the 2017-2018 school year, Mr. Solz had been divorced for several years. By April of 2018, he was apparently dating a woman who taught at either Ft. Braden Elementary School or Riley Elementary School. That person may have thought that she had some “power” because she was dating a principal, but there was no evidence that she did. More to the point, that person was not Ms. Jahn.

20. Mr. Solz was an “open door” administrator. His office was in plain view, and he made it a practice to never be alone in his office with another teacher with the door closed. There was no evidence that he ever did so.

21. The evidence unequivocally established that Mr. Solz was a good leader at GES, that he was purposefully respectful of his female colleagues, and avoided situations that could be misconstrued.

Brooke Jahn

22. Ms. Jahn was a teacher at GES starting in August 2013. By all credible accounts, Ms. Jahn was ambitious and a go-getter. She knew that she wanted to move from being a classroom teacher into administration. She set high goals, and was willing to take on the work necessary to advance in her career in education, work that others were not willing to do.

23. During the 2017-2018 school year, in addition to her duties as a GES teacher, Ms. Jahn was taking classes to earn her Master’s Degree in Education Leadership. Holding a Master’s Degree in Education Leadership allows one to take a position as a dean, an assistant principal, a principal, or a leader at the school district in some capacity.

24. As part of the curriculum for her degree, Ms. Jahn was required to serve an internship. Ms. Sumner supervised Ms. Jahn, which required Ms. Jahn to spend “lots of time” in the office, generally during her planning

period or after school. Ms. Wyatt documented her progress. Mr. Solz was not overly involved with Ms. Jahn's internship. Upon her completion of her Master's program, Ms. Jahn became one of only three teachers or counselors at GES holding that degree, the others being Mr. McKhan and Ms. Wyatt.

25. In addition to receiving her Master's Degree in Education Leadership, Ms. Jahn took and passed the Florida Educational Leadership Exam (FELE) during the 2017-2018 school year, which qualified her to be considered for a position in education administration. During the period at issue, she had not yet applied to the administrator pool.

26. During the 2017-2018 school year, Ms. Jahn taught third grade at GES. In previous years, Ms. Jahn taught kindergarten. Ms. Jahn wanted to move to the third-grade classroom for several reasons. She wanted experience in detecting early reading deficits. Her kindergarten students were "learning to read." By third grade, students are "reading to learn." Therefore, reading deficits by third grade can affect student achievement. In addition, third grade is a Florida Statewide Assessment (FSA) standardized test grade. Ms. Jahn recognized that experience in administering the FSA was almost a requirement for assignment as an assistant principal.²

27. During the 2016-2017 school year, Ms. Jahn was selected by her kindergarten teacher peers to be the team leader for the kindergarten section. Mr. Solz had no role in that process.

28. Ms. Jahn's selection as kindergarten team leader earned her a spot on the SITE Committee. The SITE Committee consists of grade-level team leaders, as well as persons representing paraprofessionals, custodians, cafeteria workers, ESE students, parents, and other school functions. As a SITE-based school, the SITE Committee serves to decentralize decision

² Respondent suggested that Ms. Jahn's transfer from kindergarten to third grade was evidence of favoritism. There was no evidence that the transfer was anything other than a normal and routine transfer, and showed no more favoritism than Ms. Vasquez teaching kindergarten and second grade at GES, Ms. Baggett being assigned to teach second, third, and fourth grades over the years at GES, or Ms. O'Brien teaching third and first grades at GES.

making away from the Principal, and allows for a collaborative process by representatives of all segments of GES employees.

29. Ms. Jahn was thereafter nominated and selected by the other members of the SITE Committee as the SITE Facilitator. That position required a great deal of work and effort, which Ms. Jahn gladly took on, realizing the career benefits derived from the experience. Mr. Solz had no role in that process.

30. Ms. Jahn was also selected to serve on the Teacher Education Center (“TEC”) as a professional learning advocate. As a TEC representative, Ms. Jahn provided teachers with opportunities for training to maintain their teaching certifications and assisted them in making their way through the certification process. The TEC is also engaged in managing the professional development budget for the school. Ms. Jahn had to be involved in professional development as part of her Master’s Degree internship, and the TEC helped to fill that requirement.

31. The TEC representative is open for any teacher who wants to apply. Other than complaints from several witnesses that they were not solicited by school-wide email, or by personal entreaty from Mr. Solz “and offered for nomination or from, you know, veteran teachers who have that experience,” there was no evidence that any teacher other than Ms. Jahn, including the complaining witnesses, had the interest, drive, or commitment to apply for the TEC. There was no evidence that the position was required to be advertised by email or subject to personal invitation. Ms. Jahn sought out the position, and applied. The process of appointment was somewhat vague, except that Mr. Solz did not unilaterally appoint Ms. Jahn to the position.³

³ Ms. Baggett, despite averring that Mr. Solz appointed Ms. Jahn to the TEC, admitted at the hearing that she had no information that Mr. Solz appointed Ms. Jahn to that position “[o]ther than it's just, I guess, common knowledge that the principal of the school would, you know, would approve these positions.” Supposition, speculation, and “common knowledge” are not substitutes for competent, substantial, and persuasive evidence.

32. The team leader, SITE facilitator, and TEC representative positions were subject to a modest stipend, but the duties involved work that far exceeded the pay -- “probably cents on the hour” -- she received for serving. However, Ms. Jahn understood that having experience in various areas would benefit her in achieving her long term goals.

33. Ms. Jahn was also selected to serve on the District Advisory Council (“DAC”), a group of teachers, parents, administrators, and school board members that meet to discuss issues that affect students and classrooms. It is an unpaid, volunteer position that meets after school hours. Dr. Smith asked Mr. McKhan, Ms. Wyatt and Ms. Jahn to share the role. Since Mr. McKhan and Ms. Wyatt had previously served, Ms. Jahn took on most of the duties. Mr. Solz had no role in that process.

34. Ms. Jahn was part of a group of teachers invited by Dr. Smith to observe other schools in the District in order to implement the “Leader in Me” program at GES. Ms. Jahn was exposed to leadership techniques that she would not have been exposed to as a classroom teacher. Mr. Solz had no role in that process.

35. Ms. Jahn routinely attended monthly faculty meetings, which were open to all faculty at GES. She was able to apply some of the faculty meetings into credit for her Master’s Degree. She was required to mark attendance and document credit for every faculty meeting. There was no evidence that Mr. Solz was involved in that process.

36. Ms. Jahn was an active participant in the faculty meetings, which may have rubbed some less participatory teachers the wrong way, with witnesses complaining that Mr. Solz gave undue weight to Ms. Jahn’s contributions, but was dismissive of their comments, failing to take them “seriously.” The evidence, such as it was, that Ms. Jahn was given some sort of preferential treatment at the faculty meetings was not supported by a single specific instance, but was “supported” by the fall-back phrase that “it was, again, another one of the school-wide known fact.” Even if it was established that

Mr. Solz valued Ms. Jahn's input, such would not establish preferential treatment. It is just as easy to draw the inference that Ms. Jahn's statements were more pertinent than others. The more credible testimony established that Mr. Solz was not dismissive or disrespectful to any of the staff at faculty meetings.⁴ The testimony that Mr. Solz afforded preferential treatment to Ms. Jahn at faculty meetings lacked even basic credibility, and is not accepted.

37. Ms. Jahn also trained a teaching intern, Ms. Hobbs. Ms. Hobbs was effusive in her praise of Ms. Jahn, crediting her success and her teaching style to Ms. Jahn's tutelage. Because of Ms. Jahn's success in mentoring Ms. Hobbs, Ms. Hobbs was, by the end of the 2017-2018 school year, able to handle the class on her own, which is the goal of a successful internship. While the class was under Ms. Hobbs' instruction, Ms. Jahn was able to leave the classroom -- though not the campus.

38. The evidence firmly established that Ms. Jahn set her goals high, and took steps that were not easy to achieve those goals. There was no credible evidence to suggest that she expected to be given anything by Mr. Solz or anyone else. She was not, as intimated by others, appointed to her duties by Mr. Solz. By all credible accounts, she earned her accolades. Though others reacted negatively, there was nothing to suggest that others were willing to put in the effort, or that they had earned the respect necessary to be selected by their peers to one of the many available positions.

Allegations in the Administrative Complaint

A. During the 2017-2018 school year, Respondent engaged in a sexual relationship with Brooke Jahn, a married teacher who was a direct report to Respondent.

⁴ Mr. Solz was more forceful; stating that the allegation he was dismissive or rude during faculty meetings "is a lie, a purposeful lie."

39. As described, during the 2017-2018 school year, Ms. Jahn took on a steady stream of jobs designed to advance her career. As a result, she met often with members of the GES administration, including primarily Ms. Wyatt and Ms. Sumner. The previous year she met frequently with Dr. Smith. She also met with Mr. McKhan and Mr. Solz. There was nothing in any of those meetings that contained even a whiff of impropriety.

40. The 2017-2018 school year ended for teachers the first week of June 2018. Teacher contracts end on the second day after the last day of school. If a teacher's contract is renewed, the contract renewal becomes effective on the first day of school in August for teachers. Ms. Jahn was not under contract and did not work at GES over the summer.⁵

41. Ms. Jahn was not seeing Mr. Solz in anything other than a professional capacity during the 2017-2018 school year. Despite the rumors, gossip, and innuendo bandied about by several witnesses, there was absolutely no competent, substantial, and credible evidence to support that Mr. Solz and Ms. Jahn were engaged in any sort of romantic, much less sexual, relationship at any time prior to the last day of classes during the 2017-2018 school year.

42. By the time the 2017-2018 school year ended, Ms. Jahn had received her Master's Degree in Education Leadership and passed the FELE. She had been a classroom teacher for eight years, and was starting to look for other opportunities. However, for reasons related to the LCSD summer teacher transfer policy and postings, she had not yet done so.

43. During this same period, difficulties in Ms. Jahn's marriage began to come to a head. The reasons are unimportant, except for the fact that they had nothing to do with Mr. Solz.

⁵ Ms. Jahn had signed a contract for the coming school year, but it was pending board approval. She was not working as a teacher at GES, but was slated to teach private swimming lessons over the summer "to make extra summer money."

44. In late May 2018, Mr. Solz became aware that the 2018 Instructional Leadership Team Summer Institute was to be held over the weekend of June 11 and 12, 2018, in Tampa, Florida. The conference was limited to 25 principals from around the state. Mr. Solz applied, and was accepted. He then realized that he could bring a qualified teacher leader from his school. Since it was a leadership conference, leadership experience was a prerequisite. The only people at GES who were not already administrators and who were qualified were Ms. Wyatt and Ms. Jahn.⁶

45. Ms. Wyatt was already slated to attend the Superintendent's Leadership Academy in Tallahassee. She did not want to pass it up because she had applied for the assistant principal pool that year. People who were interviewing applicants for the pool were leading that meeting, creating a good networking opportunity for Ms. Wyatt.

46. Mr. Solz invited the other leadership candidate, Ms. Jahn. He extended the invitation for her family to attend as well, a common practice. Ms. Jahn accepted the invitation. She had to rearrange swimming lessons and child care in order to attend, but did so because it was important to her efforts to professionally advance. Her husband could not attend for professional reasons.

47. Mr. Solz and Ms. Jahn travelled separately to Tampa. By the time of the conference, Ms. Jahn had come to the conclusion that her marriage was heading for divorce. She took the opportunity to visit her sister in the Tampa area. It was a stressful period.

48. Mr. Solz and Ms. Jahn arrived separately at the convention hotel on Friday evening. Other than Mr. Solz assisting Ms. Jahn in getting checked in, they had no contact with one another that evening.

49. After the conference sessions on Saturday, Mr. Solz and Ms. Jahn had dinner as part of a group. It was, according to both, the first time they had

⁶ By this time, Mr. McKhan had been appointed and was serving as an assistant principal at Pineview Elementary School.

ever been alone with one another. There was no evidence to the contrary. During dinner, Ms. Jahn disclosed to Mr. Solz that she was having marital difficulties, but no more.

50. The next morning, after a difficult conversation with her husband the night before, Ms. Jahn came down from her room in obvious distress. She indicated that she was having a “panic attack.” Mr. Solz walked with her to get coffee, talked with her, told her it would be OK, and gave her an “awkward side-ways hug.” He made sure she was engaged in the Sunday conference sessions, which eased her anxiety.

51. After the Sunday session was over, Ms. Jahn went back to Tallahassee. Mr. Solz stayed for a while to meet with principals he knew who were coming in for a separate Florida school administrators conference. He had dinner with several of his colleagues, and drove home.

52. Mr. Solz and Ms. Jahn did not see each other for several weeks after. Mr. Solz visited family in Savannah for a week and, upon his return, had his children for a week which entailed a trip to Disney World. Although Ms. Jahn’s divorce was moving forward, she took a pre-planned cruise with her then-husband and her children. However, during that period, Mr. Solz and Ms. Jahn had begun to text one another and spoke on the phone. They started to realize they had things in common, and might like to pursue a relationship.

53. Before they did anything to advance any sort of sexual relationship, they mutually decided that Mr. Solz should self-report their interest to the Superintendent. At that time, the “relationship” was all verbal and through texts. Other than the “awkward side-ways hug,” there had been no physical component to the relationship. Mr. Solz testified credibly that when he met with Superintendent Hanna on July 12, 2018, “I felt like we [he and

Ms. Jahn] had a friendship that was easily blossoming into a romantic relationship.”⁷

54. Prior to their decision to self-report, Ms. Jahn had already decided she needed to move from GES to diversify her experience to ultimately move out of the classroom into administration. For a person holding an Education Leadership degree, it is common knowledge that in order to advance, a teacher must move around to different schools. Ms. Jahn had been researching other opportunities with the LCSD, and had applied to be a reading coach at Griffin Middle School, as well as several other less desirable positions. On July 11, 2018, and again on July 12, 2018, Ms. Jahn requested, in writing, a transfer from GES. In describing her interview with Ms. Jahn on July 12, 2020, Ms. Kraul testified that:

She indicated again that she wants an administrative experience. She used the figure 150 percent leaving Gilchrist of her own free will. That she wants a middle school experience and she was very aware that she would not be eligible for an assistant principal position straight out of the classroom. That this was her ticket to get more experience.

Ms. Jahn also believed it would be easier for her to stand out professionally at Griffin Middle School. Ms. Kraul testified that Ms. Jahn was waiting out the LCSD teacher transfer period and “that's, I believe, where she was when I met with her in July.”

55. There is not a shred of competent substantial evidence to suggest that Ms. Jahn’s desire to transfer from GES was based on anything other than her desire to pursue her long-held goal of moving from a classroom position into a position in administration. There is no evidence that Ms. Jahn was pressured

⁷ Though not relevant to the specific allegations of this proceeding, it merits acknowledgement that Mr. Solz and Ms. Jahn have since married, and were married as of the date of the final hearing.

into seeking the transfer, or that her request had anything to do with Mr. Solz.

56. On July 12, 2018, Mr. Solz reported to Superintendent Hanna that he and Ms. Jahn were involved in a relationship that was becoming romantic. They had not been “caught.” There was no evidence that they knew of the purported “anonymous emails.”⁸ Mr. Solz and Ms. Jahn were early in their “romance,” having not yet passed out of the talking and texting stage. The decision to report was a volitional act designed to avoid gossip and innuendo, and establish a path forward without “direct report” conflict. Mr. Solz was not even certain that he was required to report, since the LCSD fraternization policy prohibited contact between staff and students, and the sexual harassment policy dealt with “unwelcomed” conduct. Nonetheless, Mr. Solz decided to report their blossoming interest because it “just felt like it was the right thing to do.”

57. The evidence conclusively established, despite the suppositions and gossip of others, that there was no sexual relationship between Mr. Solz and Ms. Jahn prior to the July 12, 2018, self-report.

58. On July 18, 2018, Superintendent Hanna placed Mr. Solz on administrative leave with pay. There was no competent, substantial, or persuasive evidence to support a finding that, at the time of Mr. Solz’s suspension, he and Ms. Jahn had commenced a sexual relationship.

⁸ The first “anonymous email” was not received in evidence. The alleged recipient, Ms. Paul, had no recollection of it, other than she forwarded it to Ms. McAllister. Ms. McAllister had no recollection of receiving, reviewing, or forwarding the first email. Its contents are a mystery. That alleged email has no evidentiary value. The second “anonymous email” came to Ms. Paul on July 15, 2018, and she forwarded it to Ms. McAllister and Superintendent Hanna on July 16, 2018. The anonymous “former [formal?] complaint by teachers” could not have come from anyone with much knowledge of Ms. Jahn, since the “teachers” could not even manage to get her name right, calling her “Mrs. Garret.” Garrett is the first name of Ms. Jahn’s ex-husband. As with the illusory first email, the second “anonymous email” has no evidentiary value.

59. On August 31, 2018, Superintendent Hanna issued Respondent a letter of reprimand which included reassignment of Mr. Solz as a Principal on alternative assignment in the Department of Teaching and Learning.”⁹

60. The allegation that “[d]uring the 2017/2018 school year, Respondent engaged in a sexual relationship with Brooke Jahn, a married teacher who was a direct report to Respondent,” was not proven.

61. Petitioner failed to establish that Respondent committed the acts alleged as a material allegation in paragraph 3. of the Administrative Complaint.

B. During the course of their relationship, Respondent afforded Teacher Jahn preferential treatment as compared to similarly situated employees thereby creating a hostile work environment. Respondent’s preferential treatment of Teacher Jahn included . . . training not offered or made available to other teachers.

62. This allegation is predicated on there having been a “relationship.” Since there was no relationship, the allegation was not proven. However, in addition, there was no evidence that Respondent afforded Ms. Jahn preferential treatment as compared to similarly situated employees. There were only two other “similarly situated” employees who had the education and the ambition to be considered for leadership roles at GES, Mr. McKhan and Ms. Wyatt. By the time the more serious allegations in this case were alleged to have occurred, Mr. McKhan had been assigned as Assistant Principal at Pineview Elementary School.

⁹ Respondent appears to argue that a negative inference should be drawn from Mr. Solz’s failure to file a grievance regarding the reprimand. A review of the letter shows it to have involved an allegation of conduct in April 2018, which Ms. Kraul testified “was nobody’s business what he did in his personal time, after hours,” and an allegation of use of electronic media for non-educational purposes,” which was not an issue in this proceeding at all. Why Mr. Solz elected not to grieve the reprimand was not explained, but no inference of wrongdoing can be drawn. If anything, the decision not to grieve the letter could just as easily be explained by its giving notice of his transfer as Principal that he had already determined to be an acceptable alternative to allow his “blossoming interest” in Ms. Jahn to move forward.

63. The testimony established that many of the opportunities provided to Ms. Jahn came from Ms. Wyatt, her mentor; Dr. Smith and Ms. Sumner, GES assistant principals; and from her peers, including her fellow grade-level teachers and those on the SITE committee. Except for the Instructional Leadership Team Summer Institute, which came after the close of the 2017-2018 school year, and after Ms. Wyatt's election to attend a different conference, Mr. Solz made no assignments or invitations to Ms. Jahn. Ms. Jahn earned the opportunities to advance her career. She was not "given" those opportunities by Mr. Solz or anyone else at GES.

64. Much of the testimony critical of the "relationship" between Mr. Solz and Ms. Jahn came from employees who either could not or would not put in the work to qualify for leadership positions. They did not seek to earn degrees in Education Leadership, did not actively seek out extracurricular leadership positions, and were not elected by their peers to leadership positions, including SITE Facilitator.

65. The evidence established that the witnesses who provided many of the statements that precipitated this proceeding were irritated by Mr. Solz for any number of reasons: that they were "angry" at Mr. Solz for being assigned to teach in a portable classroom; that Mr. Solz was monitoring their Facebook posts; that Mr. Solz used the iObservation system "against" them; that they were "formally written up" for infractions when other (non-comparable) teachers were not; or that they simply were not evaluated as highly as they believed they deserved.¹⁰ Much of the evidence provided in support of Petitioner's case consisted of statements and testimony that were directed

¹⁰ It is not overlooked that the three primary witnesses offered by Petitioner to substantiate wrongdoing by Mr. Solz were clearly antagonistic towards him, which pre-dated anything alleged in this case. Ms. Vasquez testified that she and Mr. Solz "had a history of -- very, very hostile history," and she "did not feel comfortable talking to Mr. Solz." Ms. Baggett exhibited obvious animosity, feeling the Mr. Solz "was very dismissive," and that "[p]rofessionally I don't respect his practice." Ms. O'Brien testified that during the period from 2008 through May of 2018, "Mr. Solz and I did not see eye-to-eye most of the time." The witnesses's antipathy towards Mr. Solz is not a primary basis for assigning their testimony little weight. However, it does nothing to bolster their credibility.

towards Mr. Solz's previous relationships, that were imprecise and unsubstantiated gossip, or that were pure uncorroborated hearsay. The allegations that Mr. Solz "appointed" Ms. Jahn to "TEC Rep., SITE Facilitator, DAC, and Kdg. Team Leader" were either based on ignorance of the process or, more likely, a conscious misrepresentation of the criteria by which those positions are filled.

66. As to the only allegation that had any basis in fact -- Ms. Jahn's attendance at the Instructional Leadership Team Summer Institute -- the complaining teachers simply lacked the requisite leadership qualifications. That was not the fault of either Mr. Solz or Ms. Jahn.

67. There was not a speck of competent, substantial evidence to establish that Mr. Solz afforded Ms. Jahn preferential treatment as compared to similarly situated employees, including training not offered or made available to other teachers. Given the facts of this case, it is found that no rational person could reasonably conclude that training opportunities provided by GES administrators, including Mr. Solz, created a hostile work environment.

68. Petitioner failed to establish that Respondent committed the acts alleged as a material allegation in paragraph 3.a) of the Administrative Complaint.

C. During the course of their relationship, Respondent afforded Teacher Jahn preferential treatment as compared to similarly situated employees thereby creating a hostile work environment. Respondent's preferential treatment of Teacher Jahn included ... [having] Jahn accompany him on at least one school related out of town trip without making the opportunity available to other teachers.

69. This allegation has been addressed in detail herein. In addition to the fact that there was no "relationship" when Mr. Solz invited Ms. Jahn to attend the Instructional Leadership Team Summer Institute, the evidence in this case established, conclusively, that Mr. Solz did not afford Ms. Jahn

preferential treatment as compared to similarly situated employees.

Attendance at the conference was offered to Ms. Jahn as the only qualified attendee since Ms. Wyatt had a conflicting leadership-based conference that drew her attention, and was based on absolutely no improper motive. Given the facts of this case, it is found that no rational person could reasonably conclude that Mr. Solz's offer to Ms. Jahn to attend the conference (with her family) created a hostile work environment.¹¹

70. Petitioner failed to establish that Respondent committed the acts alleged as a material allegation in paragraph 3.b) of the Administrative Complaint.

D. During the course of their relationship, Respondent afforded Teacher Jahn preferential treatment as compared to similarly situated employees thereby creating a hostile work environment. Respondent's preferential treatment of Teacher Jahn included ... [r]ules regarding supervision of students [being] relaxed for Jahn as compared to other teachers.

71. In addition to the fact that there was no "relationship," the evidence in this case established, conclusively, that rules for supervision of students were not relaxed for Ms. Jahn as compared to other teachers.

72. The evidence demonstrates that Ms. Jahn went to various administrative offices -- primarily those of Ms. Wyatt (her mentor) and Ms. Sumner (her education leadership internship supervisor), as well as that of Dr. Smith the preceding year -- before school, at lunch, or during her planning period.

73. It is common for intern/student teachers to earn the right to "solo" teach a class. As Ms. Jahn's intern, Ms. Hobbs, gained in competency, she

¹¹ On a practical note, the conference was held in June of 2018, after the conclusion of the 2017-2018 school year for teachers. By the time teachers returned to campus in the fall, Mr. Solz had been transferred from GES. If Mr. Solz was able to create a hostile work environment at GES from his post at the Department of Teaching and Learning, it would have been quite a trick.

was allowed to take on more of the teaching responsibilities for Ms. Jahn's class on her own, as was the goal. Finally, Ms. Jahn was able to leave the classroom for periods of time, which gave Ms. Hobbs valuable experience and confidence. However, the evidence establishes that Ms. Jahn did not abuse her time during those periods, but was working at necessary and requested school-related activities. The suggestion that there was some impropriety involved when Ms. Jahn left Ms. Hobbs in charge is simply not supported.

74. Ms. Baggett complained that she was "formally written up" (by the Assistant Principal, not Mr. Solz) because she "left [her] students unsupervised." Why she was disciplined is a matter between Ms. Baggett and the Assistant Principal. However, that disciplinary matter (which might also explain her complained-of, less-than-stellar evaluation) does not establish that Ms. Jahn violated any rules regarding supervision of students, does not establish any other teacher as a valid comparator, and does not lend support to the allegations in this case.

75. Ms. Vasquez testified that Ms. Jahn left her class during the school day, and "made it known that she was getting her dog groomed" on one occasion, and on another occasion "she told me she was getting her hair done." Ms. Hobbs openly scoffed at the idea, a rejection that is supported by the record. Despite the hearsay nature of Ms. Vasquez's testimony, it might have retained some thin thread of credibility if it did not directly conflict with her written statement provided during the investigation, in which she stated:

I had been made aware of, several years ago, a relationship with *Jessica Scully*. She was seen in [Mr. Solz's] office quite frequently-and would talk openly about the special treatment she was getting from David. How David would allow her to leave school to run her errands. She left school to get her dog groomed and told several teachers that David knew where she was and approved it. (emphasis added).

Either Mr. Solz is attracted to women with poorly-groomed dogs, or the testimony regarding Ms. Jahn's personal off-campus errands, including dog-grooming, was a fabrication. The evidence supports the latter.

76. There is no competent, substantial, and credible evidence to support a finding that Ms. Jahn ever left her students with inadequate supervision, that she ever left campus to perform personal errands, or that she violated any disciplinary standard regarding student supervision. There was not a shred of evidence that Mr. Solz relaxed or disregarded any rules regarding the supervision of students for Ms. Jahn as compared to other teachers. Given the facts of this case, it is found that no rational person could reasonably conclude that Mr. Solz relaxed any rules regarding supervision of students for Ms. Jahn so as to create a hostile work environment.

77. Petitioner failed to establish that Respondent committed the acts alleged as a material allegation in paragraph 3.c) of the Administrative Complaint.

Summary

78. The tone of the Administrative Complaint gives the impression that Respondent and Ms. Jahn were carrying on a torrid sexual relationship from the confines of Respondent's office, and that Mr. Solz was lavishing Ms. Jahn with perquisites as the 2017-2018 school year was ongoing. Nothing could be further from the truth. The facts show that Ms. Jahn had high professional goals, and worked hard -- on her own -- to achieve them.

79. The suggestion that Respondent favored Ms. Jahn to advance his prurient interest in her, or that Ms. Jahn was using Respondent as a stepping stone to some higher goal are equally unsupported, and equally fallacious. The allegation that Mr. Solz engaged in harassment or discriminatory conduct which unreasonably interfered with any GES employee's performance of their professional or work responsibilities, or with the orderly processes of education, or that he undertook any action vis-a-vis

Ms. Jahn that created a hostile, intimidating, abusive, offensive, or oppressive environment is simply not supported by the facts of this case.¹²

CONCLUSIONS OF LAW

A. Jurisdiction

80. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016).

B. Standards

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

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

¹² The undersigned recognizes that the factual outcome of this case was not a close call. However, that should not be seen as a reflection on counsel for either party. The undersigned recognizes both Mr. Weaver and Mr. Webster as upholding the highest standards of professionalism. This case rested solely on the credibility of witnesses and the weight of testimony. As is the nature of the legal profession, one represented a successful client, and one an unsuccessful client. Nonetheless, the undersigned would be remiss in failing to acknowledge that both counsel represented their clients ably and skillfully.

contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

* * *

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

82. Florida Administrative Code Rule 6A-10.081(2)(c)4. provides that:

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

* * *

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

* * *

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

C. Burden and Standard of Proof

83. Petitioner bears the burden of proving the specific allegations of wrongdoing that support the charges alleged in the Administrative Complaint by clear and convincing evidence before disciplinary action may be taken against the professional license of a teacher. *Tenbroeck v. Castor*,

640 So. 2d 164, 167 (Fla. 1st DCA 1994); § 120.57(1)(j), Fla. Stat.; *see also* *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern and Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Pou v. Dep't of Ins. and Treas.*, 707 So. 2d 941 (Fla. 3d DCA 1998).

84. Clear and convincing evidence “requires more proof than a ‘preponderance of the evidence’ but less than ‘beyond and to the exclusion of a reasonable doubt.’” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). The clear and convincing evidence level of proof

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

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

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); *see also* *In re Henson*, 913 So. 2d 579, 590 (Fla. 2005). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc.*, 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

85. Section 1012.795 is penal in nature and must be strictly construed, with any ambiguity construed against Petitioner. Penal statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden the application of such statutes.

Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997); *see also Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Dyer v. Dep't of Ins. & Treas.*, 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

D. Administrative Complaint - Section 1012.795(1)(j)

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

E. Administrative Complaint - Florida Administrative Code Rule 6A-10.081(2)(c)4.

87. The Administrative Complaint charged Respondent with violating rule 6A-10.081(2)(c)4., which provides that Florida educators:

[s]hall not engage in harassment or discriminatory conduct which unreasonably interfered with an individual's performance of professional or work responsibilities or with the orderly process of education or which created a hostile, intimidating, abusive, or oppressive environment, and further, failed to make reasonable effort to assure that each individual was protected from such harassment or discrimination.

88. The evidence in this case demonstrates that Respondent did not engage in a sexual relationship with Ms. Jahn during the 2017-2018 school year while Ms. Jahn was a direct report to Mr. Solz. The evidence demonstrates that Mr. Solz took reasonable measures to notify the LCSD Superintendent of his interest in Ms. Jahn *before* engaging in a relationship that was much more than text messages and telephone calls. The evidence

demonstrates that Mr. Solz was willing to transfer from GES to avoid any appearance of improper conduct.

89. It is Petitioner's burden to demonstrate, by clear and convincing evidence, that Respondent engaged in the specific conduct alleged in the Administrative Complaint. Gossip, anonymous emails, supposition, and speculation from witnesses whose credibility is lacking did not meet that burden of proof. An interest in pursuing a relationship is not a relationship, and guessing and inferring as to when Mr. Solz and Ms. Jahn may have begun what has become a lasting relationship cannot substitute for competent, substantial, and persuasive evidence.

90. Petitioner failed to prove, by clear and convincing evidence, that during the 2017-2018 school year, Respondent engaged in a sexual relationship with Ms. Jahn, a married teacher who was a direct report to Respondent, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

91. Petitioner failed to prove, by clear and convincing evidence, that Respondent afforded Ms. Jahn preferential treatment as compared to similarly situated employees thereby creating a hostile work environment during the 2017-2018 school year, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

92. Petitioner failed to prove, by clear and convincing evidence, that Respondent provided training to Ms. Jahn not offered or made available to other qualified, eligible, or similarly situated teachers during the 2017-2018 school year, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

93. Petitioner failed to prove, by clear and convincing evidence, that Respondent had Ms. Jahn accompany him on at least one school related out of town trip without making the opportunity available to other qualified or

similarly situated teachers who were educationally eligible to attend a Leadership Conference, or that any qualified teacher was passed over in favor of Ms. Jahn. Petitioner failed to prove, by clear and convincing evidence, that the training seminar in question was offered to Ms. Jahn by Respondent in furtherance of any romantic or sexual interest in Ms. Jahn, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

94. Petitioner failed to prove, by clear and convincing evidence, that Respondent relaxed rules regarding supervision of students for Ms. Jahn, as compared to other teachers, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

95. Petitioner failed to prove, by clear and convincing evidence, that Respondent engaged in harassment or discriminatory conduct which unreasonably interfered with an individual's performance of professional or work responsibilities, or with the orderly process of education during the 2017-2018 school year, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

96. Petitioner failed to prove, by clear and convincing evidence, that Respondent engaged in conduct, with Ms. Jahn or otherwise, that created a hostile, intimidating, abusive, or oppressive environment at GES during the 2017-2018 school year, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

97. Petitioner failed to prove, by clear and convincing evidence, that Respondent failed to make reasonable effort to assure that each individual at GES was protected from harassment or discrimination during the 2017-2018 school year, in violation of rule 6A-10.081(2)(c)4., or that Respondent violated the Principles of Professional Conduct as set forth in section 1012.795(1)(j).

RECOMMENDATION

Upon consideration of the Findings of Fact and Conclusions of Law reached herein, it is

RECOMMENDED that the Administrative Complaint be dismissed in its entirety.

DONE AND ENTERED this 21st day of September, 2020, in Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
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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.