

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

Case No. 20-4281PL

vs.

THOMAS LLOYD ALDEN,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”), on March 23 and 24, 2021.

APPEARANCES

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

For Respondent: Branden M. Vicari, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent committed any of the acts alleged in Petitioner’s Amended Administrative Complaint; and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Richard Corcoran, as Commissioner of Education (“Petitioner”), issued an Administrative Complaint on December 18, 2019, alleging Thomas Lloyd Alden (“Mr. Alden”) violated statutes and rules governing education certificate holders by committing the following acts during the 2018-19 school year: (1) “[i]n the classroom and in front of their classmates, Respondent referred to students as ‘dumb’ or ‘stupid’ or words to that effect”; (2) “Respondent told his students that the class was divided into a section of ‘smart’ kids in the back and ‘dumb’ kids in the front, or words to that effect”; and (3) “Respondent used profanity in the classroom including the words, ‘bitch,’ ‘shit,’ and ‘hell.’” Petitioner also alleged that Mr. Alden embarrassed a high school student during the 2018-19 school year by engaging in a debate with that student about his religious beliefs and stating that one of the student’s beliefs was “demonstrably fallacious.”

Mr. Alden requested a formal administrative hearing, and Petitioner referred this matter to DOAH on September 23, 2020. After granting two continuances, the undersigned scheduled the final hearing for March 23 and 24, 2021.

On January 15, 2021, Petitioner filed a Motion seeking to amend the Administrative Complaint based on newly discovered evidence. The Motion sought to add the following allegations:

On or about October 8, 2019, as one of Respondent’s students was entering his classroom, Respondent grabbed the student’s hair, which caused the student’s head to be pulled backwards.

On or about February 25, 2020, a student in Respondent’s class answered a question incorrectly. Respondent walked over to the student, touched the student’s forehead with two fingers and said

“think” to the student. By doing this, Respondent embarrassed the student in front of his classmates.

On or about April 22, 2019, Respondent submitted six applications for employment to the Marion County School District. On the applications, Respondent stated in the Employment History section that while employed in the Citrus County School District he was the “Title: SS Department Chair” and his duties were to “Oversee social science department.” In the Background Questions section of the application, Respondent answered “No” to the question “Have you ever been investigated for misconduct related to your employment?” The statements made by Respondent on the application are false.

On or about December 18, 2020, Respondent submitted an application for employment to the Marion County School District. On the application, Respondent stated in the Employment History section that while employed in the Citrus County School District he was the “Title: SS Department Chair” and his duties were to “Oversee social science department.” In the Background Questions section of the application, Respondent answered “No” to the question “Have you ever been investigated for misconduct related to your employment?” The statements made by Respondent on the application are false.^[1]

On March 5, 2021, Petitioner filed a “Motion to Deem Fact Admitted” (“the Motion”) asserting that Mr. Alden admitted certain allegations within the Amended Administrative Complaint during the course of a deposition. After comparing Mr. Alden’s deposition testimony to the pertinent allegations

¹ In its Proposed Recommended Order, Petitioner correctly notes that no evidence was presented during the final hearing regarding the allegations that Mr. Alden submitted applications to the Marion County School Board containing false information. Accordingly, those allegations are deemed to have been dismissed and will not be discussed further herein.

within the Amended Administrative Complaint, the undersigned made the following rulings via an Order issued on March 15, 2020:

Paragraph 3(c) of the Amended Administrative Complaint alleges that Respondent embarrassed and disparaged students during the 2018/2019 school year by using profanity in the classroom. While Respondent admitted using profanity, he did not admit that any students were embarrassed or disparaged as a result of him using profanity. Therefore, Respondent is only deemed to have admitted the portion of Paragraph 3(c) alleging that he used profanity in the classroom.

Paragraph 4 of the Amended Administrative Complaint alleges that Respondent embarrassed a student by telling the student that one of his religious beliefs was “demonstrably fallacious.” While Respondent admitted during his deposition that he told the student in question that a “claim” of his “was demonstrably fallacious,” Respondent did not admit that he embarrassed the student or that he told the student that “his belief” was “demonstrably fallacious.” Therefore, Respondent is not deemed to have admitted the allegations in Paragraph 4 of the Amended Administrative Complaint.

Paragraph 6 of the Amended Administrative Complaint alleges that Respondent “grabbed” a student’s hair as she was entering Respondent’s classroom and that Respondent’s action “caused the student’s head to be pulled backwards.” However, Respondent stated during his deposition that he “swatted” at the student’s hair and that his finger became entangled in a knot. Therefore, Respondent is not deemed to have admitted the allegations in Paragraph 6 of the Amended Administrative Complaint.

Paragraph 7 of the Amended Administrative Complaint alleges that after a student answered a question incorrectly, Respondent approached the

student, “touched the student’s forehead with two fingers and said ‘think’ to the student. By doing this, Respondent embarrassed the student in front of his classmates.” While Respondent admitted during his deposition that he approached the student, touched the student’s forehead, and said “think,” Respondent did not admit that the student in question was embarrassed in front of his classmates. Therefore, Respondent is only deemed to have admitted the portion of Paragraph 7 of the Amended Administrative Complaint alleging that Respondent approached the student, touched the student’s forehead, and said “think.”

The final hearing took place as scheduled with Petitioner calling Karen Harper, Alexander Stubenbort, Melissa Forsyth, and Kayla Palacios as witnesses. Petitioner also called the following witnesses who are former students of Mr. Alden’s: S.H., S.C., S.B., J.S., O.L., K.S., and K.R.H. Respondent offered testimony from himself and Brian Donovan. Respondent also called the following witnesses who are his former students: R.C., M.M., C.S., B.S., S.C., and M.J. Petitioner’s Exhibits 2, 3 (pages 3 through 5, 10 through 13, and 15 through 25²), 3a, 6 (pages 32 through 44), 7, 9 (an October 9, 2019, letter and a hotline report), 10 (a February 27, 2020, letter), 11, and 12 were accepted into evidence. The undersigned noted hearsay objections to Petitioner’s Exhibits 3, 3a, 6, 10, and 11. The undersigned also noted a relevancy objection to Petitioner’s Exhibit 9. Respondent’s Exhibits 1, 2, 6, and 7 were accepted into evidence.

The three-volume final hearing Transcript was filed on April 9, 2021, and the parties filed timely proposed recommended orders on May 3, 2021. Both of the Proposed Recommended Orders were considered in the preparation of this Recommended Order.

² Petitioner was unable to authenticate page 14 of Petitioner’s Exhibit 3.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following Findings of Fact are made:

Background on Mr. Alden

1. Mr. Alden began working as an educator in 2004 when he was hired to work at the Clark County Alternative School in Athens, Georgia. When that school closed in 2009, Mr. Alden relocated to Clark Central High School. After taking a year off to care for his terminally ill mother, Mr. Alden relocated to Florida and took a position with Gateway High School in Osceola County in 2011.³ In 2017, Mr. Alden took a teaching position with Lecanto High School (“Lecanto High”) in Citrus County, Florida.

2. During the 2018-19 school year, Mr. Alden was an economics and government instructor at Lecanto High. He also taught one section of world history.

3. Allegations by students regarding Mr. Alden’s conduct led to the initiation of an investigation in September of 2018 and the issuance of a written reprimand on September 25, 2018. A second investigation began on May 2, 2019, but was closed on May 9, 2019, due to Mr. Alden’s resignation from Lecanto High.

4. Mr. Alden worked as a sixth-grade world history teacher at Liberty Middle School in Marion County, Florida, during the 2019-20 school year. As explained in more detail below, two incidents during the 2019-20 school year led to Mr. Alden not being recommended for reappointment.

³ Mr. Alden holds Florida Educator’s Certificate 1186313, covering the areas of Educational Leadership, Elementary Education, Gifted, and Social Science, which is valid through June 30, 2022.

Findings as to Whether Mr. Alden Referred to Students as “Dumb,” “Stupid,” or Words to that Effect

5. S.H. was a senior at Lecanto High during the 2018-19 school year and was in Mr. Alden’s economics class. S.H. has a learning disability and reported in September of 2018 to her case manager, Karen Harper, a math teacher at Lecanto High, that Mr. Alden would become angry with her for asking questions. Mr. Alden supposedly displayed that anger by sighing heavily and telling S.H. that she didn’t know what she was talking about.⁴

6. S.H. offered the following testimony during the final hearing:

Q: Tell us about what your concerns were in Mr. Alden’s class.

A: Well, I was – not repeatedly, but I have heard him putting down students. On top of that I was making a statement about something he said and he said that I didn’t know what I was talking about and that I was stupid.

Q: Okay. Now, did that bother you what Mr. Alden said to you?

* * *

A: Yes, sir.

Q: When he called you stupid, did he say this in front of other students?

A: Yes, sir.

Q: What you just told us here today, was that some of what you told Mr. Harper?

⁴ Ms. Harper also acted as a case manager for a student named A.M., who stated to her that Mr. Alden referred to him as stupid and a failure when he sought assistance from Mr. Alden. Because A.M. did not testify during the final hearing, the portion of Ms. Harper’s testimony concerning A.M.’s allegations is uncorroborated hearsay that cannot support a finding of fact. See § 120.57(1)(c), Fla. Stat. (2020)(providing that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”).

A: Yes, sir,

* * *

Q: Okay. You say he has put you down when asked questions. What do you mean by that? What did he do? What was going on?

* * *

A: Like anything I would say – and, honestly, it sounded pretty dumb in my mind as well, my questions, but I could understand why he put me down, but it's still unacceptable. But I was just saying things that provoked it. So. He put me down, like, you know, called me, you know, stupid, tell me I wasn't – I didn't know what I was talking about. Like that.

Q: Okay. So even if you felt like you asked a dumb question, you didn't expect him to call you stupid in front of your peers?

* * *

A: Yes. Because my other teachers don't do that.

Q: Okay. How did that make you feel for him to call you stupid?

A: Not good. It just made me feel kind of depressed, like I wasn't good enough for his class. Just did not feel good about it.

7. Other former students of Mr. Alden's from the 2018-19 school year did not corroborate S.H.'s testimony. For example, J.S. testified that Mr. Alden implied that particular students were dumb or stupid but never directly said so. However, J.S. did not explain how that implication was expressed. K.S. did not remember Mr. Alden using the words "dumb" or "stupid." M.M. could not recall any instances in which Mr. Alden demeaned a student. C.S. denied ever observing Mr. Alden disparage a student or call a student "stupid" or

“dumb.” B.S. never heard Mr. Alden call a student “dumb” or “stupid” and did not recall Mr. Alden disparaging or embarrassing any students. S.C. never witnessed Mr. Alden disparage or belittle any students and never heard Mr. Alden call any students “stupid” or “ignorant.” M.J. never observed Mr. Alden disparaging any students or call a student “dumb” or “stupid.”

8. R.C. denied ever observing Mr. Alden disparage a student. When asked if he remembered Mr. Alden explaining the difference between “stupid” and “ignorant,” R.C. gave the following testimony:

A: I remember the comment. If I believe. I mean, it's been two years, but to my best knowledge I believe that the comment was made on the note that, as long as you're – as long as you're trying and you're asking questions and you're trying to be engaged and learn, that you can't be stupid. But if you're choosing not to learn and you're choosing not to try and give no effort, then you're just ignorant. But you can't be stupid as long as you try.

Q: Okay. And did you ever observe Mr. Alden, you know, directly, call a student stupid or dumb?

A: No, sir.

9. Mr. Alden vehemently denied Petitioner's allegation that he referred to students as “dumb” or “stupid”:

A: I spent 15 years in the classroom working with kids that have been disparaged by their community and their families. Came to me using I am stupid as their – as their – as an excuse for not putting effort into their education.

They had to – they had been convinced that there was no point in trying because they weren't – they were going to fail. I spent 15 years, from the minute I walked into the classroom, trying to convince these kids that they were not stupid, that they were, in fact, more than capable and trying to

deprogram them from the belief that there was no point in trying.

I made, every year, the first day of the – the first day of class I made a point to illustrate to the kids that there was a difference between ignorant and stupid. Because a lot of them conflated those two terms.

I would point out that ignorant means you have not learned and stupid means you cannot learn. And to drive the point home, especially with the age group that I worked with, I went into a little conversation about human growth and development and the formation of the prefrontal cortex and that that's the part of your brain that allows you to make rational decisions and it doesn't finish forming until your early-to-mid 20s.

* * *

I also used the secondary working definition of stupidity that ignorant means you don't know any better and stupid means you know better, but you do it anyway.

And I use that to short circuit what a lot of these kids would interpret as a disparaging remark from other adults. That when an adult might say, that was stupid, they weren't talking about you as a person, they're talking [about] your actions.

* * *

Q: How often would you have to have that sort of discussion with your students?

A: Well, as I said, I would do it at the beginning of the term, just to sort of begin that deprogramming process. I would also reiterate the lesson at every available opportunity.

If I heard a kid say, I'm stupid, I would stop the world and point out to them, no, you're not, you

can't be. It's physiologically impossible and all the rest.

If I heard a kid disparage another student, say that was stupid or are you stupid or don't be stupid, I would clarify for both the student making the comment as well as the student the comment was towards, that that's not how you want to say that.

You want to say, that was careless, that was thoughtless, that was reckless. Not that that was stupid. And stress to the student that was – that had engaged in observable behavior that could be defined as a stupid action and say, look, you're not stupid. You knew better. Think about what you're doing before you do it. And, you know, you don't have to worry about people coming to the wrong conclusions.

Findings as to Whether Mr. Alden Told His Students That a Class Was Divided Into “Smart” and “Dumb” Sections

10. S.B. was a sophomore at Lecanto High during the 2018-19 school year and had Mr. Alden for world history. When asked about how Mr. Alden seated students in his classroom, S.B. gave the following testimony:

A: He would separate the classroom. Smart people would be in the back of the classroom and then the dumber kids, or what he would refer [to as] the kids who failed the test or didn't make good enough grades, he would put them in the front and refer to them as dumb.

Q: How did you know Mr. Alden was putting the smart kids in the back?

A: He had said it.

Q: And the not so smart or dumb kids in the front? How did you know that?

A: He had said it himself. A kid has asked why we were being separated and he just said that he had

separated the kids because the smart kids go in the back and the dumb kids go up front, is what I had overheard in the class period.

Q: Okay. Did that make you feel any particular way when he would put – separate kids like that?

A: Yes. Because that's not how a teacher should be speaking to their students. So I don't think that was right.

* * *

Q: Now, even though you're in the smart group, did you feel bad for the kids that were in the, what he described, as you say, the dumb group?

A: Yes, of course. Because he would always repeat and make it known that those were the dumber kids.

Q: Okay. And what did he tell you he based putting the smart kids in the smart group and the dumb kids in the dumb group? How did he – did he tell you how he made that determination as to which kids were going to go in any particular group?

A: Usually it would be because of the quiz grades or the test grades that we had received [that] day.

11. J.D. was a senior at Lecanto High during the 2018-19 school year and was one of Mr. Alden's students. J.D. offered the following testimony about Mr. Alden's method of seating students:

Q: Okay. Let's start talking about [allegation] 3-A. Tell us what you know about 3-A.

A: All right. So 3-A, it says that in the classroom he referred to students as dumb or stupid. I never heard him actually refer to any individual student individually as dumb or stupid, but I know that he did refer to people collectively as not willing to

learn. But I do not know that he actually referred to any [] particular student as dumb or stupid.

Q: Did you hear him use those words toward any group of students as being dumb or stupid?

A: Implied, yes. But not directly.

Q: Okay. What do you mean when you say implied?

A: So, like, in the next part, in 3-B, when he divided the section into smart and dumb students. And smart students were in the back and dumb students were in the front. That did happen and that does imply that he thought that those kids were not as smart as the kids in the back.

Q: Okay. So, by the way, were you in either one of those groups?

A: Yes, I was. I was in the back.

Q: Okay. So, you were in the smart kids' group; is that right?

A: Exactly.

Q: Okay. Now, how did you – did you – did that make you feel in any way? How did you know that the smart kids were in the back and the dumb kids were in the front? I mean, how did you know that?

A: Because it's what the other kids were saying. The other kids in the class. It made them feel that the kids in the back were better than they were. And those were – those are words from the students. Like, when I was – so, in the class, I was in the back and me and another student in the back would – we would, you know, bicker and argue. So I asked Mr. Alden to move me to a different setting so that we just wouldn't bicker and argue anymore. And when I was sitting with those students, they would always refer to me as the smart kid in the group. And it made a distinction. It actually, in a

way, segregated the class based on the level of intelligence.

* * *

Q: Okay. Did Mr. Alden tell you that [was] why he was separating [students] into different groups? The kids who scored well on the exams were put in the back and the kids who didn't score well, they were put in the front.

A: Exactly. That is how he explained it in the beginning of the school year.

Q: Okay. And you were talking about the interaction between the kids. Based on the way he had told you all he was segregating you with the kids that scored well in the back and kids that didn't score well in the front, did that cause some tension or problems between the students in the classroom?

A: I wouldn't say tensions, but it did ostracize people who sat in the front, people who sat in the back. And then when you, like, try to talk to people from a different area, it was, like, you were either below them or above them.

Q: Okay. And that was discussions among the students based on where they were placed; is that correct?

A: Right. And that is my experience from sitting in a different group.

12. K.S. was aware that Mr. Alden based students' seat assignments on their class performance. However, he testified that Mr. Alden "never said that we were either stupid or smart in one place or another."

13. R.C. gave the following testimony about the seating arrangement:

Q: How was the seating arrangement in Mr. Alden's classroom, if you recall?

A: It varied. Normally we could sit kind of wherever we want[ed] when we came in. But then, after test days, we would be split into groups where the first row back, if I recall, the highest test grades would be in one area and the lowest test grades in the other. We'd talk and go over the test and then we would be split into groups based on lowest test grades with the highest test grades put together and all mixed out so that everybody could help each other and help each other learn.

Q: Okay. And did you find this effective?

A: I believe so. Because some days I had a bad test and someone else did better and they could help me. Then if I had a better test and someone else didn't, I could help them. You got to know everybody in the class better and I feel, again, it was just very productive overall.

Q: Did the seating arrangement ever cause you any embarrassment?

A: No, sir.

14. C.S. testified that the seating arrangement helped “students that weren't really doing well on their tests by putting students that had lower grades on tests up in front. That way [Mr. Alden] could do one-on-one with them, if needed.” When asked if the seating arrangement ever caused him embarrassment, C.S. testified that, “I actually really enjoyed it since there would be certain lessons I didn't understand that well and so being up closer to him, it allowed me to, like, get his attention and be, like, can you help me understand this.”

15. When asked about the seating arrangement in Mr. Alden's class, B.S. testified that “he just put it to where he thought would be the best for people that needed to learn a little bit better. But it wasn't like anything like embarrassing or anything like that. Like it was what he thought was the best seating arrangement to do.”

16. S.C. seemed to agree when asked if Mr. Alden ever announced that he was dividing a class “between dumb students and smart students.” However, S.C. testified that no one took any offense and that the seating arrangement never caused him any embarrassment.

17. M.J. did not recall students being seated based on test scores, but she did remember that students who needed more help were placed closer to the front of the classroom so that they could get Mr. Alden’s attention. She denied ever hearing Mr. Alden state that he was dividing a class into smart and dumb sections.

18. Mr. Alden readily acknowledged that he placed students in different sections of his classroom based on test scores during the time in question and had used this method during seven school years:

After the first unit test, they were grouped by their test score. So the highest performing students were in the back of the room. They were – my independent learners were in the back of the class. And the lowest scoring kids in the group were my dependent learners and they needed more support from me and I put them in – not necessarily in the first group because the very first group was closer to the door to the classroom. The second and third – the second, third – no, wait. One, two, three. The second, fifth and fourth groups were the ones closest to my desk. And that’s where I arranged the students that needed more help with the content.

And sometimes it was a bad test taker or sometimes they were having trouble with the read – with reading comprehension. Sometimes it was an issue with communication with their peers. And having them closer to me allowed me to observe their interactions and, where necessary, step in and provide one-on-one support and determine if I had to address a learning deficiency or if it was a struggle – they were struggling with a particular piece of content.

19. Mr. Alden denied referring to students as being in “a dumb section or stupid section”:

Whenever the students would make comments to that – to that end, I was vehement and immediate in my correction of it. I made – on numerous occasions I would say that the kids in the back of the room might have gotten a hundred percent on the test and the kids in the front of the room might have gotten a 90. That I only have limited amount of space and I can't put every A in the back of the room. I don't have enough room to put everybody in the back of the room.

So everybody's got to go somewhere and it -- ending up in the front of the room does not mean you're low performing. It doesn't mean you have a poor performance. There's no such thing as good enough grades.

* * *

The folks in the front are the folks that need support. The folks in the back are – I'm able to leave to their own devices.

Findings as to Whether Mr. Alden Used Profanity in the Classroom

20. S.H. testified that Mr. Alden uses the words “bitch” and “shit” in class. S.C. read from a prior written statement in which he stated that Mr. Alden is “very blunt, uses uncalled for words. He speaks about other students, but doesn't use specific names, like mistakes they have done. He cusses, such as words as damn, shit and hell. He's used the n-word before. Does not think before he speaks.” S.B. testified that Mr. Alden “would curse a lot” and used the words “bitch,” “shit,” and “ass.” That made S.B. uncomfortable because she thinks that teachers should not be using such language around students. J.S. testified that Mr. Alden used the words “bitch,” “shit,” and “hell” in class. J.S. added that Ms. Alden expressed his preference for Milton Friedman's economic theories by stating that John Maynard Keynes “didn't know shit.”

21. O.L. was a senior at Lecanto High during the 2018-19 school year and was in Mr. Alden's economics class. She testified that Mr. Alden told a joke⁵ to a student in which the set-up was "what is the difference between a bitch and a ho?"⁶

22. K.S. remembered Mr. Alden using the term "shit" at least a couple of times. He also remembered the joke described by O.L.

23. R.C. testified that Mr. Alden occasionally used profanity in the classroom. However, according to R.C., Mr. Alden did not use profanity in a derogatory manner and did not direct any profanity toward any students. C.S. denied hearing Mr. Alden ever say anything inappropriate.

24. Mr. Alden⁷ conceded during his testimony that he had a relaxed attitude toward profanity:

Q: The Amended Administrative Complaint in 3-C states, specifically, Respondent used profanity in the classroom, including the words bitch, shit and hell. Could you respond to that accusation?

A: Incidental profanity was not a thing that I made a big deal about. It was more that the students engaged in it than that I participated in it. I did participate in it, but very infrequently.

⁵ The Amended Administrative Complaint did not mention the joke at issue, but Mr. Alden did not assert that he was not on notice that testimony regarding the joke would be used to substantiate the allegation that he used profanity in the presence of students.

⁶ I.G. did not testify at the final hearing but a written statement from her was accepted into evidence as part of Petitioner's Exhibit 6. I.G. wrote that "Alden said 'this is a joke' and asked the class not to tell, because I believe some other students were making jokes about being called a whore, then he said 'What's the difference between a whore and a bitch? A whore gets with everyone and a bitch gets with everyone but you.'" Even if I.G.'s statement was offered to prove that Mr. Alden made the statement at issue, I.G.'s statement supplements and corroborates O.L.'s testimony. Accordingly, I.G.'s statement is admissible. See § 120.57(1)(c), Fla. Stat. (2020)(providing that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").

⁷ As noted in the Preliminary Statement, Mr. Alden is deemed to have admitted using profanity in the classroom.

It originated with students in the class using that language without sign of disquiet. They – I remember distinctly one student saying to me, Mr. Alden, I really like your class because you talk to us about real shit. And I was, like, whoa. But he showed no signs that he was aware that he had said something inappropriate and nobody in the class showed signs that it was an inappropriate thing to say. At that point I noticed that it was – it was not an infrequent thing among the students. So rather than make it – I mean, I worked at an alternative school where I dealt with juvenile felons. I worked in a school where we – our number one problem was kids getting into gang fights.

So in my career there had just been bigger fish to fry and more important issues to address. So, at Lecanto, when the students informed me, through their behavior, that incidental profanity was not a thing that they were going to get bent out of shape about, I tried to manage it in what I thought was the best way possible. I made very strict rules. Nothing over – nothing more than PG-13. Nothing that you would not hear on commercial television in prime time. And the f-word – never in anger, never towards another person, never used to aggress against another student, never used to disparage or insult another student. And the f-word was forbidden.

Mr. Alden denied ever using the n-word.

25. With regard to the testimony that he told a joke with the words “bitch” and “ho,” Mr. Alden offered the following context:

I had a senior girl that was in crisis. She was being accused of being a whore by the ex-girlfriend of her current boyfriend. The agitator was a junior. My girl was a senior and she was about to graduate. She was within just a few short weeks of graduating. She came into class [visibly] upset, surrounded by a group of girls who were egging her on and she kept saying she was going to beat her.

I tried to intervene to calm her down, kind of talk her off the ledge.

* * *

So, I did the last thing I could think to do. I just said, hey, do you know what the difference is between a b_ _ and a ho? Because that was the topic that she was upset about. Being called a whore. That got her attention.

* * *

And I said, so what is the difference. Tell me what the difference is. And it took a little while to kind of talk her through it, but she got the point that it wasn't about the behavior, it was about the perception of the behavior. That it wasn't about the person who was acting, it was about the outside observer and their judgment of the person's behavior.

26. Karen Harper is a teacher at Lecanto High and explained why teachers using profanity in the classroom could be harmful to learning:

Q: Now, in your career, do you use those kinds of words in your classroom?

A: No.

Q: Do you believe – is there any particular reason why you don't use those words in your classroom?

A: It's not professional. I know that during -- whenever you're hired, you have to go to -- the beginning of school or when you get hired by a county, you have to go through an orientation and they talk about code of ethics and things that they, you know, as a teacher, this is what's expected of you. And that was just something that was -- I know that it's a code of ethic[s] you shouldn't be doing that.

Q: Well what about just in terms of how – based on what you know about students, how using those kinds – that kind of language impacts students?

A: Some students are – you never know. Just like in [the] general population. You don't know who you're going to offend, who you're not going to offend. So it's best just to avoid it and not say them.

* * *

Q: Okay. So, but if the teacher wants to characterize a person in a history book as a bitch or something that they did in the context of history as . . . If the teacher, then, wants to say that something that the queen or the king did was shitty, in your professional view, is that an appropriate context to use those kinds of words?

A: No.

27. Teachers and students at Lecanto High are prohibited from using profanity.

Findings as to Whether Mr. Alden Embarrassed J.S. by Engaging in a Religious Debate and Stating That a Belief of J.S.'s Was "Demonstrably Fallacious"

28. M.M. was a senior at Lecanto High School during the 2018-19 school year, and Mr. Alden was his economics teacher. On a day in early May of 2019, M.M. disclosed to classmates sitting at his table during economics class that he was transgender, and that led to his classmates asking several questions about M.M.'s family life and religious views. When M.M. expressed a favorable view about Jehovah's Witnesses, J.S. approached the table where M.M. was seated, stood over him, and inserted himself into the conversation. M.M. described the ensuing events as follows:

I can't remember exactly what brought up J.S. joining this conversation. I do remember that I started with saying my own opinion on Jehovah's

Witnesses, stating that it was a truer religion than most that I have viewed. And I remember him walking up to my desk, standing less than a foot over me while I was seated. And I am a very, very short, small man. Very, very scared of many people, especially in high school. He stood over me and he told me right off the bat that I was wrong. And I said, it's okay, man, no problem. Conversation over. We're done. And I just acted as if I was going back to my assignment.

He was like, no, no, no, you are wrong. And I want to tell you that you are wrong and that Jesus and God are one and the same. And I was, like, okay, that's your belief, my belief is different. Just, that's it. He was, like, no, no, man. And I was, like, I don't want to – I don't want to deal with someone pushing someone's beliefs on me right now. You know, I'm in school, I just want to finish my assignment. And he was like, I'm not pushing my beliefs, I'm enlightening you. And as he's talking to me he is in a way towering over me, is how I viewed it.

I'm assuming that Mr. Alden saw that I was getting very uncomfortable and Mr. Alden came to the other side of me, looked at Mr. J.S. and said, you are wrong for doing this to him, you need to back off. And at that point, the conversation diverted, while it was over me, still to J.S. going after Mr. Alden with the same phrases and repeating the exact same argument that he was doing to me. Mr. Alden kindly enough diverted the argument away from my desk and got sort of to the other side of the classroom at that point.

29. J.S. described the events in question as follows:

So they were talking about that topic and they were talking – kept talking about, you know, mainstream Christianity. So I walked over there and I wanted to share my belief, since they were already on that topic, to inform them of that in case they were not aware of a different way of thinking,

a different way of believing. So I walked over there and I made the comment, I said, did you know that Jesus is God. And after I said that comment, Mr. Alden walked over to me and he said, don't say that Jesus is God. That's demonstrably fallacious.

And Jesus is God is one of the core beliefs of my faith. The fact that [he] believes that Jesus is God and that God is the Holy Ghost and that all of them are one person is one of the founding principles of what I believe.

So in essence, he was saying, don't say what you believe is true, because it's clearly and evidently based on something that is false.

* * *

And after that, he engaged me in a whole debate, trying to prove what I believe to be wrong in front of all of [my] peers.

Q: Okay. So his demeanor towards you while he was telling you that what you believe was demonstrably fallacious, what was his demeanor like?

A: It was cocky, it was arrogant, it was – it seemed like he thought no one could ever prove him wrong. And even when you tried to use the sources that you draw your faith from, such as the Bible, I was – when we were talking, I was trying to use scriptures that I believe to be doctoral scriptures from the Bible. And he said – he told me that I could not use the Bible because it was inaccurate and false, due to the Council of Nicaea. So he not only was disparag[ing] my faith, but he disparaged the spiritual book that I draw my faith from.

Q: Okay. Emotionally how did that make you feel?

A: Emotionally, I was embarrassed. I was upset. I was angry. But I was just going to let it -- I was just

going to let it go. I was just going to let it roll off – roll off like water on a duck’s back.

30. The undersigned does not credit J.S.’s assertion that he was embarrassed. During his testimony, J.S. presented as a very outgoing and opinionated young man who has no inhibitions about expressing his views and engaging in debates. In fact, J.S. testified that “I am a, you know, I hate to say it, but I am an opinionated person and that tends to get me into discussions based on different topics, such as, you know, politics, opinions, the whole nine yards.”

31. Mr. Alden’s description of this incident corroborates M.M.’s testimony, and his description of J.S. matches the opinion formed by the undersigned:

[J.S.] was aggressively opinionated. And I had to remove him from two groups at the request of the members of his groups because he would not acquiesce ever. A big part of the class was they would take quizzes as a collaborative group and they would discuss and debate what was the best evidence for their answers on the quiz. And J.S. would not keep – J.S. would get his opinion on what was the best evidence and he would not hear anyone nay-saying it. So, two different groups of kids said, could you please remove him because we can’t have a debate with this guy.

He was also very aggressive about his religious beliefs. And I, on more than one occasion, reminded him that belief is individualized. You cannot require anybody else to agree with your beliefs. If it’s just a matter of a difference of opinion on beliefs, on faith, then you have to agree to disagree. It’s unjust. Otherwise it’s unjust.

The particular incident involving M.M. – M.M.’s characterization of the interaction is a lot more intimidating than I thought it was. I just – I just saw J.S. in the back of the room with a group that had asked him to be removed from them. And I stepped up to just sort of reestablish that boundary.

That, you know, this is -- this is a group of kids that really doesn't -- they got a problem with you, there's a personality conflict or something going on here. I had no -- I didn't know that M.M. was feeling bullied at the time. And I -- when I stepped to M.M. or when I stepped to J.S., I heard him -- all I -- I heard him say that Jesus and God are literally the same thing. And I heard M.M. very gently disagreeing, but clearly not wanting to get into a debate -- a debate with J.S.

I certainly did not want to get into a debate about religious beliefs, so I employed the Socratic method and I just asked J.S., what do you base that on. And J.S. said, I base it on the Bible. And I said, okay. Let me just ask you questions based on your source material and let's see if we can figure out if that's an accurate claim. Like, can you make that claim using your own sources. And I just asked him a few simple questions about the biblical nature of God as defined by the Bible and the nature of Jesus as outlined in the Bible and showed the contrast between God of the Bible and the Jesus of the Bible to show him that, okay, that claim, you can't defend. You can't make that claim based on the source material.

Findings Regarding the Allegation that Mr. Alden Grabbed a Student's Hair

32. Mr. Alden taught world history at Liberty Middle School in Marion County, Florida, during the 2019-20 school year.

33. K.R.H. was a student at Liberty Middle School that year and had Mr. Alden for eighth-grade history. On approximately October 8, 2019, K.R.H. was walking into Mr. Alden's classroom and Mr. Alden was positioned near the entrance. K.R.H. had long hair and was wearing it in a ponytail. She testified that Mr. Alden "pulled my hair pretty roughly and it made my head go back a little." K.R.H. did not say anything to Mr. Alden. However, when she looked back at him, she testified that he was laughing and did not offer an apology.

34. K.R.H. called her parents about the incident, and her father then called the school. Melissa Forsyth, the principal of Liberty Middle School, fielded the call and began an investigation. In addition to interviewing K.R.H., Ms. Forsyth interviewed two other students who witnessed the incident and corroborated K.R.H.'s assertion that Mr. Alden pulled K.R.H.'s hair.⁸

35. Ms. Forsyth and her assistant principal viewed security camera footage of the incident⁹, and Ms. Forsyth discussed the incident with Mr. Alden:

And we saw Mr. Alden's hand go around her ponytail and kind of -- it went up and then her head tilted back as she was walking into the room.

Q: Okay. Did you talk to Mr. Alden about that?

A: We did.

Q: What did he tell you?

A: So at first he said that he oftentimes greeted students at the door. High fives, fist bumps, elbows. And he never pulled anyone's hair. I did take that opportunity and reminded him that there were security cameras in the hallway. And then he said, he swatted at K.R.H.'s ponytail jokingly to flip it and a finger got caught in a tangle.

Q: So is it your testimony that when you first talked [to] Mr. Alden about it, he denied ever pulling the student's hair?

A: Yes, sir.

Q: And then when you informed him that you had video and you had seen him grab the student's hair

⁸ Neither of the alleged witnesses testified at the final hearing.

⁹ The security camera footage was not offered into evidence during the final hearing.

and pull her head back, did he – that’s when he told you what he did was swat at her head?

A: Right. I didn’t tell him I saw anything. I just reminded him that there were video cameras in the hallway.

Q: Okay. And then that’s when he changed his story about what happened?

A: He swatted at her ponytail jokingly to flip it and a finger got caught in a tangle.

Q: Okay. Now, is that what you saw when you observed it yourself?

A: It did not appear that way.

Q: Okay. It appears as you’ve described, that he grabbed her ponytail and pulled her head back; is that correct?

A: That it was – that it was around the hand – the hair and then her head tilted back after it went up.

36. While denying that he grabbed and pulled K.R.H.’s ponytail, Mr. Alden testified that his hand accidentally got entangled in K.R.H.’s hair:

I was standing at – I was standing in the doorway on the hallway side, greeting students as they came in. The doorway was inset about three feet from the wall. So, if I’m standing in the doorway observing the hallway, I couldn’t clearly see into the classroom. As K.R.H. came in I said, hi, she said hi. And as she – I put my fist out to bump her and as she walked by I – I assume she didn’t see me with my hand out or she was distracted. As she walked by, I swatted at her ponytail, just like, oh, you’re going to ignore me. Okay. Swatted at her ponytail. I wear a ring on my little finger and it got caught – my finger or the ring or some combination got caught in her hair and that’s – that’s why on the camera it appeared to flip up and then get pulled

back down because that's how gravity works. You hit a thing, it's going to fall back down.

Got my finger caught and her head came back and I got my finger out. She kind of jerked. I said, my bad. I couldn't really say a lot to her because there was another student right in front of me that was in the moment trying to get my attention. So, just – it was just an incidental movement that got taken wildly out of proportion.

Findings Regarding the Allegation that Mr. Alden Embarrassed a Student by Touching His Forehead and Saying “Think.”

37. Kayla Palacios was an assistant principal at Liberty Middle School during the 2019-20 school year, and she was conducting a formal observation of one of Mr. Alden's classes on February 25, 2020. She testified that Mr. Alden was standing at the front of the classroom and directing questions to specific students. When A.C. was unable to answer the question posed to him, Ms. Palacios testified that “Mr. Alden poke[d] A.C. in the forehead with two fingers and A.C.'s head went back.”

38. Ms. Palacios discussed the incident with Mr. Alden later that afternoon and relayed that it is inappropriate for teachers to touch students. According to Ms. Palacios, Mr. Alden “acknowledged it and we moved forward from that conversation.” Because she considered the incident sufficiently significant, Ms. Palacios informed Ms. Forsyth about it the next morning.

39. Mr. Alden described the incident as follows:

On this particular day I was being observed, so I wanted to make a good impression on Ms. Palacios. So, I went to A.C. on a difficult question that I was sure he would have the right answer to. And he didn't. He kind of flubbed the answer a little bit. And when I didn't give him that immediate, you're right, he got flustered. And because he was, you know, the teacher's pet and because he was the guy that always had the right answer, his peers were starting to kind of snicker.

There was a little bit of tension between him and the rest of the class that didn't really bother him, usually. But on this day, when his friends were snickering and he felt like he had it and then realized he hadn't, he got a little flustered. To try to focus his attention on me and ignore the rest of the class, I very delicately placed two fingers on his forehead, while he was looking up at me. He did not have his head down. He was looking me in the face, trying to figure it out. And I just – and I just – to focus him, stop, think, think about what you're doing, you know this, you've got this. And he did. He came up with the correct answer. And he beamed when he got it right.

40. A.C. did not testify at the final hearing, and there was no evidence as to whether Mr. Alden's action embarrassed him.

Ultimate Findings Regarding Petitioner's Allegations

41. Petitioner's first two allegations are closely related. The first alleges that Mr. Alden referred to students as "dumb," "stupid," or words to that effect. The second alleges that Mr. Alden told his students that his class was divided into one section for "smart kids" and another for "dumb kids."

42. Petitioner presented testimony from S.H. and S.D. that clearly supported the first two allegations. Because the other witnesses who testified about these allegations contradicted the testimony given by S.H. and S.D., the undersigned is not left with a firm conviction regarding these two allegations. Thus, Petitioner did not prove the first two allegations by clear and convincing evidence.

43. In contrast, Mr. Alden's own admission and the witness testimony clearly and convincingly established that Mr. Alden used profanity in the classroom. Moreover, Ms. Harper, a teacher at Lecanto High, persuasively testified why teachers using profanity in the classroom is harmful to learning and would reduce a teacher's effectiveness. However, there was no persuasive

evidence that any students were seriously harmed by Petitioner's use of profanity.

44. Petitioner also alleged that Mr. Alden embarrassed J.S. by engaging J.S. in a religious debate and telling J.S. that one of his religious beliefs was "demonstrably fallacious." Even if Petitioner could prove that Mr. Alden characterized one of J.S.'s religious beliefs as "demonstrably fallacious," Petitioner has not proven that the debate between Mr. Alden and J.S. embarrassed the latter. After having the opportunity to observe J.S.'s demeanor, the undersigned does not credit J.S.'s assertion that he was embarrassed.

45. As for the allegation that Mr. Alden grabbed K.R.H.'s hair and caused her head to be pulled backwards, there is no doubt that one of Mr. Alden's hands made contact with K.R.H.'s ponytail and caused her head to be pulled backwards. The only question pertaining to this allegation is whether Mr. Alden grabbed K.R.H.'s ponytail or inadvertently got entangled with it. Other than Mr. Alden and K.R.H, Ms. Forsyth was the only witness to testify about the incident. However, her testimony was based on her observation of security camera footage, and Petitioner did not attempt to move that footage into evidence. As a result, there is no way to ascertain whether the footage was detailed enough for Ms. Forsyth to accurately distinguish whether Mr. Alden grabbed K.R.H.'s ponytail or inadvertently got entangled within it. In other words, the absence of that footage and the absence of testimony from other witnesses at the scene of the incident precludes the undersigned from finding that Petitioner proved this allegation by clear and convincing evidence.¹⁰

¹⁰ This finding should not be construed as the undersigned accepting Mr. Alden's version of events. Even if Mr. Alden simply swatted at K.R.H.'s ponytail, he exhibited poor judgment by doing so. He also exhibited poor judgment by using profanity in the classroom.

46. Petitioner also alleges that Mr. Alden embarrassed A.C. by touching A.C.'s forehead and saying "think" when A.C. was initially unable to answer a question. While the evidence clearly and convincingly established that Mr. Alden touched A.C.'s forehead, there was no evidence as to whether A.C. was embarrassed thereby because A.C. did not testify. Accordingly, this allegation was not proven by clear and convincing evidence.

CONCLUSIONS OF LAW

47. DOAH has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2020).

48. The Commission is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012, Florida Statutes.

49. This is a proceeding in which Petitioner seeks to impose discipline¹¹ against Respondent's educator certification. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

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

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to

¹¹ Section 1012.796(7), Florida Statutes (2018-2019), enumerates the penalties that the Commission can impose such as: (a) revocation or suspension of licensure; (b) imposition of an administrative fine of up to \$2,000 for each count or separate offense; (c) probation; (d) restriction of the authorized scope of practice; and (e) written reprimand. The 2018 and 2019 versions of the Florida Statutes apply to the instant case because that is when the conduct at issue allegedly occurred. *McCloskey v. Dep't of Fin. Serv.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013).

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

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

51. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in the licensee’s favor. *Elmariah v. Dep’t of Prof’l Reg.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *Taylor v. Dep’t of Prof’l Reg.*, 534 So. 2d 782, 784 (Fla. 1st DCA 1988). Disciplinary statutes and rules must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden their application. *Beckett v. Dep’t of Fin. Servs.*, 982 So. 2d 94, 99-100 (Fla. 1st DCA 2008); *Dyer v. Dep’t of Ins. & Treas.*, 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

52. Also, due process prohibits a regulatory authority from taking disciplinary action against a licensee based on matters not specifically alleged in a charging documents, unless those matters were tried by consent. *See Shore Vill. Prop. Owner’s Ass’n v. Dep’t of Env’tl. Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); *Delk v. Dep’t of Prof’l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

53. The Commission argues that the allegations against Mr. Alden amount to violations of sections 1012.795(1)(g) and 1012.795(1)(j), Florida

Statutes (2018-2019).¹² The former statute subjects a certificate holder to discipline for being “found guilty of personal conduct that seriously reduces that person’s effectiveness as an employee of the district school board.” Section 1012.795(1)(j) subjects a certificate holder to discipline for violating “the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules” set forth in Florida Administrative Code Rule 6A-10.081. In the Amended Administrative Complaint, Petitioner alleges Mr. Alden violated rules 6A-10.081(2)(a)1., 5., and 7.¹³:

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

(a) Obligation to the student requires that the individual:

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student’s mental and/or physical health and/or safety.

* * *

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

¹² Sections 1012.795(1)(g) and 1012.795(1)(j) have not been amended since the 2018 legislative session.

¹³ Rule 6A-10.081 has not been amended since March 23, 2016. The Amended Administrative Complaint also alleges that Mr. Alden violated rules 6A-10.081(2)(b)2. and (c)1. The former requires that a certificate holder’s obligation to the public requires that the individual “[s]hall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.” The latter requires that a certificate holder’s obligation to the profession of education requires that the individual “[s]hall maintain honesty in all professional dealings.” Those rules appear to pertain to the allegations that were not pursued during the final hearing, i.e., that Mr. Alden submitted applications to the Marion County School Board containing false information.

* * *

7. Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

54. The outcome of the instant case largely turns on the burden of proof and the wording of Petitioner's allegations. As discussed above, Petitioner failed to prove by clear and convincing evidence that Mr. Alden referred to students as "dumb" or "stupid" and that he divided his class into a "smart kid" section and a "dumb kid" section.

55. While Petitioner had evidence to support its allegations that Mr. Alden said that J.S.'s religious belief was "demonstrably fallacious" and that Mr. Alden touched A.C.'s forehead and said "think," Petitioner presented either no evidence or no credible evidence that Mr. Alden embarrassed J.S. or A.C.

56. Likewise, Petitioner was unable to prove the portion of the charge alleging that Mr. Alden "grabbed" K.R.H.'s hair. The videotape of that incident or testimony from a witness who had a proper vantage point could have resulted in a different outcome. *See generally T.D.W. v. State*, 137 So. 3d 574 (Fla. 4th DCA 2014)(holding that "the detective's testimony in this case – that she saw a better camera angle, not present on the video in evidence, that clearly depicted appellant's face – violated the best evidence rule."); *Dyer v. State*, 26 So. 3d 700, 702-04 (Fla. 4th DCA 2010)(ruling a store manager was improperly allowed to testify that the store's surveillance video showed the defendant opening DVD boxes and putting DVDs into his pocket); *Russell v. State*, 844 So. 2d 725, 727-28 (Fla. 5th DCA 2003)(finding a best evidence rule violation where a detective testified that a video showed the defendant

placing a large amount of change on the counter of a 7-Eleven after a large quantity of change had been stolen from a Taco Bell).

57. In contrast, the evidence clearly and convincingly established that Mr. Alden used profanity in the classroom. That conduct violated section 1012.795(1)(g) by reducing Mr. Alden’s effectiveness as a teacher and rule 6A-10.081(2)(a)1. by creating a condition harmful to learning. Ms. Harper, a teacher at Lecanto High, persuasively explained why using profanity in the classroom is not productive. Even though Petitioner did not offer Ms. Harper as an expert witness, the aforementioned testimony was well within her professional scope. It is well established that a lay witness can offer an opinion about a matter within that witness’s personal experience and knowledge. *See R.C. v. State*, 192 So. 3d 606, 611 (Fla. 2d DCA 2016)(holding that “Florida’s adoption of the *Daubert* standard has not changed the long-established rule that lay persons can identify marijuana – and some other illicit substances as well, e.g., cocaine and methamphetamine – based on their personal experience and knowledge. Such testimony is not admitted based on scientific expertise but instead based on the layman’s training and experience, for which a predicate establishing a sufficient degree of familiarity is sufficient.”); *Jones v. State*, 440 So. 2d 570, 574 (Fla. 1983)(rejecting an argument that a police officer could not offer an opinion that a mark on a window sill resulted from the recoil of a high-powered rifle because “[i]t was well within his realm of experience to offer the trier of fact his opinion as to this origin of the mark on the ‘stash house’ window sill.”); *Sajiun v. Hernandez*, 226 So. 3d 875 (Fla. 4th DCA 2017)(holding that the trial court did not abuse its broad discretion in allowing a non-expert witness to testify about how quickly a motorcycle was traveling before an accident when that witness had operated motorcycles since 1980); *Austin v. State*, 199 So. 3d 327 (Fla. 3d DCA 2016)(holding that testimony from a crime scene investigator that pry marks left on a drawer could have been made by a

screwdriver “has long been recognized as permissible lay testimony” based on the witness’s personal observation and general experience). *See also* § 120.569(2)(g), Fla. Stat. (providing, in relevant part, that “all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida.”).

58. Accordingly, the undersigned finds that Mr. Alden violated section 1012.795(1)(g) and section 1012.795(1)(j) through rule 6A-10.081(2)(a)1. Florida Administrative Code Rule 6B-11.007¹⁴ sets forth the Education Practices Commission’s disciplinary guidelines and provides that violations of section 1012.795(1)(g) are punishable by a penalty ranging from probation to revocation of a teaching certificate. Violations of section 1012.795(1)(j) through rule 6A-10.081(2)(a)1. are punishable by a penalty ranging from reprimand to revocation.

59. Upon reviewing the aggravating and mitigating factors set forth in rule 6B-11.007(3), the undersigned does not perceive any compelling reasons for deviating from the recommended penalty range. However, a two-year revocation, as sought by Petitioner, is too harsh given that the majority of the counts alleged in the Amended Administrative Complaint were unsubstantiated and that there was no persuasive evidence that any students were seriously harmed by Petitioner’s use of profanity. Accordingly, the undersigned recommends that Petitioner’s teaching certificate be placed in probationary status for one year.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order finding that Respondent violated section 1012.795(1)(g) and

¹⁴ Rule 6B-11.007 was last amended on December 10, 2019. None of the provisions relevant to the instant case changed.

section 1012.795(1)(j) through rule 6A-10.081(2)(a)1., and that Respondent's educator's certificate be placed in probationary status for one year.

DONE AND ENTERED this 2nd day of June, 2021, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

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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.