STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

Case No. 20-2075PL

vs.

TYRHON RENARD CRAWFORD,

Respondent.
_____/

RECOMMENDED ORDER

Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings (DOAH) conducted a disputed-fact evidentiary hearing by Zoom conference on October 1, 2020.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
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Ocala, Florida 34477-0088

For Respondent: Carol R. Buxton, Esquire
Florida Education Association
1516 East Hillcrest Street, Suite 109
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated section 1012.795(1)(g) and (1)(j), Florida Statutes (2017), and Florida Administrative Code Rule 6A-10.081(2)(c)4.; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On November 5, 2019, Richard Corcoran, as Commissioner of Education (Petitioner), issued an Administrative Complaint against Tyhron R. Crawford (Respondent). The Administrative Complaint alleged facts from the 2017-2018 school year, which served as the predicate for violations charged under section 1012.795(1)(g) and (1)(j), and rule 6A-10.081(2)(c)4.

Respondent timely filed an Election of Rights by which he requested a disputed-fact administrative hearing. The case was referred to DOAH on April 30, 2020, for the assignment of an administrative law judge to conduct the requested hearing.

After scheduling input from the parties, a case management conference was held to address concerns of both parties regarding the impact of the COVID-19 pandemic on hearing preparation. The parties requested and were given extra time for hearing preparation and the hearing was initially set for September 4, 2020, by video teleconference with sites in Tallahassee and Altamonte Springs, Florida. Petitioner filed an unopposed motion to convert the hearing mode to Zoom conference, which was granted. Respondent later filed an unopposed motion to continue the hearing because of a conflict with a recently scheduled hearing before the Education Practices Commission, which was also granted. The hearing was rescheduled for October 1, 2020, by Zoom conference and it went forward as rescheduled.

Prior to the hearing, the parties filed a Joint Pre-hearing Stipulation in which they stipulated to several facts. The stipulated facts are incorporated in the Findings of Fact below, to the extent relevant.

At the hearing, Petitioner presented the testimony of Michael Ganio, Sheree Carter, Jamila Mitchell, Jessica Kendrick, Gregory Thompson, and

Benjamin Rivers. Petitioner's Exhibits 1 through 14 and 17 were admitted in evidence and official recognition was taken of Petitioner's Exhibit 18. Respondent's objections to the hearsay nature of Petitioner's Exhibits 6 and 12 through 14 were noted, but the objections were overruled. The parties were reminded that use of hearsay evidence in this proceeding is limited to supplementing or explaining competent evidence; hearsay cannot be the sole basis for a finding of fact unless it would be admissible over objection in a civil action in Florida. *See* § 120.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 28-106.213(3).

Respondent testified on his own behalf and presented the testimony of Rolando Bailey, Dale Valente, Iris Woodard, Renee Bellamy, and Whitney Poole. Respondent did not offer any documentary evidence.

After the hearing, the parties were informed of the ten-day timeframe provided by rule for filing proposed recommended orders (PROs), running from the date of filing of the hearing transcript at DOAH.

The two-volume Transcript was filed on November 23, 2020. The parties filed a joint motion to extend the PRO deadline, which was granted for good cause shown.[1] Both parties subsequently filed their PROs, which have been carefully considered in the preparation of this Recommended Order.

Unless otherwise noted, citations to Florida Statutes and rules are to the 2017 codifications in effect at the time of the conduct alleged to warrant discipline. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013). Transcript references are designated as "Tr. ____."

[1] By agreeing to an extended deadline for post-hearing submissions beyond ten days after the filing of the transcript, the parties waived the 30-day timeframe for issuance of the Recommended Order. *See* Fla. Admin. Code R. 28-106.216.

FINDINGS OF FACT

Based upon the demeanor and credibility of the witnesses who testified, the evidence admitted in the record at the final hearing, and the documents officially recognized, the following Findings of Fact are made:

1. Petitioner is the agency head of the Florida Department of Education. Petitioner is responsible for investigating allegations of misconduct against individuals holding Florida educator certificates. Upon a finding of probable cause, Petitioner is responsible for filing an administrative complaint, and prosecuting the case in an administrative hearing pursuant to chapter 120, Florida Statutes, if the educator disputes the allegations.

2. Respondent holds Florida Educator's Certificate 878903, covering the areas of Athletic Coaching and Physical Education, which is valid through June 30, 2025.

3. At the time of the allegations in the Administrative Complaint, Respondent was employed as the athletic director at Evans High School (Evans) in the Orange County School District (District).

4. Respondent was first employed by the District from 2004 to 2008, when he worked at Evans as a basketball coach and physical education teacher. He was re-employed by the District from 2014 until late in the 2017-2018 school year. He worked at Freedom High School (Freedom) as a physical education teacher and assistant athletic director through the end of the 2016-2017 school year. He then was employed at Evans as athletic director for most of the 2017-2018 school year. He resigned on April 5, 2018, pursuant to a settlement agreement with the School Board of Orange County (School Board), which is the District's governing body.

5. Rolando Bailey was the assistant principal at Evans when Respondent was first employed there, and Mr. Bailey was the principal at Freedom when Respondent worked there through the end of the 2016-2017 school year. Mr. Bailey acknowledged "situations" during Respondent's earlier time at Evans and while at Freedom that involved "conflict" and "communications"

issues with Respondent and required administrative intervention, but these problems were handled without involving the Employee Relations office (now called the Employee Standards office) to impose discipline.

6. Mr. Bailey left Freedom to become principal at Evans beginning in the 2017-2018 school year. He thought Respondent would be a good candidate for the athletic director position at Evans, because Respondent was familiar with the community and Mr. Bailey thought he would be good at program building, which is what Mr. Bailey thought the athletic department needed.

7. When Mr. Bailey made the move from Freedom to Evans, he brought not only Respondent with him, but also, at least 15 other administrators and teachers. This set a bit of an "us against them" tone between the existing faculty and staff at Evans and the Freedom transplants.

8. Respondent and Mr. Bailey had a close working relationship. The perception among Evans personnel, based on observed interactions between Respondent and Mr. Bailey, was that they were also close personal friends. At the hearing, Mr. Bailey and Respondent both denied being close personal friends, but they were alumni of the same college, members of the same fraternity, and would frequently meet after regular school working hours. Mr. Bailey acknowledged these frequent meetings, although he said that they were work-related: "The role itself gave us the opportunity to talk outside of hours." (Tr. 200-01). These meetings did nothing to dispel the perception among Evans personnel that Mr. Bailey and Respondent were close personal friends.

9. Evans presented challenges for Mr. Bailey as incoming principal. The school had not been performing well academically, with a "D" rating by the state, and he was intent on improving that performance. As for the athletic department, Mr. Bailey saw the need for "program building," noting that facilities were in disrepair and resources such as uniforms and equipment were scarce, resulting in a lack of school pride. Respondent's objective was to turn the Evans sports teams into winning programs.

10. Respondent's charge was to "lead and direct" the athletic department and allow Mr. Bailey to focus on academics. However, Mr. Bailey made a commitment to the Evans coaches who were already in place when Mr. Bailey came over from Freedom. Mr. Bailey told the Evans coaches that the 2017-2018 school year would be an evaluative year, and there would not be any changes made until after the end of the year. Mr. Bailey committed to personally participating in each coach's evaluation at year-end, along with Respondent, and Mr. Bailey would make the decision then regarding whether changes were needed to move in a different direction.

11. Mr. Bailey was of the view that certain changes would be needed after the evaluative year. For example, he noted that several coaches held more than one head coaching position, which he generally disagreed with except for certain "related" sports, such as cross-country and track, which had separate seasons so one individual could be head coach of both. Mr. Bailey also was of the view that an individual should probably not serve as both a head coach and an administrative dean, although exceptions could be allowed and Mr. Bailey was willing to wait and see if individuals at Evans were handling it well.[2] For the 2017-2018 "evaluative" school year, Mr. Bailey was willing—and had committed—to not make changes to conform the staffing to his views, and instead, to await year-end evaluations to make these decisions.

12. Respondent expressed a different view, stating that if it had been up to him, he would have terminated all existing coaches when he started at Evans and he would have made them all reapply. But it was not up to Respondent, and Mr. Bailey's commitment stood.

13. Respondent started working at Evans during the last few days of July 2017. He immediately implemented some changes in how the athletic

[2] For example, Mr. Thompson was an administrative dean and head football coach at Evans for years before Mr. Bailey became principal and he remained in both positions after Mr. Bailey became principal.

department was run. One change involved employing Ms. Woodard, who came over from Freedom with Mr. Bailey and the others, as assistant athletic director with the responsibility for inputting team roster information, including documenting compliant physicals and grade point averages (GPAs) for the students on the roster. This apparently had the effect of revealing students who were disqualified because they did not meet the minimum requirement of a 2.0 GPA. Previously, coaches were responsible for inputting their own team rosters. The claim asserted at hearing was that coaches were "padding" their rosters with disqualified students[3] or inactive students.[4] The motive suggested for "padding" a roster would be that for "minor" sports like cross-country, track, swimming, golf, and others, higher roster numbers could result in supplements being authorized for assistant coaching positions. A reduction in roster numbers could mean a reduction or loss of supplements, which could mean that assistant coaches would have to coach on a volunteer basis, or a head coach might have to do without, or without as many, assistant coaches. There was no competent credible evidence proving specific instances of wrongful or inappropriate roster padding.[5]

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[3] Respondent explained how students without qualifying GPAs might have been mistakenly listed on rosters showing qualifying GPAs. He acknowledged that coaches did not have access to detailed GPA data, and instead, might input a student's cumulative GPA as shown on the prior year's report card. However, that GPA might include grades for classes that were not eligible for purposes of meeting the minimum GPA required to participate in sports.

[4] Ms. Bellamy, the girls' basketball head coach, said she discouraged "her" girls from going out for cross-country, because they "probably" would not be allowed to compete in meets. Her comments were more suggestive of a turf war than credible evidence of roster padding.

[5] Several witnesses who were not at Evans until 2017-2018 offered their belief that roster padding occurred before the 2017-2018 school year. The credible testimony established only that when rosters were prepared or updated under Respondent's system beginning in August 2017, inputting updated GPAs resulted in some students being disqualified. Ms. Woodard, who implemented the new system, admitted she was not sure how many supplements were lost or in which sport. She thought cross-country may have lost supplements, but then said the sport previously had four or six supplements and that it had four supplements after she updated the rosters. Whitney Poole claimed that rosters had been padded the previous year, but she did not explain how she could have known that, since she was not at Evans before August 2017, and then was only a math teacher. She did not have any position in the athletic department before January 2018 when she became an assistant coach. In general, Ms. Poole was not a credible witness, and with one exception, her testimony was not credited.

Sheree Carter

14. Sheree Carter was a coach and administrative dean at Evans in 2017-2018, when Mr. Bailey, Respondent, and others came to Evans from Freedom. She had been employed at Evans since 2012. She remains employed at Evans to this day.

15. During the 2016-2017 school year, Ms. Carter held the following positions at Evans: administrative dean over attendance; head coach of girls' cross-country and girls' track; and assistant coach for girls' weightlifting. Ms. Carter was slated for those same positions headed into the 2017-2018 school year. Ms. Carter took comfort from Mr. Bailey's assurance that no changes would be made until he made the decisions after personally participating in the year-end evaluations.

16. Ms. Carter testified that she met Respondent at the end of July, during the two-week pre-planning period before classes started. Within a week or two after they met, Respondent started saying things to let her know that he was interested in her. He made her uncomfortable, and she rebuffed his advances. But rather than discouraging his comments, the intensity and frequency of Respondent's advances escalated.

17. Ms. Carter testified that Respondent would walk by her office, which was at the back of the front office, and he would poke his head in to see if anyone else was with her. Respondent never came into her office if someone else was with her; he waited until she was alone, and then he would come in. His conversation opener was that he was recently divorced and was trying to get his feet wet getting back into the dating game. She responded by saying okay, cool, good luck with that.

18. Respondent then started coming by Ms. Carter's office to ask if she wanted to grab lunch together or come eat lunch in his office. She declined each time he asked. After the rebuffed lunch offers, Respondent started asking Ms. Carter if she wanted to go to the movies with him or grab drinks after work. Again, she turned him down each time.

19. Respondent's next approach was to let Ms. Carter know that he had a sofa in his office, followed by repeated invitations to Ms. Carter to hang out and chill with him on the sofa in his office. These invitations were conveyed with a personal, intimate air. Ms. Carter always turned down these advances and let Respondent know she was uncomfortable with what he was asking.

20. Respondent approached Ms. Carter with these advances not only when she was alone in her office, but also, on the practice fields and in the hallways or courtyard, if she was alone. Respondent only approached Ms. Carter to make these advances when no one else was around.[6] Ms. Carter described it as "creepy," like "in a stalking type of way. Like he would just wait for that right moment to approach you when you're by yourself and then throw these advances at me." (Tr. 74).

21. Respondent's stalking-type behavior and frequent approaches affected Ms. Carter's ability to do her job. She delayed or avoided communicating with Respondent about coaching matters, despite needing to communicate with the athletic director. She would check hallways before freely moving around to make sure Respondent was not present, and she took to closing her office door to give the impression she was not there.

22. Ms. Carter's testimony was credible and clear. Her demeanor was earnest and believable.

23. In contrast, Respondent's testimony regarding the advances claimed by Ms. Carter lacked credibility. Respondent was evasive. He frequently avoiding a direct answer to the question, as illustrated by the following:

> Q: And did you invite her to your office to chill?
>
> A: I was hardly ever in the office. I mean, so, it's very hard to chill in there. I was very, very on the go. I was very, very on the go. You know, Mr. Bailey was big on the look and appearance. So there was stuff always that needed to be done with the field and

[6] Mr. Bailey testified that he never observed Respondent engage in sexual harassment, but conceded that sexual harassment is not normally something that he sees people doing out in the open.

> with the cosmetics. So I was hardly ever in the office. The only time I was in the office if I had to be [sic]. But I was hardly ever in the office, so I definitely couldn't be there just to chill because it was just too much work to do. (Tr. 324).
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> * * *
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> Q: Did you ever invite her to eat lunch in your office?
>
> A: I never ate lunch. It's hard for me to eat lunch because I had lunch duty and we had three lunches. So, when am I going to eat lunch when I'm constantly being fussed at by Mr. Bailey about not answering e-mails. Because I was never in my office so my e-mails were forwarded to Ms. Woodard so I didn't have to hear from him about why I don't answer e-mails. So I never ate lunch during the day. (Tr. 327).

Respondent avoided answering the questions posed—whether he ever *invited Ms. Carter* to chill or eat lunch in his office. Respondent danced around the subject, never denying or refuting Ms. Carter's clear testimony that he had, in fact, invited her multiple times to eat lunch in his office and to chill on the sofa in his office, but she turned him down each time.

24. Respondent did deny that he had asked Ms. Carter to go to the movies[7] or out for drinks with him, but he offered weak explanations, which were not persuasive, for why he would not have extended these invitations. When asked if he ever asked Ms. Carter to go to the movies with him, he responded: "No. I was too busy to be trying to go to the movies and live in a whole different county and try to work. You know, Evans was an hour and 20 minutes away. Freedom was 38. So there's no time to go to the movies. Especially with a person you don't know, you know." (Tr. 325-26). And when

[7] Ms. Poole, a witness for Respondent who generally went out of her way attempting to testify favorably for Respondent, said that she had been friendly with Ms. Carter at the beginning of the 2017-2018 school year. Ms. Poole admitted that during this time, Ms. Carter told Ms. Poole that Respondent had asked her out to the movies. To that extent, Ms. Poole's testimony was credible, and it corroborated Ms. Carter's testimony.

asked if he ever asked Ms. Carter out for a drink, he said: "No, because I don't drink. … I just never had a drink, never smoked. So I don't drink. And because I don't drink, I'm not going to invite somebody out to watch them drink. So." (Tr. 326-27). Respondent's testimony on these points was less credible than Ms. Carter's testimony, and her testimony is credited.

25. Ms. Carter testified that her discomfort with Respondent's advances came to a head at a soccer game, when he approached her and once again asked her out for drinks, and she got upset. She said that she blew up, emphatically reiterating (punctuated with curse words) that she had told him before she was not interested and expressing her frustration that he had not yet accepted the message that she wanted him to stop making advances at her. This was on a weeknight during the week of December 4, 2017.

26. On Friday, December 8, 2017, Respondent went to Ms. Carter's office and told her: (1) that she was immediately removed, mid-season, from the assistant coach position for weightlifting, though she could keep the supplement; (2) that they would be moving in a different direction and she would no longer be head coach for girls' cross-country (which had ended its season one month earlier); and (3) that they would evaluate her position as head coach for girl's track after the spring. Respondent told Ms. Carter that he and Mr. Bailey had made these decisions because Mr. Bailey did not want her coaching and serving as an administrative dean at the same time.[8]

27. Ms. Carter was very upset because she loves coaching. She broke down crying and was so distraught, she was unable to perform her job duties to supervise during either lunch periods that day. Ms. Carter believed that

[8] Respondent admitted to delivering this news to Ms. Carter, although he said it was in a routine meeting in his office that he had scheduled to give Ms. Carter her end-of-season evaluation for coaching girls' cross-country (conflicting with Mr. Bailey's clear testimony that he always participated in evaluations, which were done at the end of the year). Curiously, Respondent testified that his evaluation had no meaning, and its only purpose was to give coaches something for possible future employers wanting to see evaluations. Respondent failed to explain, if the meeting was only to address a meaningless end-of-season evaluation for one sport, why he used the occasion to deliver meaningful consequences or why he addressed more than that one sport.

Respondent took this action to retaliate against her because she had rebuffed his advances, particularly after her strong rebuke of him earlier that week.

28. Up to this point, Ms. Carter had confided in two different colleagues regarding Respondent's advances and her discomfort with them, but she had not lodged a formal complaint against Respondent with Mr. Bailey. She was concerned that Mr. Bailey would take Respondent's side in a dispute because of their longstanding relationship and apparent close personal friendship. Previously, when she had confided in Mr. Thompson, he had told her she should talk to Respondent regarding her discomfort, but she had tried that repeatedly. When she confided again in Mr. Thompson upon being reduced to tears on December 8, 2017, this time he told her she should not be talking with colleagues rather than going through proper channels, and he urged her to file a complaint.

29. Ms. Carter followed that advice, submitting a complaint in an email to Mr. Bailey, which she sent to him just after midnight, very early on Monday morning, December 11, 2017. She asked if she could meet with Mr. Bailey to discuss what Respondent had told her regarding her coaching responsibilities and her concern that Respondent had taken this action because she had turned down his advances.

30. Directly contradicting Respondent's claim, Mr. Bailey testified that he did *not* make the decision to remove Ms. Carter from her coaching duties during the 2017-2018 school year, nor did he direct Respondent to tell Ms. Carter in December—in the middle of the "evaluative year"—that she could not remain as coach and administrative dean.[9] Instead, as he had committed to do at the beginning of the year, Mr. Bailey waited until the end of the school year to have the conversation with Ms. Carter about changes going forward. At that time, he informed her that he did not want her to continue in the dual roles of coaching and administrative dean in the 2018-

[9] When Mr. Bailey found out that Respondent had that conversation with Ms. Carter on December 8, 2017, he had a meeting with Respondent to find out why he did that.

2019 school year. Ms. Carter wanted to remain in coaching to continue building her programs. With Mr. Bailey's agreement, she gave up the administrative dean position and returned to classroom teaching the next school year so she could continue coaching.

31. Mr. Bailey was a witness for Respondent and he attempted to be supportive of Respondent in his testimony. However, Mr. Bailey clearly and directly contradicted Respondent's claim that he had instructed Respondent to remove Ms. Carter from coaching on December 8, 2017. Mr. Bailey was surprised by Ms. Carter's email reporting that Respondent had done so and had attributed the decision to Mr. Bailey. After meeting with Ms. Carter, Mr. Bailey reported Ms. Carter's complaint to the Employee Relations office for investigation.[10] In contrast to the "situations" involving Respondent when he was first at Evans and again while at Freedom, which were handled by administrative interventions without involving Employee Relations, this time Mr. Bailey found it necessary to involve Employee Relations.

Jamila Mitchell

32. Jamila Mitchell, Ph.D., also provided testimony regarding inappropriate statements and conduct by Respondent that made her feel very uncomfortable and that interfered with her doing her job.

33. Dr. Mitchell has been working at Evans since 2014. Her doctorate degree is in computer science. She has been the computer science instructor at Evans and the sports media sponsor. She held those two positions during the 2017-2018 school year. She was not a coach or assistant coach.

34. As sports media sponsor, Dr. Mitchell is involved in all sports-related media, including film, photography, social media, and the school's website.

[10] Two separate investigations were initiated: the first addressed alleged sexual harassment and retaliation by Respondent, pursuant to the District's responsibilities under civil rights laws as Ms. Carter's employer not to commit unlawful employment practices. When that investigation was completed with a finding of probable cause to believe there was sexual harassment, Mr. Ganio, then-manager of the District's Employee Relations office, completed an investigation into whether Respondent had engaged in misconduct, which would provide just cause for the School Board to take action against him as a District employee.

Her responsibilities include managing sports-related website content and ensuring information is disseminated for all sports-related events. She must keep up with schedules, rosters, college recruiting activities, and events such as college scholarship signing days and awards banquets. Frequent communications with the Evans athletic director are essential to her job duties, at least by the time sports activities are in full swing after the first couple of weeks of each school year.

35. Dr. Mitchell testified that beginning in September 2017, when her job required her to be in frequent communications with Respondent, he started saying and doing things that made Dr. Mitchell uncomfortable.

36. On several occasions, Respondent referred to Dr. Mitchell as his "little Mexican." Dr. Mitchell is not Mexican. Respondent would say this when passing her in the hallway, if they were both at a game or event, or when he came to her classroom. Sometimes she was alone when he said this, but sometimes other people overheard what Respondent said. She was offended by Respondent's words, and also, uncomfortable having to explain to others who heard Respondent call her his little Mexican that she was not Mexican, but was biracial. Despite taking offense, she tried to ignore it or laugh it off.

37. Respondent frequently came by Dr. Mitchell's classroom during her planning period when she was the only one there. At least initially, they would discuss sports media matters. But then the conversations would turn to Respondent telling Dr. Mitchell that he "liked the way her butt looked" in the pants she was wearing that day, or how whatever she was wearing accentuated some part of her body. She tried to change the subject back to work, but his comments made her feel weird and "creeped out."

38. Respondent's frequent comments about her clothing and body impeded communications regarding sports media issues. Respondent's comments also caused Dr. Mitchell to stop wearing form-fitting clothing, pants that were a

little bit tight, or shirts cut a little bit low.[11] She began wearing loose clothing and when Respondent came by her classroom, she stayed seated behind her desk so he would not comment on "how her butt looked." Her discomfort and worries distracted from needed communications and interfered with getting the job done. It got to the point where Dr. Mitchell avoided communicating in person with Respondent, resorting to communicating by text or phone call.

39. Dr. Mitchell described the "tipping point" for her was when she was walking through a courtyard to go to the front office and Respondent was coming out of the front office. Dr. Mitchell was wearing her hair down (loose), which she rarely did. When they passed in the courtyard, Respondent commented that he liked it when she wore her hair down because it gave him something to grab onto. There were other people in the courtyard—teachers and students—and Dr. Mitchell testified that she just prayed that nobody heard what Respondent said to her. She was highly embarrassed by what she reasonably interpreted as a sexual reference.

40. Dr. Mitchell did not immediately complain about Respondent's inappropriate conduct, in part because she was embarrassed, but also, because she did not know to whom she could complain. She had seen how Mr. Bailey interacted with Respondent, and observed that they seemed to have a very friendly, personal relationship. She was concerned that if she said anything, it would be her job on the line. But when she was contacted by an investigator looking into Sheree Carter's complaint, who had been told that Respondent may have also harassed Dr. Mitchell, she spoke with the

[11] Respondent suggested in his PRO that Dr. Mitchell should be faulted for her choice of attire in a school "full of hormonal high school students that most likely has a dress code, stated or implied, for teachers." (Resp. PRO at 28). No credible evidence supports a finding that Dr. Mitchell's attire was provocative, inappropriate, or contrary to any dress code, and none was cited. Respondent's argument is, in effect, that Dr. Mitchell "asked for it"—a classic means to deflect blame and excuse inappropriate sexual conduct, which is, or should be, a relic of the past. Respondent's veiled hint that Dr. Mitchell asked for it is tantamount to a concession that "it" occurred, necessitating an excuse for his behavior. There is no excuse.

investigator and provided the same information about Respondent's offensive conduct to which she testified at the hearing.

41. Dr. Mitchell was very credible and genuinely distraught as she described these uncomfortable encounters with Respondent.

42. As with Ms. Carter's specific complaints, Respondent denied (or gave evasive, less-than-clear answers) that he said or did the things described by Dr. Mitchell.[12] Respondent's testimony was not as credible as Dr. Mitchell's testimony. Dr. Mitchell's testimony is credited.

Jessica Kendrick

43. Jessica Kendrick was the head swim coach at Evans, coaching both the boys' and girls' swim teams, from 2013 through the 2018-2019 school year. Her testimony was fairly narrow in scope, but clear and to the point: when Respondent was the head of the athletics department in the 2017-2018 school year, he made her uncomfortable by standing very close whenever they talked with no one else nearby—that is, when there were no witnesses.

44. Ms. Kendrick is five feet, eight inches in height. Respondent is six feet, one inch tall. He used his height advantage to intimidate Ms. Kendrick, making her feel like he was towering over her when he stood very close and looked down at her. Ms. Kendrick's vivid description was that Respondent would be standing so close to her that she could tell what he had for lunch.

45. Ms. Kendrick's reaction to these close encounters was to back up to create space between Respondent and herself. But Respondent would quickly move forward to close the space she had created. She would inch back again; he would inch toward her to close the gap again. Respondent made Ms. Kendrick feel very uncomfortable.

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[12] In contrast, the investigative summary of the District's investigation into Ms. Carter's sexual harassment complaint reported that Respondent stated he "does not recall if he made inappropriate comments to [Dr.] Mitchell." (Pet. Ex. 14, Bates p. 35). Although statements of *non-party* witnesses reported in the investigative summary are hearsay, and thereby limited in use to supplementing or explaining competent evidence, Respondent's statements reported in the investigative summary that was offered against him are party admissions, excepted from hearsay, and admissible for all purposes. *See* § 90.803(18)(a), Fla. Stat.

46. Ms. Kendrick had been the head swim head coach at Evans for four years before Respondent became athletic director. He made her so uncomfortable when they spoke in person that she went out of her way to avoid him. She told the two assistant swim coaches, Mr. Rivers and Mr. Ross, about her discomfort with Respondent. She asked her assistants to take her place for in-person meetings or discussions with Respondent so she could avoid any more uncomfortable close encounters with Respondent. It affected her job; communications with the athletic director were necessary for her to function effectively as head coach.

47. Ms. Kendrick testified that rather than having to interact with Respondent, if Respondent had continued on as athletic director at Evans, she would have given up the head coaching position. Instead, Respondent resigned, and Ms. Kendrick decided to remain head swim coach at Evans for the 2018-2019 school year.

48. Respondent testified that he had no idea what Ms. Kendrick was talking about. Ms. Kendrick's testimony was more credible than Respondent's and is credited.

49. At the hearing, Respondent made the blanket statement that all the witnesses testifying against him were lying. He claimed that Ms. Carter and Ms. Kendrick were lying to get back at him for changing the procedures to prevent roster padding and costing them coaching supplements.[13] He claimed that their colleagues, in whom they had confided and who corroborated their testimony, were also lying. Respondent's attempted attacks on the credibility

[13] Ironically, the suggestion that Ms. Carter was mad because she lost supplements as a result of the changed roster procedures was contradicted by Respondent's own testimony. As for her head coaching positions, Respondent testified that head coaches receive supplemental pay irrespective of roster numbers. Ms. Carter might have lost those supplements as a result of Respondent's unauthorized attempt to remove Ms. Carter from cross-country head coach and to threaten removal from track, had those actions stood, but they were reversed by Mr. Bailey. As for the supplement Ms. Carter received as assistant weightlifting coach, Respondent admitted that when he told Ms. Carter she was relieved of her assistant coaching duties mid-season, he told her she could retain the supplement. Respondent's actions had nothing to do with supplements or rosters; Respondent acted to retaliate against Ms. Carter for rebuffing his repeated advances.

of the witnesses testifying against him were not persuasive and did not undermine their clear, credible testimony.

50. Most notably, although Respondent claimed some witnesses had a motive to lie to get back at him because of lost coaching supplements, no such motive was or could be attributed to Dr. Mitchell. Dr. Mitchell was not a coach or an assistant coach. Respondent offered no cogent theory to explain why Dr. Mitchell would fabricate her testimony. Respondent's accusation that Dr. Mitchell's testimony was invented does not square with her display of emotions at the hearing. She was visibly shaken and crying when she described her embarrassment with Respondent's sexual innuendos, and when she explained why she did not complain about Respondent at the time.

Ulunda Frazier

51. The pattern of behavior evident from the complaints of Ms. Carter, Dr. Mitchell, and Ms. Kendrick is further buttressed, at least generally, by court records regarding Ulunda Frazier and Respondent.

52. Ms. Frazier is a teacher. At the time pertinent to this case, she taught at Oak Ridge High School (Oak Ridge), within the District. At the hearing, Respondent described Ms. Frazier as a longtime personal friend he has known for 15 or 16 years. He said Ms. Frazier used to babysit for Respondent's 15-year-old son when the teenager was an infant and toddler.

53. Respondent admitted that his personal relationship with Ms. Frazier had turned "toxic." He did not offer any details to explain in what way the relationship turned toxic. Instead, alluding to a close intimate relationship gone bad, he said only that his relationship with Ms. Frazier "had become toxic and out of control that was actually birthed out of both of our pains. We -- she was going through an ugly divorce and I was going through my treatments and stuff. And so the relationship had just got toxic and it had -- it was no longer a friendly environment." (Tr. 351).

54. Court records in *Frazier v. Crawford*, Case No. 48-2018-DR-000923-O, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County,

Florida, were officially recognized. The records reflect that on January 24, 2018, Ms. Frazier filed a Petition for Injunction Against Stalking under section 784.0485, Florida Statutes, seeking to enjoin Respondent from stalking her. That same day, the court issued a Temporary Injunction for Protection Against Stalking.

55. On January 25, 2018, the Polk County Sheriff's Office served the Temporary Injunction, Ms. Frazier's Petition, and a Notice of Hearing on Respondent at his residence.

56. The hearing was scheduled for February 6, 2018, and was held as noticed. Both Ms. Frazier and Respondent attended. At the conclusion of the hearing, the court issued a Final Judgment of Injunction for Protection Against Stalking (Stalking Injunction). Respondent received a copy by hand delivery in open court, as acknowledged by his signature on the Stalking Injunction. He is therefore "deemed to have knowledge of and to be bound by all matters occurring at the hearing and on the face of" the Stalking Injunction. (Pet. Ex. 18, Bates p. 51-52).

57. The Stalking Injunction contains the following finding: "After hearing the testimony of each party present and of any witnesses, or upon consent of Respondent, the Court finds, based on the specific facts of this case, that Petitioner is a victim of stalking."[14] (Pet. Ex. 18, Bates p. 47). On that basis, the Stalking Injunction ordered as follows: "Respondent shall not commit, or cause any other person to commit, any acts of stalking against Petitioner, including stalking, cyberstalking, aggravated stalking, or any criminal offense resulting in physical injury or death. Respondent shall not commit any other violation of the injunction through an intentional unlawful threat, word or act to do violence to Petitioner." (Pet. Ex. 18, Bates p. 50). The Stalking Injunction is in effect until February 26, 2021.

[14] "A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree[.]" § 784.048(2), Fla. Stat. (2017). Section 784.0485 creates a cause of action for a person who is a victim of stalking to obtain an injunction for protection against stalking.

58. The Administrative Complaint alleged that the Stalking Injunction "reduced Respondent's effectiveness as an athletic director because it limited his ability to travel to that school and perform his duties."

59. The terms of the Stalking Injunction do not support this allegation. While the Stalking Injunction generally and broadly prohibited Respondent from having any contact with Ms. Frazier, including at Oak Ridge where she worked and at her residence (both of which were in Orlando), there is an express exception to the no-contact prohibition, as follows: "The Respondent may go to Oakridge [sic] High School only for a valid business reason. If any contact occurs, it shall be non-hostile contact." (Pet. Ex. 18, Bates p. 49).

60. In several respects, however, the Stalking Injunction contradicts Respondent's testimony. Respondent denied that he would have made advances on Ms. Carter because he was married and had been married to the same woman since 2010. Yet his close personal relationship with Ms. Frazier predated his marriage by five or six years. Respondent testified that Ms. Frazier babysat for Respondent's 15-year-old son when the teenager was an infant. The fact that Respondent got married to someone else five years later did not prevent Respondent from engaging in a first "friendly" and then "toxic" close relationship with Ms. Frazier, or from stalking Ms. Frazier before the Stalking Injunction was issued against him on February 6, 2018.

61. Whatever the details may be regarding Respondent's stalking of Ms. Frazier, it is noteworthy that she lived and worked in Orlando. This belies Respondent's claim that he could not have harassed Ms. Carter with the repeated advances she described, because he would not have had time to go to the movies or out for drinks near where he worked in Orange County. He attempted to paint the picture that he spent every moment in Orange County working or commuting to and from his home in distant Polk County. The Stalking Injunction stands as evidence that, contrary to Respondent's claim, in addition to working at Evans and commuting to and from Polk County, Respondent found time to have a first friendly, then toxic

relationship with Ms. Frazier and to stalk Ms. Frazier where she lived and worked in Orange County.

Respondent's Separation from the District

62. The investigation into Ms. Carter's complaint identified individuals who were potential witnesses with relevant information or possible victims. After conducting interviews, the District held a pre-determination meeting on March 7, 2018, to share with Respondent the information learned during the investigation and give him an opportunity to respond. Respondent appeared with a union representative, who instructed him not to respond.

63. On March 27, 2018, Respondent was suspended from work with pay while the District completed its investigation. This "Relief of Duty" status is employed when warranted by the seriousness of the allegations. "Relief of Duty" included an immediate suspension of network access, including email.

64. During the process of completing the investigation, the District discovered a new allegation of inappropriate conduct by Respondent. The District learned of Ms. Frazier's Petition and the resulting Stalking Injunction. It held a second pre-determination meeting on April 3, 2018, to inform Respondent that it had learned about the Stalking Injunction. Again, Respondent was given the chance to respond, but again, he refused to say anything on advice of his union representative.

65. On the same day as the second pre-determination meeting, Barbara Jenkins, the District Superintendent, issued a memorandum to the School Board, transmitting a complaint charging Respondent with misconduct in office and conduct unbecoming a public employee, and recommending that Respondent be terminated from employment for the charged violations.

66. Immediately after the complaint and recommendation for termination were released, Respondent negotiated and finalized a Settlement Agreement and General Release (Agreement) with the School Board.

67. The Agreement expressly stated that it was not to be construed as an admission by Respondent or the District of any wrongdoing. Nonetheless,

pursuant to the Agreement, Respondent was required to resign as of April 5, 2018, and to tender a written letter of resignation.

68. Pursuant to the Agreement, Respondent agreed "he will not reapply for or accept employment [at a District school] at any time in the future." Respondent also acknowledged that the District would be submitting its investigation into Respondent's alleged misconduct to the Department of Education Professional Practices Commission, as required by section 1012.796(1)(d), Florida Statutes.

69. In form and substance, the Agreement is a common vehicle utilized for resignation of an employee in lieu of the employee having to answer to charges and face the prospect of termination.

70. Respondent attempted to suggest that his resignation was purely voluntary, based on his decision that he did not want to work in a place where people would lie about him. His claim was not credible. Respondent fully understood when he took the position at Evans, along with at least 15 others brought over from Freedom by Mr. Bailey, that there would be an "us against them" air that he would have to overcome. Mr. Bailey attempted to set the stage for developing good relationships with existing Evans coaches and other staff, by deeming the first year an "evaluative year" in which there would not be any position changes until the evaluative year was discussed with Mr. Bailey, Respondent, and the coach at the end of the year. Respondent knew that Evans had challenging problems to overcome, with scarce resources in terms of facilities, equipment, and uniforms, and that he was expected to build winning programs and instill school pride. He knew he was expected to put in place the systems, policies, and procedures that would allow for program building, and he was well aware that his changes would be unpopular with some. It defies logic and credibility for Respondent to suggest that he chose to walk away from his commitment before completing one school year only because existing Evans coaches and assistant coaches were lying about him.

71. Mr. Bailey acknowledged that, as principal, he was compelled to let the investigation process be carried out. As he put it: "[W]hat I performed is my role as a principal. That when there's conduct that's unbecoming of an employee, or an employee feeling as if they have been, in this case, harassed, I'm going to follow the guidance that has been presented to me in my role as the leader of the school." (Tr. 209). He acknowledged that at the culmination of that process, when it was reported to him, he followed the guidance that he was supposed to follow, and as a result, Respondent was no longer at his school.

CONCLUSIONS OF LAW

72. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).

73. In this proceeding, Petitioner seeks to impose discipline against Respondent's educator's certificate, a form of license. § 120.52(10), Fla. Stat. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. *State ex rel. Vining v. Fla. Real Estate Comm'n*, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, to impose such discipline, Petitioner must prove the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 933-34 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292, 294-95 (Fla. 1987).

74. As stated by the Supreme Court of Florida:

> 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 at 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 Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous." *Westinghouse Elec. Corp. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

75. Section 1012.796 sets forth the disciplinary process for educators, and provides in pertinent part:

> (6) 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.
>
> (7) 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.

76. Penal statutes and rules authorizing discipline against a professional license must be strictly construed, with any ambiguity resolved in favor of the licensee. *Elmariah v. Dep't of Prof'l Reg., Bd. of Med.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990).

77. In addition, disciplinary action must be predicated on facts alleged and charges set forth in an administrative complaint. *See* § 120.60(5), Fla. Stat.;

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).

78. Count 1 of the Administrative Complaint charges Respondent with a violation of section 1012.795(1)(g), for having "been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board." The only factual predicate for this charge in the Administrative Complaint was the allegation that the Stalking Injunction reduced Respondent's effectiveness as an athletic director because it limited his ability to travel to Oak Ridge and perform his duties. As found above, this charge was not proven. Respondent was permitted under the terms of the Stalking Injunction to go to Oak Ridge for business purposes.[15]

79. Count 2 of the Administrative Complaint charges Respondent with a violation of section 1012.795(1)(j), which authorizes discipline for violations of the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules. This count does not charge an independent violation, but rather, is dependent upon a corresponding violation of the rules prescribing the Principles of Professional Conduct.

80. Count 3 of the Administrative Complaint charges Respondent with violating rule 6A-10.081(2)(c)4., providing as follows:

> (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

[15] Petitioner argued in its PRO that Respondent's effectiveness was also reduced as a District employee by his harassment of four District employees (including Ms. Frazier). That factual predicate for Count 1 was not alleged in the Administrative Complaint and cannot be inferred after the fact.

> 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.

81. Based on the Findings of Fact above, Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(2)(c)4., by engaging in harassment of three female employees at Evans, two of whom were coaches under his direct leadership and control as athletic director and head of the athletic department. His inappropriate conduct interfered with these three individuals' performance of their professional work responsibilities and with the orderly processes of education. His inappropriate conduct also created a hostile, intimidating, offensive, and oppressive work environment in which all three professional women had to alter their mode of communications, and became skittish about simply walking down the hallways and courtyard of the school out of fear of being accosted by Respondent with unwanted advances, offensive comments with sexual overtones, and physical posturing that was intimidating.

82. Rather than arguing whether Respondent's conduct was proscribed by the words chosen to be codified in rule 6A-10.081(2)(c)4., Respondent argued in his PRO that the rule should be interpreted to require proof of "sexual harassment" as defined in different statutes and rules that do not apply here and that were not charged. Respondent offers no authority to support this reach. Indeed, to accept Respondent's argument, for starters it would be necessary to add the word "sexual" before "harassment" in the rule. It must be assumed that this rule, codifying a principle of professional conduct for the education profession, intentionally omits the word "sexual" as a limitation on the specific type of "harassment" encompassed therein.

83. After offering inapplicable statutes and rules that address and define sexual harassment for purposes other than Florida regulation of the education profession, Respondent then further mischaracterized the law by stating: "Florida's sexual harassment laws are modeled after Title VII of the Civil Rights Act. Federal cases construing this issue offer some guidance." (Resp. PRO at 24). This statement is a loose (and therefore, incorrect) reference to Florida case law providing that the Florida Civil Rights Act, codified in chapter 760, Florida Statutes, is modeled after Title VII of the federal Civil Rights Act, and, in that context, Florida courts and tribunals applying chapter 760 routinely rely on federal cases interpreting the federal act. *See, e.g.*, *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 21 (Fla. 3d DCA 2009). But the Florida Civil Rights Act is not at issue in this case. No authority was offered by Respondent for drawing any kind of parallel between the Principles of Professional Conduct for the Education Profession and sexual harassment employment laws, in general, or the Florida Civil Rights Act, in particular.

84. The inquiry under the charged principle of professional conduct governing educators such as Respondent is different than the inquiry under the civil rights laws. Here, at issue is whether Respondent violated his professional obligations as an educator by engaging in harassment of his colleagues, two of whom worked as coaches under his leadership and direction as athletic director. The inquiry under the Florida Civil Rights Act would be whether an employer, such as the District, committed an unlawful employment practice. That is why the inapposite federal cases offered by Respondent focus on whether another employee's sexual harassment of a complainant was so pervasive and severe as to alter the terms and conditions of employment. It is unnecessary to debate whether Respondent's sexual harassment of three employees at Evans rose to such level as would implicate the District as their employer. That is a wholly separate inquiry.

85. It has been settled in Florida that educators are expected to conform to high moral standards. As courts and tribunals have held, "by virtue of their leadership capacity, teachers are traditionally held to a higher moral standard in the community." *Adams v. Prof'l Prac. Council*, 406 So. 2d 1170, 1171 (Fla. 1st DCA 1981). Respondent repeatedly crossed the line of propriety and high moral standards expected of educators by his repeated harassment, ranging from unwelcome advances with sexual overtones and inappropriate sexually-charged comments to physical intimidation. Respondent's conduct clearly violated rule 6A-10.081(2)(c)4.

Appropriate Penalty

86. At the time of Respondent's conduct, the disciplinary guidelines, codified in Florida Administrative Code Rule 6B-11.007, provided the normal penalty for the violation found here broadly ranged from reprimand to revocation. Fla. Admin. Code R. 6B-11.007(2)(i)11., effective Apr. 9, 2009.[16]

87. Rule 6B-11.007(3) provided that a penalty outside the normal range was allowed when warranted by consideration of mitigating and aggravating circumstances. However, the broad penalty range that applies to the violation found is essentially all-encompassing, from a simple reprimand to revocation. No mitigating or aggravating circumstances suggest imposition of a penalty outside the normal range.

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[16] The 2009 version of the disciplinary guidelines cross-referenced the Principles of Professional Conduct then-codified in Florida Administrative Code Rule 6B-1.006, and paraphrased the principle to which a particular penalty range applied. The penalty range referenced above applied to "[h]arassment or discrimination which interferes with an individual's performance or work in violation of [rule] 6B-1.006(5)(d)." Rule 6B-1.006(5)(d) contained the same principle now codified in rule 6A-10.081(2)(c)4., providing then and now, in pertinent part: "Obligation to the profession of education requires that the individual … [s]hall 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[.]" The disciplinary guidelines rule, as amended May 29, 2018, and recalibrated to the transferred Principles of Professional Conduct now has a penalty range of probation to revocation for a violation of rule 6A-10.081(2)(a)1. Petitioner's PRO relies on the penalty guideline rule not adopted until after Respondent's conduct charged here. However, the penalty guidelines rule in effect at the time of Respondent's conduct applies. *Orasan v. Ag. for Health Care Admin., Bd. of Med.*, 668 So. 2d 1062, 1063 (Fla. 1st DCA 1996).

88. Instead, given the all-encompassing penalty range that applies, factors embodied in the codified mitigating and aggravating circumstances are more appropriately considered and balanced to determine the appropriate penalty within that broad range.

89. Respondent argues, if a violation is found, there should only be a reprimand. Petitioner argues the opposite end of the spectrum, that Respondent's certificate should be revoked, albeit for five years instead of permanently.

90. One difficulty in addressing factors such as the codified mitigating and aggravating circumstances is that the record contains only spotty history for Respondent's career as an educator. There is no evidence that his record as an educator is spotless, although there is no indication that he has previously been disciplined by the Education Practices Commission. There is some evidence, collected in the District's investigation, that Respondent has been disciplined previously by the District during his intermittent employment stretches in Orange County. The circumstances of his first departure from Evans are unknown. Mr. Bailey referred rather obliquely to "situations" and "conflict" involving Respondent during his first tenure at Evans and also at Freedom. And Respondent's record as an educator during the gaps in his employment with the District is anyone's guess, as far as the record is concerned.

91. The seriousness of the violations found here dictates against a penalty at the lowest end of the permissible range, as does Respondent's less than forthright testimony, which shows a complete lack of remorse for his inappropriate conduct. Consideration is also warranted of the deterrent effect of more than a token penalty, especially where, as here, Respondent has attempted to avoid consequences for his wrongdoing by walking away and then claiming he did so voluntarily.

92. On the other side of the equation, the violation that was charged and that Respondent is found to have committed is, by its nature, one that does

not involve harm to a student. Moreover, Respondent removing himself from the setting brought instant relief to the targets of his harassment. But there were multiple targets of his inappropriate conduct and harassment. And there was lingering distress for at least two of the targets caused by the violation, and by having to relive the events during the hearing.

93. As Petitioner noted in its PRO, there are other final orders finding violations of the same rule at issue here that are based on more egregious facts, including one cited by Petitioner in which the penalty imposed was permanent revocation.

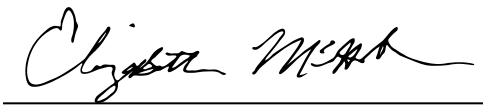
94. All things considered, the undersigned has determined that an appropriate penalty is as follows: a three-year suspension of Respondent's certificate, followed by a three-year probationary term with such conditions as are deemed appropriate by the Education Practices Commission, which should include a requirement that Respondent take two college level courses, one in professional ethics for educators and one related to women's rights in the workplace; and payment of a $750.00 fine (less than half of the authorized fine of up to $2,000.00 per count).[17]

[17] Petitioner's PRO proposes an additional penalty—that Respondent be required to participate in the Recovery Network Program—but offers no record evidence or argument to suggest imposing that additional penalty is warranted here. While it is conceivable that conduct of the type Respondent is found to have committed could be the product of some impairment, there is nothing in the record on this subject. In fairness to Respondent, if Petitioner intended to pursue that theory, it should have included allegations of the claimed impairment in the Administrative Complaint affording Respondent notice and an opportunity to defend against that claim.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission issue a final order finding Respondent guilty of violating section 1012.795(1)(j) through a violation of rule 6A-10.081(2)(c)4., and imposing the following as penalties: suspension of Respondent's educator's certificate for a period of three years from the date of the final order; probation for a period of three years after the suspension, with conditions to be determined by the Education Practices Commission, which should include a requirement that Respondent take two college level courses, one in professional ethics for educators and one related to women's rights in the workplace; and payment of a $750.00 fine.

DONE AND ENTERED this 29th day of January, 2021, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 29th 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.