STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

Case No. 21-0706PL

vs.

JO CARTY,

Respondent.
_____/

RECOMMENDED ORDER

On June 11, 2021, a disputed-fact evidentiary hearing was held by Zoom conference before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Peter Caldwell, Esquire
Florida Education Association
Legal Department
1516 East Hillcrest Street, Suite 109
Orlando, Florida 32803

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated section 1012.795(1)(j), Florida Statutes (2018), and Florida Administrative Code Rule 6A-10.081(2)(a)1., as alleged in the Amended Administrative Complaint; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On October 14, 2020, Richard Corcoran, as Commissioner of Education (Petitioner), issued an Administrative Complaint against Jo Carty (Respondent). The Administrative Complaint alleged facts from the 2018-2019 school year, which served as the predicate for charging a violation of section 1012.795(1)(j) and rule 6A-10.081(2)(a)1.

Respondent timely filed an Election of Rights by which she requested a disputed-fact administrative hearing to contest the alleged facts and charges. The case was referred to DOAH on February 19, 2021, for the assignment of an administrative law judge to conduct the requested hearing.

Based on input from the parties, the hearing was scheduled for May 6, 2021, by Zoom conference. On April 19, 2021, Respondent filed an Unopposed Motion to Continue Final Hearing, which was granted, and the Zoom hearing was rescheduled for June 11, 2021.

On May 26, 2021, non-party, Orange County School Board (OCSB), filed a Motion to Seal Documents Requested by Respondent Pursuant to Subpoena Duces Tecum. A Protective Order was issued on May 27, 2021, protecting certain subpoenaed documents from public disclosure and outlining the steps to be taken by the parties before, during, and after the hearing to maintain the confidentiality of those documents.

Petitioner filed an Unopposed Motion to Amend Administrative Complaint on May 27, 2021, to which the proposed Amended Administrative Complaint was attached. The motion was granted.

On May 28, 2021, Petitioner filed a Motion in Limine to Exclude Character Evidence and Evidence Beyond the Amended Administrative

Complaint. Respondent filed a response in opposition on June 4, 2021. The motion was denied, without prejudice to Petitioner asserting objections at the hearing to specific testimony and documentary evidence.

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.

On the morning of the hearing, Petitioner filed a Motion to Deem Facts Admitted, based on excerpts of Respondent's deposition testimony. The motion was denied, but Petitioner was permitted to offer into evidence the deposition excerpts and Respondent was permitted to offer any additional portions of the deposition needed for context. The parties agreed that the entire deposition should be admitted, and that it would be designated Petitioner's Exhibit 20. Petitioner agreed to file the complete deposition transcript after the hearing.

At the hearing, Petitioner presented the testimony of Kimberly Beckler; students M.P., N.S., C.S., C.K., and K.S.; and student N.S.'s parent, J.S. Petitioner's Exhibits 2, 5 through 12, 16, 17A through 17D, and 20 were admitted into evidence.[1]

[1] Petitioner's proposed exhibits 2 and 7 through 12, as well as Respondent's proposed exhibits 5 and 6, contained unredacted student names (or, in one instance, unredacted names of a student and the student's parent). These exhibits were conditionally admitted into evidence, subject to being redacted to obliterate the students' and parent's names, leaving only initials. The redacted versions of Petitioner's Exhibits 2 and 7 through 12, and Respondent's Exhibits 5 and 6 were submitted by both parties after the hearing, and they are included in the public record portion of the evidentiary record. Their unredacted counterparts are in a sealed envelope with a restrictive legend indicating the confidential nature of the contents.

Respondent testified on her own behalf and presented the testimony of Jacqueline Saccamano, Altamont Coley, and student B.M. Respondent's Exhibits 1 through 5,[2] and 9 through 11[3] were admitted.

At the conclusion of the hearing, Respondent requested an extended 30-day period after the hearing transcript filing date to file proposed recommended orders (PROs). Petitioner did not oppose the request, which was granted.[4]

The two-volume hearing Transcript was filed on July 16, 2021. Thereafter, each party filed one unopposed motion for an additional brief extension to the PRO filing deadline. Both motions were granted for good cause shown. The parties timely filed their PROs by the extended filing deadline, and they have been carefully considered in the preparation of this Recommended Order.

Unless otherwise noted, citations to Florida Statutes and Florida Administrative Code rules are to the 2018 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, 444 (Fla. 5th DCA 2013).

---

[2] Portions of Respondent's proposed exhibit 3 were not admitted. After the hearing, Respondent submitted a substitute Exhibit 3, pared down to contain only the admitted portion. Respondent's Exhibit 5 was acknowledged to be hearsay that would not be admissible in a civil action over objection, and therefore was admitted only for the limited purpose authorized for hearsay evidence. *See* § 120.57(1)(c), Fla. Stat., and Fla. Admin. Code R. 28-106.213(3).

[3] Respondent's Exhibits 10 and 11 are subject to the May 27, 2021, Protective Order, and are contained in a separate sealed envelope with a restrictive legend on the outside and a copy of the Protective Order on the inside. The terms of that Protective Order control and restrict the use of these confidential documents and dictate how they are to be disposed of upon the completion of this proceeding, including any appeal. Both parties are bound by the Protective Order and have been directed to comply with its requirements.

[4] 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 on the demeanor and credibility of the witnesses, the documentary evidence admitted at the hearing, and the parties' stipulations, 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 631669, covering the areas of Educational Leadership and Mathematics, which is valid through June 30, 2025.

3. Respondent has been a teacher for at least 25 years; quite a few of those years were in other states. She has not been previously disciplined by the Education Practices Commission in connection with her Florida certificate. No evidence was offered to show any prior discipline against Respondent's educator license or certificate in another state.[5]

4. At the time of the allegations in the Amended Administrative Complaint, Respondent was employed by the OCSB as a mathematics teacher at Howard Middle School, part of the Orange County Public Schools (OCPS) system. Respondent began working at Howard Middle School on August 6, 2018, for the pre-planning week for teachers prior to the arrival of students for the start of the school year.

5. Kimberly Beckler was the new principal for Howard Middle School that year, although she had been employed by the OCSB since 2004, most recently as a senior administrator in the District's office. She started work as

[5] Respondent was disciplined by the OCSB for the incident at issue in this proceeding, receiving a written reprimand. It appears that this is the only disciplinary blemish on an otherwise clean record during her 25-year teaching career; no evidence was offered to prove any other discipline imposed against Respondent.

principal at Howard Middle School shortly before the teachers' pre-planning week.

6. The Amended Administrative Complaint at issue in this proceeding is predicated on the following allegations of fact:

> On or about September 6, 2018, during an active assailant drill at Howard Middle School, Respondent directed several of her students to go into her classroom closet. Respondent went into the closet with the students, turned the closet light off, and closed the closet door. Respondent's remaining students were left inside the classroom for a period of time without direct adult supervision. Some of the students who remained in the classroom were confused by what Respondent did, and at least one student was "scared" because she did not know what would happen if the drill were real and the Respondent left her and the other students in the classroom alone.

7. The parties stipulated that on September 6, 2018, the Howard Middle School administration conducted an active assailant drill.

8. Before the drill, in August 2018, Respondent and other teachers at Howard Middle School were instructed to complete safety training regarding how to proceed during an active assailant drill. The training included two online video modules and a six-question test. Teachers were reminded several times in August that they were required to complete the training and certify having done so before the end of August.

9. Respondent testified she did not remember this training or watching the videos, but is sure that if she was required to view them, she would have done so.

10. As a "reminder" of the instructions detailed in the training videos, a written summary was provided to Howard Middle School teachers at some point prior to the September 6, 2018, drill. Respondent acknowledged that she received the summary written instructions prior to September 6, 2018,

when the first drill of the new school year was conducted. The same summary information was provided on posters in each classroom.

11. The summary instructions included various steps for teachers to take in their classrooms. The step at issue in this case requires teachers to move all classroom occupants out of the line(s) of sight through windows.

12. To comply with this "out of sight" instruction, teachers had to consider the lines of sight through narrow windowpanes in the classroom doors. In addition, for classrooms on the ground floor with exterior windows, lines of sight from outside the building also had to be considered.

13. Respondent taught different math classes in six or seven class periods, but all of her classes were held in the same classroom, which was not on the ground floor. According to Principal Beckler, Respondent's classroom was on the second floor. Respondent could not remember whether her classroom was on the second or third floor. All witnesses agreed that for purposes of conducting an active assailant drill, the line of sight through the exterior windows did not have to be considered, because classroom occupants could not be seen through the exterior windows by someone outside the building. For Respondent, then, the only line of sight she had to address was through the narrow window panel in the classroom door.

14. Principal Beckler testified that instructions for active assailant drills were the subject of much discussion during the teachers' pre-planning week and at administrative meetings. Principal Beckler said that teachers were instructed to identify the lines of sight applicable to their particular classrooms and then identify areas in their classrooms where they could safely move occupants out of the lines of sight.

15. It would have made sense, as part of general teacher training in preparation for lockdown active assailant drills, to provide those instructions to teachers. At the hearing, Respondent heard Principal Beckler's testimony; she did not deny being given this instruction, nor was she asked about it. There was no clear proof that the verbal instructions described by Principal

Beckler were provided to or discussed with Respondent as part of a group of teachers in August 2018. Nonetheless, even without such instruction, identifying lines of sight through windows into one's own classroom, so as to know where to move classroom occupants so they are out of view, would have been a reasonable, prudent step to prepare to apply the written instructions that were admittedly provided to Respondent. Stated differently, it would be unreasonable for a teacher, knowing that he or she would be expected to act quickly in an active assailant drill to move students out of the lines of sight of windows, to not prepare for that drill by identifying the reaches of that line of sight for their own classroom.

16. Respondent testified that the September 6, 2018, active assailant drill was the first such drill ever conducted by OCPS. Her testimony was refuted by the more credible adamant testimony by Principal Beckler and by Respondent's witness Altamont Coley, who was an administrative dean at Howard Middle School in charge of the active assailant drill on September 6, 2018.[6] Several student witnesses also confirmed that they had participated in the same type of lockdown active assailant drill previously, although their other teachers conducted the drills differently, not in a way that left students feeling unprotected.

17. Respondent's testimony reflected some confusion on her part regarding the various type of drills conducted by OCPS. For example, she testified that she had participated in "lockdown" drills before at an OCPS school, and that in at least some prior lockdown drills, the instructions were

[6] Principal Beckler's clear, credible testimony was elicited in the following question and answer sequence: Q: "And the September 6, 2018, drill was the first ever active assailant drill in Orange County Public Schools, correct?" A: "That is absolutely false." Q: "Okay. But it was Ms. Carty's first, correct?" A: "No, that is false. Ms. Carty was employed by OCPS the year prior." (Tr. 150-151). Equally clear and credible was Altamont Coley's testimony given in the following question and answer sequence: Q: "And was the September 6, 2018, drill the first ever active assailant drill in Orange County Public Schools?" A. "Oh. No, sir. No, sir. I have participated in drills before that. Even at previous schools. On my previous school before coming to Howard." Q: "Were they specifically active assailant drills? The ones that you're – the previous ones?" A: "Yes, sir." (Tr. 208-209).

to lock the door and "hide" in the classroom. She also testified that in some "lockdown" drills, she only had to lock the door, did not have to hide, and could continue teaching. Based on the evidence, Respondent confused different types of drills and the requirements for each type of drill.[7]

18. Contrary to Respondent's claim that the September 6, 2018, drill was a completely new procedure, the clear and credible evidence established that the drill was a "lockdown" active assailant drill that was not new to OCPS, had been conducted in prior school years, and was not new to Respondent, who had prior experience in "lockdown" drills in which she was required to move the classroom occupants out of view through windows.

19. Howard Middle School teachers were informed before the drill that a drill was going to take place sometime on September 6, 2018, but they were not told specifically when during the school day. That would simulate the "surprise" element of an actual active assailant situation.

20. Respondent's classroom where she taught her math classes on September 6, 2018, was large. It was one of the larger-sized classrooms at Howard Middle School.

21. Without knowing the class period during which the drill would occur, Respondent could not know exactly the number of classroom occupants she would have to move out of view, but she would know the approximate number. For example, the geometry class Respondent was teaching when the drill was held was capped by state law at 25 students. However, only 23 students were enrolled in that class. And at least one student was confirmed to have been absent that day.

---

[7] Respondent testified that "there's a difference between a lockdown and an assailant drill. An assailant drill was, you know, first time for me and I believe first time, you know, issued in the school. So that's a completely different type of drill." (Tr. 225). Without delving into confidential material, suffice it to say that the claim that a "lockdown" drill is different from the active assailant drill conducted on September 6, 2018, is contrary to the nomenclature used by OCPS. *See* Respondent's Exhibits 10 (in effect since before September 6, 2018) and 11 (similar to prior versions in effect since before September 6, 2018).

22. The only window through which someone could see into Respondent's classroom was a very narrow vertical windowpane, set into part of the upper half of the classroom door. The door itself was recessed from the classroom wall, with a little entry alcove formed by side walls that appear to be ten to twelve inches in width.[8] The narrow width of the window combined with the recessed design of the doorway left only a very restricted line of sight into the classroom from the hallway.

23. Respondent's classroom was rectangular. The two longer walls were: (1) the exterior wall on the opposite side of the classroom from the door; and (2) the wall separating the classroom from the hallway (hallway wall). The long hallway wall was broken up by the recessed classroom door, with about one-third of the hallway wall to the left of the door (facing the door from inside the class) and about two-thirds of the hallway wall to the right of the door. The two side walls appear to be somewhat shorter than the hallway and exterior walls.

24. For someone in the hallway peering into the classroom through the classroom door window, the exterior wall across the classroom would most likely be completely visible; the two side walls would be partially visible (those parts closest to the exterior wall), and both parts of the hallway wall, on either side of the recessed door, would be completely hidden from sight. Although Respondent did not say that she ever tried to identify the reaches of the lines of sight through her classroom door window, she testified that she believed one wall was completely out of the line of sight, and the two side walls were partially hidden from view through the door window—the parts of the side walls closer to the exterior wall would be within the line of sight.

25. Respondent's classroom had an interior walk-in closet. The closet door was off one of the side walls, close to the hallway wall. Principal Beckler

[8] Petitioner's Exhibit 17B (Bates-stamped 022) shows one side wall forming the classroom door's entry alcove. A landscape-oriented (horizontal) chart is hanging on the alcove side wall, close to the top. The chart appears to be on standard letter-sized paper, with the 11-and-one-half inch side easily fitting across the side wall.

testified credibly that she examined the line of sight through Respondent's classroom window door, and the closet door could not be seen from the hallway. The classroom pictures in evidence provide visual corroboration.

26. At the time of the drill, there were no more than 22 students in Respondent's class. Including Respondent, there were, at most, 23 occupants.

27. When the announcement was made over the public address system for the drill, Respondent said she instructed her students to hide along the longer part of the hallway wall (to the right of the door, from inside the class, facing the door). She had the students sit down in a single row along that wall from the classroom door alcove, under the smart board, to the far corner. She then quickly proceeded to turn off the classroom lights and computer monitors.

28. When Respondent finished these steps, she saw that approximately five or six students had not yet found a place to hide. Respondent testified that they were all standing directly in front of the classroom door window. That was the one spot in the classroom where the students could not be.

29. Respondent testified that she did not think it was possible to hide another five or six (or seven, including herself) people along the hallway wall. She said the rest of the students were sitting on the floor up against the hallway wall under the smart board, and that to add any more people would have required that they sit on top of each other.

30. Respondent testified that she had never been unable to hide all of her students in her classrooms before: "When we had lockdowns and things of that nature, I never had that issue. So that, you know, it shocked me. That was the very first time in my entire career that happened to me." (Tr. 248).

31. Respondent decided the remaining students should hide inside the large walk-in closet. She gave this step some thought. First, she thought that, to comply with the drill instructions, she would have to turn off the closet light. Then her thought process continued beyond the drill instructions, imagining that someone in the hallway might be able to see the open closet

door, and even if the closet light was out, that person might suspect from the open closet door that there were people in the closet. Therefore, Respondent decided that she would have to not only turn off the closet light, but also close the closet door completely. But this decision gave rise to another line of thought. Respondent testified she became concerned that if she left students alone in the dark in a closed closet, they could act inappropriately, such as by touching each other inappropriately, because there were both males and females. To address this concern, she joined the five or six students in the closet, turned off the light, and closed the door.

32. Respondent's concern for leaving five or six students in the closet unsupervised apparently did not provoke a similar concern for the other 16 or 17 students left unsupervised in the classroom. However, as Principal Beckler credibly stated, a teacher's number one responsibility is to supervise her students. That means having eyes on all students in the classroom at all times, because things can otherwise get out of control very quickly.

33. Respondent acknowledged that as a classroom teacher, she was responsible for supervising all her students. She understood "supervise" to mean "observe and direct." Her duty to supervise the students in her classroom did not stop during the lockdown active assailant drill.

34. If Respondent had focused her thoughts on finding places in her large classroom for all students to hide out of sight, rather than on the unreasonable solution she seized on to separate the class by hiding a few students—then joining them—in the closet, she would have easily found a reasonable solution that did not require leaving most of her class unsupervised. Respondent had several reasonable options to meet the requirements of the drill while also continuing to supervise all her students.

35. Respondent could have kept the closet door open or partially open so that natural light would have kept the closet from being dark. The closet door opened out into the classroom, with the door opening on the side away from the classroom door, towards the exterior windows. Accepting Principal

Beckler's testimony, borne out by the pictures, that the closet door could not be seen from the hallway through the narrow window in the recessed classroom door, Respondent could have remained in the classroom while being able to see the students in the closet and the students lined up along the hallway wall under the smart board.

36. Rather than resorting to hiding students in the closet, though, Respondent had several clear options within the classroom itself. There was ample room in the classroom for all 22 students and Respondent to have sat on the floor out of view of the classroom door window. The line of sight through the door window would have been a cone-shaped area, narrow at the window and widening out to the exterior wall. That left substantial portions of the classroom's floor space hidden from view.

37. Inexplicably, Respondent apparently only considered having students sit on the floor in a single row, with their backs against the hallway wall under the smart board to the corner, with possibly a few students sitting in the space around the corner against part of the side wall. These 16 or 17 students apparently sat shoulder-to-shoulder against those walls. It would have been very easy for the remaining five or six students, plus Respondent, to sit on the floor in a second row facing the row of students sitting against the wall. It is clear from the pictures in evidence that there was ample floor space to allow students to sit two-deep along the smart-board wall and, if necessary, around the corner along the side wall.

38. There was more space still in the area along the hallway wall on the other side of the classroom door, and around the corner to the partial side wall where the closet door is located. Respondent could have directed the five or six students standing in front of the classroom door to sit on the floor along the hallway wall to the left of the door, and around the corner to the closet door.

39. Respondent could have had all the students sit on the floor in a triangular area (fitting for a geometry class), with two sides formed by the

smart-board hallway wall where she said most of them were sitting and the part of the side wall furthest from the classroom door, filling in the floor space outward from both of those walls.

40. Any number of different configurations were not only possible, but were obvious and clearly reasonable. There was more than enough floor space in Respondent's large classroom for 23 occupants (including Respondent) to hide out of the limited line of sight through that very narrow windowpane in the recessed classroom door.

41. Respondent's claim that she could not hide a maximum of 23 occupants out of the limited sight line through the door window somewhere in her large classroom is simply not credible. Respondent's claim is contradicted by the visual evidence. It is also contradicted by the credible testimony of Principal Beckler, who said that although Respondent's classroom was one of the larger classrooms, no other teacher has had to hide students in classroom closets; no other teacher has ever had a problem moving all classroom occupants to places within the classroom itself that were not within the lines of sight of windows. Finally, Respondent's claim is contradicted by Respondent's own testimony. When she was asked in her deposition how many students were in her class during the drill, she gave this candid response: "It had to have been a large class for us not to fit in the two sides of the classroom. Maybe 28 to 30. I'm not certain. But they should have that record at the school, I would think." (Pet. Ex. 20 at 34). As it turns out, though, there were no more than 22 students in the class. Respondent's testimony stands as an admission that she could have (and therefore should have) fit the smaller number of students out of window view in her classroom.

42. The drill lasted for approximately five minutes—including several minutes after Respondent secreted herself away with five or six students in the closet. Respondent could not see the 16 or 17 students in the classroom for at least several minutes. In fact, Respondent acknowledged that she could not even see the five or six students in the closet with her, because they were

not near her and it was completely dark. Respondent claimed that she would be able to hear any noise made by the 16 or 17 students in the classroom but admitted that she heard nothing. C.K., one of the students who went into the closet with Respondent because she thought it was safer than staying out in the classroom, testified that they could not hear what students outside in the classroom were saying through the closed closet door. C.K.'s testimony was more credible than Respondent's contrary testimony. Respondent did not offer any basis for her belief that she could hear through the closed closet door (such as if she reported having closed herself in the closet to test whether sounds made in the classroom would be audible). For at least several minutes, the 16 or 17 students in the classroom were completely unsupervised.

43. After the public address announcement that the drill was completed, Respondent and her students returned to regular classroom activities. No student voiced concern at the time regarding how the drill was conducted.

44. Although not expressed directly to Respondent that day, several students did, in fact, have concerns. Since this was an active assailant drill, when the class was supposed to practice what to do in an actual active assailant situation, Respondent's separation of the students, leaving three-quarters of the class unsupervised in the classroom, left several students confused and apprehensive.

45. On the day of the drill, one student, N.S., went home upset, told parent J.S. about the drill, and expressed confusion and fear. As N.S. explained:

> [Ms. Carty] left the rest of the class out in the classroom while she was in the closet. She did not tell the class where to go or hide during the drill. I was very confused and did not know where to go. I was also scared because I did not know what would

> happen if the lockdown was real and if Ms. Carty would leave us alone in a real lockdown. (Tr. 51-52; Pet. Ex. 8).[9]

46. Other students who testified at the hearing expressed at least some of the same confusion and concern with the unusual procedure employed by Respondent to separate the class and leave most of the class alone in the classroom. Student M.P. testified to having felt "a little unprotected" being left out in the classroom. M.P. explained feeling unprotected this way: "[A]ccording to my other teachers I've been with, they've done it a lot differently, which is supposed to better protect the students and I felt like she did it a little differently." (Tr. 34). Student C.S., one of the students in the closet, credibly testified: "I was feeling a little afraid for my classmates if this was a real active assailant. After the drill we came out of the closet. Everything went kind of back to normal. Most of the students that were left outside didn't seem upset, but I could kind of tell they were." (Tr. 69-70).

47. Prior to giving the all-clear announcement, several administrators checked all hallways to make sure they were empty and checked all classroom doors to make sure they were locked. There was no classroom-by-classroom assessment to determine how each teacher fared in carrying out the drill instructions within each classroom—that would have taken a very long time. Immediately after the drill, Dean Coley sent an email to all staff

---

[9] Counsel for Respondent attempted to undermine N.S.'s testimony about being scared, but he did not succeed. He suggested that N.S. was afraid because it felt like an actual assailant situation. N.S. disagreed: "No. Because I've done active shooter drills before." Counsel then tried to get N.S. to agree that the fear was only of the idea of an active assailant in the building, but N.S. made it clear that the fear was also caused by the way Ms. Carty carried out the drill, leaving N.S. and others alone in the classroom. Ultimately, in the following exchange, counsel conceded that N.S. was actually harmed by being scared from the way the drill was conducted: Q: "Okay. So *apart from being scared*, you were not actually harmed by the active assailant drill on September 6, 2018, correct?" A: "Correct." Q: "And you did not – and did you quickly recover from being scared on September 6, 2018?" A: "I guess, yeah." (Tr. 56, emphasis added). Respondent's PRO mischaracterized N.S.'s testimony, claiming N.S. admitted to suffering no actual harm. N.S. answered the question as posed, agreeing that "apart from being scared," N.S. was not actually harmed.

pronouncing the drill a success, while providing teachers with another "reminder," repeating the summary instructions for active assailant drills.

48. Respondent did not report any concerns to the administration about how the drill was carried out in her classroom, either immediately after the drill or at any subsequent point. She did not report that she had been "shocked" to discover there was not enough space in her large classroom to move all occupants out of the line of sight through the classroom door window. She did not request assistance from an administrator to help plan for future drills by identifying the window's sight line so as to identify all the space within the classroom out of the window's line of sight. Instead, as of the hearing in June 2021, Respondent testified that she would like Principal Beckler to show her where in the classroom she could have hidden everyone. It is troubling that, if Respondent had been truly "shocked" on September 6, 2018, by an inability to hide everyone in the classroom as she claimed, she did not immediately bring this shocking discovery to the administration's attention and worked to address the problem.

49. Shortly after student N.S. told parent J.S. about being scared by how Respondent carried out the drill in her classroom, J.S. sent an email to the administration voicing their concern.

50. Upon receiving this email, the administration at Howard Middle School launched an investigation into the incident.

51. The students who were in Respondent's class during the incident were asked to write brief statements about the incident. Several of those students testified at the hearing. Respondent also wrote a brief statement, which she signed and dated on September 24, 2018. Her statement was as follows:

> During the last drill where we had to hide and turn off the lights. I stayed in the closet with several students because I told them I cannot turn on the lights. The other students hid under a desk in the main classroom with the lights off. They did have sunlight from the windows. I asked them to remain quiet during the drill. When the drill was over we

> all took our seats and resumed class. No one indicated being frightened to me.

Respondent made no mention in her written statement of her "shocking" discovery during the drill that there was not enough space within the classroom to hide all students out of sight.

52. On October 22, 2018, after the investigation was completed and a predetermination meeting was held, Respondent was given a disciplinary letter of reprimand for misconduct by failing to properly supervise her students during the September 6, 2018, drill. She was also given non-disciplinary written directives to: (1) establish a safe, caring, and nurturing environment conducive to learning and the physical and psychological well-being of students; and (2) maintain proper supervision of her students at all times; students are not to be left alone unsupervised. Respondent refused to sign either document, despite the statement in both documents that "[m]y signature indicates only that I have received a copy of this [reprimand/directive]." At the hearing, Respondent did not deny having received the letter of reprimand and the directives.

53. In December 2018, Respondent requested a transfer to another OCPS school. Respondent's request was granted, and she taught at Memorial Middle School in Orange County during the spring 2020 semester. At the end of the spring 2020 semester at Memorial Middle School, Respondent was informed that her teaching contract was not going to be renewed for the upcoming school year. No explanation was given for the nonrenewal.

54. Respondent testified that she is having trouble finding another regular teaching position, but is working as a substitute teacher. She speculated that the reason why she is having difficulty finding a regular position is the pendency of this disciplinary proceeding, but had no non-hearsay evidence on which to base her speculation. It would be fair to say, however, that Respondent's ability to work in her chosen career and in the

job of her choice may be impacted by the outcome of this proceeding, although the opposite may also be true once the outcome is no longer an uncertainty.

55. Respondent raised as an "affirmative defense" to the Amended Administrative Complaint "that the allegations in this case underlie anti-black racism and/or animus directed against her as an African-American teacher." *See* Answer With Affirmative Defenses at 2, ¶ 2. However, Respondent offered no evidence to prove that any non-African American teachers acted similarly during an active assailant drill but were not charged with the violation alleged in this case. Instead, the unrefuted testimony by Principal Beckler was that no other teacher ever had a problem hiding all students within the classroom, and no other teacher ever separated his or her class to hide with some students in the closet while leaving other students unsupervised in the classroom. The allegations and charge at issue here are narrowly focused on Respondent's admitted conduct during the September 6, 2018, lockdown active assailant drill. The claim of racism as a defense to the allegations and charge at issue in this proceeding is wholly unwarranted.

Ultimate Findings of Fact

56. Respondent failed to make reasonable effort to protect her students from conditions harmful to learning and/or to their physical health, mental health and/or safety. She could not see three-quarters of her class for at least several minutes during an active assailant drill when she was in the closet with five or six students. Indeed, she could not see the five or six students who were in the closet with her. Nor could Respondent hear the unsupervised students out in the classroom from behind the closed closet door.

57. Several students—most notably N.S. who went home upset that day to report what happened to parent J.S.—reasonably were concerned about what would happen if an active assailant actually entered the school, and whether they and their classmates would be protected. While there was no evidence of significant or lasting effects on the students' mental health and no student were physically harmed, the conditions created by Respondent during the

drill were harmful to students' mental health in the short-term, and to students' safety.

58. Indeed, the whole point of the active assailant drill is to appropriately prepare everyone in the school for an active assailant situation so that if they ever had to respond to an actual active assailant, they would have practiced and could respond automatically, knowing exactly what they needed to do to take the appropriate precautions for their safety and their physical and mental health. Respondent failed to make reasonable effort to protect her students by supervising and leading all her students through the proper drill steps. Instead, she undermined the goal of creating conditions to protect students, by leaving most of her students to fend for themselves—unsupervised, unprotected, and anxious about what would happen in an actual active assailant situation.

CONCLUSIONS OF LAW

59. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding, pursuant to sections 120.569, 120.57(1), and 1012.796, Florida Statutes (2021).

60. In this proceeding, Petitioner seeks to impose discipline against Respondent's educator's certificate, which is 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 due the potential for loss of livelihood. *State ex rel. Vining v. Fla. Real Estate Comm'n*, 281 So. 2d 487, 491 (Fla. 1973); *Ferris v. Turlington*, 510 So. 2d 292, 295 (Fla. 1987). Accordingly, to impose such discipline, Petitioner must prove the allegations in the Amended Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 933-34 (Fla. 1996); *Ferris*, 510 So. 2d at 294-95.

61. 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).

62. Section 1012.796, Florida Statutes, 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 the 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 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.

63. 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).

64. 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).

65. The factual allegations on which the charges against Respondent are predicated were clearly set forth in the Amended Administrative Complaint.

66. Count 1 of the Amended Administrative Complaint charges Respondent with a violation of section 1012.795(1)(j) for having "violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules." This count does not charge an independent violation, but rather, is dependent upon a corresponding violation of the rule prescribing the Principles of Professional Conduct for the Education Profession in Florida.

67. Count 2 of the Amended Administrative Complaint charges Respondent with violating rule 6A-10.081(2)(a)1., which provides:

> (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.

68. Teachers stand *in loco parentis*, "in the place of a parent," with respect to students in their classrooms whom they must supervise and control. *Morris v. State*, 228 So. 3d 670, 672 (Fla. 1st DCA 2017) (citing *State v. Lanier*, 979 So. 2d 365, 369 (Fla. 4th DCA 2008)). Accordingly, teachers owe "a general duty of supervision to the students placed within [their] care … based on the school employee standing partially in place of the student's parent … [and are responsible] to protect children during school activity." *Morris*, 228 So. 3d at 673 (quoting *Rupp v. Bryant*, 417 So. 2d 658, 666 (Fla. 1982)). The specific Principle of Professional Conduct under which Respondent has been charged codifies this standard: teachers have a duty to protect the students in their charge, which they carry out through their duty to supervise and control the students in their classrooms.

69. Whether particular conduct constitutes a violation of the applicable statutes and rules is a factual question to be decided in the context of the alleged violation. *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995). Whether specific conduct constitutes a deviation from the required standard is an ultimate finding of fact within the realm of the administrative law judge's fact-finding discretion. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985).[10]

70. Based on the Findings of Fact above, Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(2)(a)1.

71. Respondent admitted to leaving most of her students in the classroom for the duration of the lockdown active assailant drill, while going into the closet with five or six students, turning off the light in the closet, and closing the closet door. For at least several minutes when she was in the dark closet, she was unable to see or hear the students left alone in the classroom, and

[10] Respondent's PRO relies on a series of inapposite cases to argue that expert testimony was necessary to prove both the standard of conduct and deviation from that standard. No case sets an absolute rule that expert testimony is always required. Nor do the contexts in which expert testimony was addressed in the cases discussed in Respondent's PRO bear any resemblance to this case. Respondent's argument that expert testimony was necessary in this case was unpersuasive.

she was unable to see the students in the closet with her. She failed to adequately supervise her students.

72. In the context of a lockdown active assailant drill, Respondent was required to lead her students through the procedures and ensure they were moved to a place in the classroom that was out of the limited line of sight through the narrow classroom door window. Respondent's claim that she could not accomplish this for 22 students, plus herself, within the classroom is contrary to the evidence.

73. The whole point of conducting the drill is to practice the appropriate steps so that if there ever is an actual active assailant situation, Respondent and her students move quickly through the practiced steps without having to think about what to do or where to go. The drill steps serve to create conditions protective of students' safety. Practicing the steps in a drill situation serves to create conditions protective of students' mental health, in that they are not fearful of what they need to do in an actual assailant situation. Respondent failed to make reasonable effort to protect her students from conditions harmful to their mental health and safety.

74. Respondent argued that the undersigned should take into account, in determining whether there is a violation at all, the fact that imposing any sanction for a violation would count for purposes of the three-violation statutory provision in section 1012.795(6)(b) and implementing rule. This statute and rule require that the third time an educator is found to have committed a violation for which sanctions are imposed by the Education Practices Commission, the required discipline is permanent revocation of the educator's certificate.

75. Respondent characterizes this statutory provision as a draconian punishment, while acknowledging it has been in place for over a decade. Respondent argues that if a violation is found here, it is a minor one, and minor violations should not lead to permanent revocation of an educator's certificate. Respondent's argument is one of policy to be addressed to the

Legislature. The Legislature could have written its statute in a way to discount or not count minor violations, but it did not. The undersigned cannot accept Respondent's argument that this statutory provision should affect the undersigned's determination of whether there is a violation here. The level of penalty for a disciplinable violation is a separate matter from whether there is a violation. The appropriate penalty must be determined from the disciplinary guidelines.

76. Respondent argued: "Even if Ms. Carty could have complied with the district's Active Assailant Drill rules without hiding students in the closet, this should not lead to the permanent revocation of her Florida Educator Certificate, as mandated by [section 1012.795(6)(b) and implementing rule]." Resp. PRO at 22. However, in this case, the evidence established that Respondent has been a teacher for at least 25 years and has never been previously sanctioned by the Education Practices Commission. Thus, contrary to Respondent's argument, Respondent is not facing permanent revocation of her educator's certificate by reason of the three-violation statute. That statute does not apply in this case.

77. Instead, as the Legislature intended, the first violation should serve as a lesson learned and a warning that Respondent should take care not to commit future violations, as she was able to accomplish for such a lengthy span of her career. A refresher in the professional standards for educators might be helpful to reinforce the standards that govern Respondent's profession, with which she must comply.

78. At the time of Respondent's conduct, the disciplinary guidelines, codified in Florida Administrative Code Rule 6B-11.007, provided that the normal penalty for the violation found here broadly ranged from reprimand to revocation. Fla. Admin. Code R. 6B-11.007(2)(j)1., effective May 29, 2018.

79. Rule 6B-11.007(3) provided that a penalty outside the normal range is permitted when warranted by consideration of mitigating and aggravating circumstances. Consideration of the applicable mitigating and aggravating

circumstances do not support imposition of no penalty. Instead, the factors embodied in the codified mitigating and aggravating circumstances are more appropriately considered and balanced to determine the appropriate penalty within the broad range provided in the guidelines rule.

80. As for mitigating circumstances, Respondent has been an educator for at least 25 years and has never been sanctioned by the Education Practices Commission. Teaching is and has been Respondent's chosen career; any penalty that would take her out of the classroom would harm her pursuit of her livelihood. *See* Fla. Admin. Code R. 6B-11.007(3)(c), (e), (f), and (i).

81. Respondent attempted to prove her contributions as an educator during her 25-year career. The evidence offered on this subject was very limited. It showed that at three different points during Respondent's 25-year career, observation reports or evaluations indicated Respondent's satisfactory performance as a teacher: on September 30, 2010, in Clarke County (in a state other than Florida); during the 2012-2013 school year in Polk County, Florida; and during the 2017-2018 school year in Orange County, Florida.[11]

82. From this very limited evaluative evidence, the only conclusion that can be drawn is that Respondent was considered a satisfactory teacher at some point in three different teaching years in three different schools over her 25-year career. While no negative inferences are drawn from the many years for which no evaluative information was provided, the undersigned also

[11] The specific evidence provided by Respondent was: (1) one classroom observation form reporting satisfactory performance during a 20-minute observation of Respondent's classroom in Clarke County (in a state other than Florida) on September 30, 2010; (2) a partial (Stage 1) evaluation for school year 2012-2013 in Polk County, Florida, showing that Respondent needed improvement in managing classroom procedures, but otherwise was mostly "effective" with a few "highly effective" ratings for the partial Stage 1 evaluation (the Stage 2 evaluation was not provided, which would be necessary to determine her overall final evaluation for that school year); (3) an observation report addressing "Domain 4" from several days' observation in Respondent's classroom at Dr. Phillips High in December 2017, rating Respondent's performance as "applying" four of five criteria, but "developing" in one of the five categories; and (4) a single Final Evaluation document for the 2017-2018 school year at Dr. Phillips High, which included the Domain 4 observation report (i.e., the Domain 4 report—item (3)—is considered part of this Final Evaluation). Respondent's overall evaluation score was within the "effective" range, slightly below the midpoint—closer to needs improvement than to the highly effective category.

cannot conclude that Respondent has proven that her contributions as an educator during her 25-year career warrant consideration in mitigation of the appropriate penalty for her violation.

83. Additional factors such as the severity of the offense, the number of repetitions of offenses, and the actual damage, physical or otherwise, caused by the violation weigh in favor of a penalty at the lower end of the permissible range. *See* Fla. Admin. Code R. 6B-11.007(3)(a), (c), and (g). Respondent's violation must be considered relatively minor in nature, owing in large part to the fact that this was a drill and not an actual assailant situation with potentially catastrophic results. No evidence was offered to show that Respondent has repeated the offense; one would hope and expect that Respondent has learned her lesson and there would be no repetition of this sort of violation. Although Respondent's actions caused actual harm to at least one student, no long-lasting harm to any of the unsupervised students resulted from the violation.

84. Respondent also argues for leniency based on her claim that she did her best under the pressure of carrying out the first ever active assailant drill. Respondent's claim that this was the first active assailant drill of its kind is contradicted by the evidence (including Respondent's own testimony), as found above. As for the particular instruction that led to Respondent's violation—that she had to move all classroom occupants out of the line of sight of the narrow classroom door window—Respondent admitted prior experience with lockdown drills with the same instructions to hide in the classroom. She could have taken steps to prepare for the drill by identifying the window's line of sight and the areas of the classroom not within that limited line of sight, but she did not. And, even though she acted under the pressure of the ongoing drill, her choice to split up her class and secure herself with five or six students in a dark closet with the door closed was not a reasonable choice. There were multiple obvious ways in which Respondent

could have complied with both the drill instructions and her ongoing duty to supervise all students in her classroom.

85. Making this same point somewhat differently, Respondent argues that she should not be punished at all because the drill functioned as it was supposed to, as a practice exercise to "get the kinks out." This argument is undercut by Respondent's failure to take any steps to correct the "kink" that she claimed to have been "shocked" to identify during the drill. Following Respondent's professed "shock" that she could not move all of the occupants to a place in the classroom out of the door window's line of sight, Respondent failed to report this huge "kink" to the administration or seek assistance from the administration to plan to "get the kinks out" for future drills or worse, for an actual active assailant situation. Her failure to take any corrective steps renders her claim somewhat suspect. Taking corrective measures to address the "shocking" discovery would have made Respondent's claim that she tried to hide all the students within the classroom, using the closet only as a last resort, more credible. Corrective or rehabilitative measures would have also served as mitigating circumstances. Instead, her failure to take corrective or rehabilitative steps is an aggravating circumstance. *See* Fla. Admin. Code R. 6B-11.007(3)(j) and (m).

86. As for the appropriate penalty, Respondent offered no suggestion other than to argue that no penalty be imposed, or that no violation be found "[e]ven if Ms. Carty could have complied with the district's Active Assailant Drill rules without hiding students in the closet," because of the "draconian" penalty that could result if Respondent commits two additional violations and is sanctioned twice more. Respondent's argument cannot be accepted to impact the outcome of this proceeding, as previously determined.

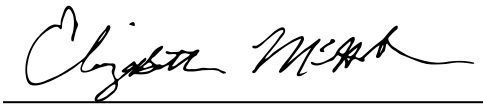
87. Petitioner proposed in its PRO that Respondent's certificate should be suspended for one year, but did not explain why. The evidence does not support imposition of a penalty that would remove Respondent from the classroom. However, a relatively short (six-month) period of probation on

terms set by the Education Practices Commission, including a required Continuing Education course in professional standards for educators, plus a letter of reprimand, are warranted as appropriate discipline for Respondent's violation that was established by the record evidence.

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), Florida Statutes (2018), through a violation of Florida Administrative Code Rule 6A-10.081(2)(a)1., imposing a six-month probation on terms established by the Education Practices Commission, including a required Continuing Education course in professional standards for Educators, and issuing a letter of reprimand to Respondent as discipline for her violation.

DONE AND ENTERED this 30th day of September, 2021, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2021.

COPIES FURNISHED:

Peter Caldwell, Esquire
Florida Education Association
Legal Department
1516 East Hillcrest Street, Suite 109
Orlando, Florida 32803

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

Randy Kosec, Jr., Chief
Office of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400

Lisa M. Forbess, Executive Director
Education Practices Commission
Department of Education
Turlington Building, Suite 316
325 West Gaines Street
Tallahassee, Florida 32399

Anastasios Kamoutsas, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.