

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

ROBERT W. RUNCIE,
Superintendent of Schools,

Petitioner,

v.

ERIC S. DELUCIA,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, Robert W. Runcie, Superintendent of Schools of Broward County, Florida ("Petitioner"), through his undersigned counsel, files this Administrative Complaint against Respondent, Eric S. Delucia ("Delucia" or "Respondent"). The Petitioner seeks formal suspension and termination of Respondent's employment with the Broward County School Board ("BCSB"), pursuant to Chapter 120 and Sections 1001.51, 1012.27(5), 1012.33, 1012.335, 1012.55, and 1012.585 Florida Statutes and Rules 6A-5.056 and 6A-10.081 of the Florida Administrative Code. The Petitioner alleges the following:

I. JURISDICTIONAL BASIS

1. The agency is the School Board of Broward County, Florida, located at 600 Southeast Third Avenue, Fort Lauderdale, Broward County, Florida 33301.
2. The Petitioner is Robert W. Runcie, who is the Superintendent of Schools of Broward County, Florida.

3. The Petitioner is statutorily obligated to recommend the placement of school personnel and to require compliance and observance with all laws, rules, and regulations. Petitioner is authorized to report and enforce any violation thereof, together with recommending the appropriate disciplinary action against any instructional personnel employed by the BCSB, inclusive of Delucia.
4. Delucia is an employee of the Broward County School Board and is currently employed as a teacher pursuant to a Professional Service Contract issued in accordance with Section 1012.33(3)(a), Florida Statutes.
5. The last known address of the Respondent is 2044 N.W. 111 Terrace, Coral Springs, Florida, 33071.

II. MATERIAL ALLEGATIONS

6. This recommendation is based upon conduct that occurred during the 2019-2020 school year.
7. Delucia was a teacher at Ramblewood Elementary but was transferred to Piper High School for the 2015-2016 school year.
8. Delucia is a language arts teacher at Piper High School (hereinafter "Piper").
9. The Broward County School Board hired Delucia on August 16, 2006.
10. During the 2019-2020 school year Delucia had inappropriate

conduct and interactions with his students.

11. During the time of the incidents outlined below in this Administrative Complaint, Delucia was on probationary status as a teacher for two (2) years pursuant to a Final Order by the Education Practices Commission of the State of Florida dated May 8, 2018, and Recommended Order by the Division of Administrative Hearings dated November 20, 2017.¹ (hereinafter "The Orders"). Please see Exhibits A and B, respectfully.

Background and History

12. Delucia has a history of inappropriate conduct and verbally abusive interactions with his students. Prior to this Administrative Complaint, there have been multiple meetings with Delucia regarding his unprofessional and inappropriate behavior - including three (3) prior formal reprimands and disciplinary Orders from the Department of Administrative Hearings and Education Practices Commission of the State of Florida.
13. Delucia was directed to follow School Board rules and procedures, follow school site rules and procedures, remain professional at all times, refrain from verbal confrontations with students, and cease inappropriate language with

¹EPH Case No. 17-0082-RT; DOAH Case No. 17-1221PL; PPS No. 156-0133; Certificate No. 915677; Index No. 18-212-FOF.

students, specifically verbally abusive name calling and disparaging remarks towards students.

14. Delucia was further directed to employ classroom management strategies and interventions to correct student discipline issues and to call security if his interventions were not effective. Delucia failed to follow these directives.
15. Florida Administrative Code Rule 6A-10.081(c)(16) dictates that Delucia "Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice."

Incident/Confrontation Number One

16. On or about September 26, 2019, Delucia engaged in a verbal confrontation with one of his students. This verbal altercation was witnessed by numerous students.
17. Specifically, student K.L. was out of his seat during class. Delucia approached the student and stated to K.L., "come here dummy." Confused, K.L. asked Delucia what he said and Delucia replied, "come here dummy" and "idiot" to K.L. Upon the repetition of the statements to K.L., the verbal confrontation escalated. K.L. told Delucia to "watch his mouth" while Delucia kept repeating the statement "you are a dummy" to K.L., while laughing.

Incident/Confrontation Number Two

18. On or about November 14, 2019, Delucia had a verbal confrontation with student Z.L. This was witnessed by several students.
19. Specifically, Delucia asked student Z.L. to put his student identification on his person. Z.L. was working on a class assignment and did not respond immediately. Delucia then stated to Z.L., "Now you brat." Delucia further stated, "If you would listen and stop being stupid you would hear me." Confused, Z.L. stated, "I'm stupid?" To which Delucia replied, "Yes, look how stupid you look, little brat."
20. Delucia then directed Z.L. to leave his classroom. Z.L. obliged and started to leave the classroom. As Z.L. was leaving the classroom, the argument escalated. Delucia confronted Z.L. and stated, "You're nothing but a pussy." When this was said, Z.L. confronted Delucia where further words were exchanged and Delucia dared Z.L. to hit him. Z.L. stated he would not hit Delucia. As such, while laughing, Delucia called Z.L. a "pussy" for not hitting him. Security had to be summoned to the classroom. Delucia wanted Z.L. arrested and in hand cuffs.

III. EDUCATION PRACTICES COMMISSION PLACING DELUCIA ON PROBATIONARY STATUS FOR TWO (2) YEARS

21. During all times material hereto pursuant to the factual

allegations of paragraphs six (6) through twenty (20), Delucia was on probation from the Education Practices Commission and Department of Administrative Hearings due to prior similar misconduct towards students and colleagues.

22. Pursuant to Education Practices Commission of the State of Florida Final Order, among other conditions, Delucia was ordered to comply with the following:

- a. Delucia was assessed a fine of three thousand dollars (\$3,000.00)
- b. Pay one hundred and fifty dollars (\$150) each month during his first six (6) months of probation;
- c. Violate no law;
- d. **Fully comply with all district school board policies;**
- e. **Fully comply with all school rules;**
- f. **Fully comply with all State Board of Education Rules;**
and
- g. **Satisfactory perform all assigned duties in a competent, professional manner.**²

23. Delucia failed to follow the probationary conditions in his Final Order during his probationary term.

24. As it pertains to the Department of Administrative Hearings Recommended Order, the Conclusions of Law State the

² Emphasis added.

following:

- a. Delucia was found in violation of Florida Administrative Code Rule 6A-10.081(3)(a), which at the time of the alleged offense provided: 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. Respondent made several comments that violated this rule. Respondent's warning, "Don't you even piss me off," said in an angry and loud voice to a student on December 2, 2014, in response to the student's statement that the student did not understand something, was harmful to learning and to the student's mental health.
- b. Delucia was found in violation of Florida Administrative Code Rule 6A-10.081(3)(e), providing that an individual shall not intentionally expose a student to unnecessary embarrassment or disparagement. This rule requires a finding of intent on the part of the teacher. Respondent's statement to student that she should put the bungee cord around her neck when she jumped intentionally exposed her to unnecessary embarrassment and disparagement. The courts have held that a violation of this rule occurs when a teacher makes a "conscious decision not to comply with the rule." Langston v.

Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

c. Delucia was found in violation of Florida Administrative Code Rule 6A-10.081(5)(e), which provided that an individual shall not make malicious or intentionally false statements about a colleague. Respondent's December 8, 2014, statement that his "motivation was to destroy [Ms. Smith] with everything that he has" clearly indicates a desire to do harm and was clearly malicious.

25. It is prudent to note the Administrative Law Judge, when deciding between a probationary term of Delucia's teaching certificate or revocation, specifically stated probation was the better course of action since Delucia had not had any disciplinary action during his last two years at Piper High School. This is now not the case.

IV. FURTHER PREVIOUS DISCIPLINE AND CORRECTIVE ACTION

26. On or about January 9, 2015, Delucia was issued a formal written reprimand for using inappropriate and/or disparaging language when communicating and confronting colleagues and students.

27. On or about November 15, 2017, Delucia was issued a formal verbal reprimand for using inappropriate language to and about students. Specifically, Delucia called his student "trash."

28. On or about January 31, 2019, Delucia was issued a formal

written reprimand for inappropriate conduct towards a student. Specifically, Delucia called a student a "prick" and/or spineless prick." In regard to corrective action, Delucia was directed to (1) remain professional at all times; (2) refrain from name calling; (3) employ classroom management strategies and interventions to correct student discipline issues; call security if intervention strategies are not affective; and (5) refrain from back and forth verbal confrontations with students.

V. ADMINISTRATIVE CHARGES

29. Petitioner realleges and incorporates herein by reference the allegations set forth in paragraphs one (1) through twenty-eight (28), above.
30. Just cause exists for the requested relief pursuant to Fla. Stat. § 1012.33, Sections 6A-5.056 and 6A-10.081 F.A.C., the Respondent's employment contract, School Board rules and regulations, the Code of Ethics of the Education Profession, and the Employee Disciplinary Guidelines promulgated by the School Board.
31. "Just cause" means cause that is legally sufficient. "Just cause" includes, **but is not limited to:**

2. "Misconduct in Office" means one or more of the following:
 - a. A violation of the Code of Ethics of the Education Profession in Florida as adopted in

Rule 6A-10.080, F.A.C.³;

- b. **A violation of the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6A-10.081, F.A.C.⁴;**
 - c. A violation of the adopted school board rules;
 - d. Behavior that disrupts the student's learning environment; or
 - e. Behavior that reduces the teacher's ability or his or her colleagues' ability to effectively perform duties.
3. "Incompetency" means the inability, failure or lack of fitness to discharge the required duty as a result of inefficiency or incapacity.
- a. "Inefficiency" means one or more of the following:
 - 1. Failure to perform duties prescribed by law;
 - 2. **Failure to communicate appropriately with and relate to students;**⁵
 - 3. Failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents;
 - 4. Disorganization of his or her classroom to such an extent that the health, safety or welfare of the students is diminished; or
 - 5. Excessive absences or tardiness.
4. "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.
5. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

VI. JUST CAUSE FOR DISCIPLINE

A. JUST CAUSE

³ Repealed 3-23-16. Now included in 6A-10.081 F.A.C., Principles of Professional Conduct for the Education Profession in Florida.

⁴ Emphasis added.

⁵ Emphasis added.

38. Respondent's actions constitute just cause to suspend his employment, pursuant to Fla. Stat. § 1012.33(6).

"Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a)."

B. MISCONDUCT IN OFFICE

39. Respondent's actions, as alleged in paragraphs one (1) through twenty-eight (28), incorporated herein by reference, constitute misconduct in office by violating Rules 6A-5.056(2)(b) and (d), and Rule 6A-10.080 of the Florida Administrative Code, which defines "misconduct".

RULE 6A-10.081 F.A.C., PRINCIPLES OF PROFESSIONAL CONDUCT FOR THE EDUCATION PROFESSION IN FLORIDA

40. Pursuant to the Principles of Professional Conduct for the Education Profession in Florida,

(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.

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

16. Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.

41. Respondent's actions, as alleged in paragraphs one (1) through twenty-eight (28), incorporated herein by reference, constitute misconduct in office and a failure to comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice by violating Rules 6A-5.056(2)(b) and (d), and Rule 6A-10.080 of the Florida Administrative Code.

RULE 6A-10.081 F.A.C., PRINCIPLES OF PROFESSIONAL CONDUCT FOR THE EDUCATION PROFESSION IN FLORIDA

42. Pursuant to the Principles of Professional Conduct for the Education Profession in Florida,

(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.

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

16. **Shall comply with the conditions of an order of the Education Practices Commission imposing probation, imposing a fine, or restricting the authorized scope of practice.**⁶

C. INCOMPETENCY

43. Respondent's actions, as alleged in paragraphs one (1) through twenty-eight (28), incorporated herein by reference, constitute incompetency. The Respondent's above described conduct has violated Florida §1012.33 and Rule 6A-5.056(3)(a) and Rule 6A-10.080 of the Florida Administrative Code. His actions show a failure to perform the required duties as a result of inefficiency.

- (a) "Inefficiency" means one or more of the following:
 1. Failure to perform duties prescribed by law;
 2. **Failure to communicate appropriately with and relate to students;**⁷

* * *

44. Respondent failed to perform duties prescribed by law as well as failed to communicate appropriately with and relate to students.

⁶ Emphasis added.

⁷ Emphasis added.

D. GROSS INSUBORDINATION

45. Respondent's actions, as alleged in paragraphs one (1) through twenty-eight (28) above, incorporated herein by reference, constitute gross insubordination. "Gross insubordination" means the intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority; misfeasance, or malfeasance as to involve failure in the performance of the required duties.

E. WILLFUL NEGLIGENCE OF DUTY

46. Respondent's actions, as alleged in paragraphs one (1) through twenty-eight (28) above, incorporated herein by reference, constitute willful neglect of duty. "Willful neglect of duty" means intentional or reckless failure to carry out required duties.

F. SCHOOL BOARD POLICY 4008

47. School Board policy 4008, Responsibilities and Duties (Principals and Instructional Personnel) requires "all employees who have been issued contracts to comply with the provisions of the Florida School Code, State Board Regulations and regulations and policies of the Board."

48. Respondent is in violation of School Board policy 4008(B), which requires that "members of instructional staff shall perform the following functions":

1. Comply with the Code of Ethics and the Principles of

Professional Conduct of the Education Profession in Florida.

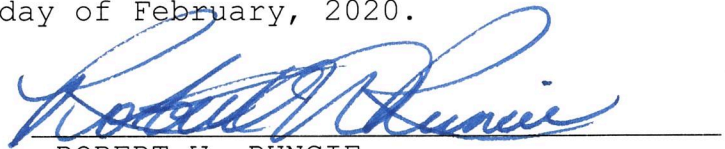
3. Infuse in the classroom, the District's adopted Character Education Traits of Respect, Honesty, Kindness, Self-Control, Tolerance, Cooperation, Responsibility and Citizenship.

8. Conform to all rules and regulations that maybe prescribed by the State Board and by the School Board.

DEMAND FOR RELIEF

WHEREFORE, based upon the foregoing, Petitioner, Robert W. Runcie, Superintendent of Schools, recommends that the School Board formally suspend and terminate Eric S. Delucia, based upon the foregoing facts and legal authority.

EXECUTED this 26th day of February, 2020.



ROBERT W. RUNCIE,
Superintendent of Schools,
Broward County

Respectfully submitted:
Andrew Brett Carrabis, Esq.
Administrative Counsel

NOTICE

If you wish to contest the charges, you must, within 15 calendar days after receipt of the written notice, submit a written request for a hearing to Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL, 33301. If timely requested, such hearing shall be conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120, Florida Statutes.

FAILURE TO TIMELY REQUEST A HEARING WILL RESULT IN A WAIVER OF THE RIGHT TO CONTEST THE CHARGES.

IF YOU WANT TO HIRE AN ATTORNEY, YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY IN THIS MATTER.



Before the Education Practices Commission of the State of Florida

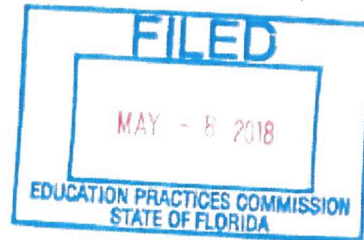
PAM STEWART,
Commissioner of Education,

Petitioner,

vs.

ERIC S. DELUCIA,

Respondent.



EPC CASE N° 17-0082-RT
DOAH CASE N° 17-1221PL
PPS N° 156-0133
CERTIFICATE N° 915677
INDEX N°: 18-212-FOF

Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on April 12, 2018, in Fort Lauderdale, Florida, for consideration of the Recommended Order (RO) entered in this case by F. SCOTT BOYD, Administrative Law Judge. Respondent was present. Petitioner was represented by Charles T. Whitelock, Esq. Attached hereto as Exhibit A is a copy of Respondent's Exceptions.

Ruling on Exceptions

Exception No. 1: Respondent filed an exception to the administrative fine of \$3,000.00 as excessive. The exception is rejected.

Exception No. 2: Respondent filed an exception to the payment of Petitioner's "costs of investigation and prosecution." The Commission does not have the authority to collect



such costs. The exception is granted and no costs for investigation and prosecution will be imposed.

Findings of Fact

1. The Panel hereby adopts the findings of fact in the Recommended Order.

There is competent substantial evidence to support these findings of fact.

Conclusions of Law

1. The Education Practices Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 1012, Florida Statutes.
2. The Panel hereby adopts the conclusions of law in the Recommended Order.

Penalty

Upon a complete review of the record in this case, it is therefore **ORDERED** that:

1. Respondent is assessed an administrative fine of \$3,000.00 to be paid within the probationary period.
2. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on 2 employment years of probation with the conditions that during that period, (s)he shall:
 - A. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.
 - B. Have Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

C. Pay to the Commission during the first 6 months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.

D. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

E. Satisfactorily perform all assigned duties in a competent, professional manner.

F. Bear all costs of complying with the terms of a final order entered by the Commission.

G. Provide a certified college transcript to verify successful (a grade of "pass" or a letter grade no lower than a "B") completion of 3 hours of college level course-work in the area(s) of Classroom Management, which may be taken online, within the probationary period.

This Final Order takes effect upon filing with the Clerk of the Education Practices Commission.

DONE AND ORDERED, this 8th day of May, 2018.


CHRISTIE GOLD, Presiding Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST

DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was furnished to ERIC S. DELUCIA, [REDACTED] Coral Springs, FL 33071 and Robert F. McKee, 1718 East 7th Avenue, Suite 301, Tampa, FL 33605 by Certified U.S. Mail, by electronic mail to Darby Shaw, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 and Charles T. Whitelock, Esq., 300 Southeast 13th Street, Suite E, Fort Lauderdale, FL 33316-1924 this 8th day of May, 2018.



Lisa Forbess, Clerk
Education Practices Commission

COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

Superintendent
Broward County Schools
600 S.E. 3rd Ave.
Ft. Lauderdale, FL 33301-3125

Executive Director, Professional Standards
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Lee Ann Gustafson
Senior Assistant Attorney General

F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Claudia Llado, Clerk
Division of Administrative Hearings

Probation

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 17-1221PL

ERIC DELUCIA,

Respondent.

RECOMMENDED ORDER

On August 21 and 22, 2017, a duly-noticed hearing was held by video teleconference at locations in Lauderdale Lakes and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Charles T. Whitelock, P.A.
300 Southeast 13th Street, Suite E
Fort Lauderdale, Florida 33316

For Respondent: Robert F. McKee, Esquire
Robert F. McKee, P.A.
1718 East 7th Avenue, Suite 301
Tampa, Florida 33605

STATEMENT OF THE ISSUES

The issues to be determined are whether Eric Delucia (Respondent or Mr. Delucia) violated sections 1012.795(1)(c), (g), or (j), Florida Statutes, and implementing administrative



rules, as alleged in the Amended Administrative Complaint; and, if so, what is the appropriate sanction.

PRELIMINARY STATEMENT

On September 6, 2016, Pam Stewart, as Commissioner of the Department of Education (Petitioner or Commissioner), filed an Administrative Complaint against Respondent, alleging violations of sections 1012.795(1)(c), (g) and (j) and implementing rules. Respondent disputed allegations in the Administrative Complaint and requested a hearing pursuant to section 120.57(1), Florida Statutes. On February 22, 2017, the case was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

The case was noticed for hearing on May 3, 2017. In response to Respondent's unopposed motion, the case was continued until August 21, 2017, begun on that date, and completed the following day. At hearing, Petitioner presented the testimony of Mr. Jeffrey Wenhold, an assistant principal at Ramblewood Middle School (Ramblewood); Ms. Anetra Poindexter, a peer reviewer during the 2014/2015 school year at Ramblewood; Ms. Claire Sheffield, another peer reviewer in the 2014/2015 school year; Student █████, a student of Mr. Delucia's; Student █████, another student of Mr. Delucia's; Mr. Howard Jones, another assistant principal at Ramblewood; Ms. Cory Smith, the principal at Ramblewood; Ms. Wendy Doll, the principal at Cooper City High

School during the 2011/2012 school year; and Ms. Farrah Wilson, an evaluations coordinator for Davie Professional Development Center. Petitioner offered 21 exhibits, P-1 and P-4 through P-23, all of which were admitted into evidence, with the caveat that many of the exhibits contained hearsay that could not in and of itself support findings of fact. Respondent called Dr. Monte Escabi, a retired assistant principal formerly from South Plantation High School, and testified himself. Respondent's Exhibits R-1 through R-7, performance evaluations of Respondent, were admitted into evidence over objection.

The three-volume Transcript of the proceeding was filed with the Division of Administrative Hearings on September 21, 2017. In response to a post-hearing motion from Respondent, the deadline for filing proposed recommended orders was extended until October 27, 2017. Both parties timely filed proposed recommended orders that were considered in the preparation of this Recommended Order.

References to Florida Statutes or administrative rules are to the versions in effect on the date of the alleged violations, except as otherwise indicated.

FINDINGS OF FACT

1. The Commissioner is the state agent responsible for investigating and prosecuting allegations of misconduct against individuals holding educator certificates.

2. At all times relevant to the allegations in the Amended Administrative Complaint, Mr. Delucia held Florida Educator's Certificate 915677, covering the areas of English, English for Speakers of Other Languages, Business Education, and Marketing, which is valid through June 30, 2019.

3. At all times relevant to the Amended Administrative Complaint, Mr. Delucia was employed as a language arts teacher in the Broward County School District.

4. Mr. Delucia stored the documents listed in Petitioner's Exhibit P-2 on his computer, as stipulated by the parties.

5. Mr. Delucia was employed at Cooper City High School during the 2011/2012 school year. Ms. Doll was the principal. Principal Doll testified that Mr. Delucia was in the initial stages of a cycle of assistance during that year. He received a memo outlining expectations and concerns, and was observed by several people.

6. Principal Doll indicated she believed that he had deficiencies in instructional planning, classroom management, lesson plan presentation, and lesson plan delivery.

7. However, Principal Doll confirmed that Mr. Delucia's Instructional Practice Score was a 2.954 for the period January 2012 through May 2012 at Cooper City High School, which was within the "effective" range. Principal Doll stated that there were concerns about his performance based on observations

that were done earlier that warranted an outside observer, but those observations were not used for the evaluation. He was never placed on a Professional Development Plan while at Cooper City High School. Respondent requested a hardship transfer and was moved to Ramblewood for the following school year.

8. On January 1, 2013, Mr. Delucia was admitted to the hospital following a series of strokes.

9. Respondent received "effective" scores in both the Student Growth and Instructional Practice components, as well as his overall Final Evaluation for the 2012/2013 school year at Ramblewood. Respondent was subsequently on medical leave of absence during the 2013/2014 school year.

10. On July 1, 2014, Ms. Smith became the principal at Ramblewood. On August 11, 2014, Mr. Delucia returned to Ramblewood from medical leave.

11. On August 14, 2014, Principal Smith was inspecting all of the classrooms at Ramblewood to ensure that they were prepared for the first day of school. She felt that Mr. Delucia's classroom was not ready for students, because it needed a little bit of "warmth."

12. On August 28, 2014, Principal Smith conducted a formal evaluation in Mr. Delucia's classroom. She concluded that the lesson had no clear focus and that it was not on the appropriate grade level for the students he was teaching.

13. In early September, there was a complaint that Mr. Delucia was putting up students' grades on a board in his room. However, Mr. Delucia testified that he posted the grades only by student number, not by name. There was no competent evidence to the contrary.

14. On October 30, 2014, in introducing the genre of mythology to his students, Mr. Delucia made the comment that "[t]he gods viewed humans as pets or sexual toys." While not an appropriate comment for middle school students, there was no suggestion that Mr. Delucia elaborated or pursued this statement further, and this incident did not constitute ineffective teaching. There was no evidence that it caused students embarrassment or harmed students' mental health.

15. There was testimony that on October 30, 2014, Mr. Delucia also spent class time explaining that the fact that a Star Wars' character had no father would have been taboo in 1976 and discussing that the episodes of that movie series were released out of the chronological order of the story. While the discussion may have gotten a bit off track, it was not clearly shown that discussion of fiction was unrelated to the concept of mythology, might not have enhanced students' understanding of the topic, or was ineffective teaching. While it was clearly shown that Mr. Delucia made the statement, "These kids have the memories of gnats," it was clear that this was said when no

students were present and in defense of his actions in discussing fantasy and fables.

16. On December 2, 2014, Respondent said to a student in an angry and loud voice, "Don't you even piss me off." This warning, given in response to the student's statement that the student did not understand something, was inappropriate in language and tone, harmful to learning, and harmful to the student's mental health. Mr. Delucia's statement that he was not visibly angry or speaking in a loud voice on this occasion is not credited.

17. On December 8, 2014, Mr. Delucia met with Ms. Poindexter, his new peer reviewer. At one point in their conversation, he talked about his former principal, Ms. Doll, referring to her battle with cancer. He stated, "She will kick the bucket soon because she has cancer and no one will care when she is gone." He stated, "She's the devil."

18. Mr. Delucia also referred to his current principal, Ms. Smith, as "the devil." He stated, "My motivation is to destroy her with everything I have" and that he "wished the ground would open up and swallow her."

19. Mr. Delucia also referred to the administrative staff as "assholes" and used multiple profanities, stating, "They do not know who they are messing with, but they will find out soon."

20. Student █████ testified that he heard Mr. Delucia tell Student █████ that he should jump off of a bridge with a bungee cord wrapped around his neck; tell Student █████ that if he was a speed bump, he (Mr. Delucia) would run over him; and tell Student █████ to kill himself a couple of times. However, Student █████ provided no detail or context for these alleged statements, some of which seemed to involve an incident involving an entirely different student who he testified was not even in his class. He was not a credible witness.

21. On January 8, 2015, Ms. Sheffield observed Mr. Delucia using a four-page packet to teach punctuation to his seventh-grade language arts class. Ms. Sheffield told Mr. Delucia that this was not really part of the seventh-grade curriculum. Mr. Delucia made a statement to the effect of "these students don't know anything, not even the basics, so we have to start somewhere." There was no allegation that this comment was made in front of the students.

22. From the period August 21, 2014, through December 3, 2014, Mr. Delucia's Instructional Practice Score was 1.916, and he was placed on a 90-day Professional Development Plan. Numerous observations by Dr. Jones and Principal Smith followed through the remainder of the school year. Mr. Delucia's Instructional Practice Score improved slightly, but was still less than effective.

23. On January 12, 2015, Ms. Sheffield noticed that one of the vocabulary words written on Mr. Delucia's board for his students was "retard." Ms. Sheffield said she assumed that Mr. Delucia meant the slang term sometimes used as a noun to refer to persons with mental disabilities. Such use of the term, as a shortened form of the word "retarded," would be offensive and disparaging. Ms. Sheffield said that they talked about the fact that it is not appropriate to use the word "retard" as a noun as a reference to the disabled. She testified that he did not respond. At hearing, Mr. Delucia admitted using "retard" as a vocabulary word, but testified that he included the word as a verb, meaning to slow down or delay. Ms. Sheffield testified she did not hear him speak the term, or say anything about it, and there was no other testimony regarding this event.

24. Mr. Delucia admitted that he often said, "If your writing looks like garbage and smells like garbage, then it is garbage." Ms. Sheffield stated that she told Mr. Delucia he might try to find another way to encourage students to write neatly in their journals that was a more positive comment or allowed students to take pride in their writing.

25. On January 26, 2015, Ms. Sheffield testified that when a student returned late from lunch, Mr. Delucia and the student began arguing. Ms. Sheffield credibly testified that Mr. Delucia

screamed at the student, "This isn't going to end up good for you. Just shut up."

26. On February 4, 2015, Student [REDACTED] had come in late to Mr. Delucia's class and was acting out in the back of the classroom. When asked why, her response was that other people also did it. Mr. Delucia responded, "If other people jump off of a bridge, would you jump off a bridge, too?" Student [REDACTED], after a moment of silence, retorted, "Yeah, if you give me a bungee cord." Mr. Delucia replied, "If there is a bungee cord, you should wrap it around your neck before you jump." The class started laughing. Student [REDACTED] replied, "You just told me to kill myself, I am telling the office." Mr. Delucia then asked Student [REDACTED] to leave the classroom. While Student [REDACTED] had a disrespectful attitude, Respondent's caustic comments to her were intentionally made in a spirit of mocking humor to subject Student [REDACTED] to embarrassment in front of the class.

27. A class grade graph prepared during the third quarter of the 2014/2015 school year documented that 68 percent of his students were failing at that time. No similar graph for any other quarter of that year, or for other years, was submitted in evidence.

28. On April 7, 2015, the students in Mr. Delucia's class were supposed to be studying Latin and Greek roots of words, but one student did not have a packet and asked Mr. Delucia for one.

After Mr. Delucia handed him the packet, the student said, "There is a footprint on this." Mr. Delucia responded, "Get working on studying or else I will call your father." The student replied, "Please don't." Mr. Delucia then said, "Why, because you don't want to get a footprint on your face?"

29. Ms. Sheffield testified that during her observations, she never saw Mr. Delucia standing up interacting with his students. She said she never saw him deliver a lesson to students.

30. For the 2014/2015 school year, Mr. Delucia's score for the instructional practice component on his evaluation was 2.002, a "needs improvement" rating, while his score for both the deliberate practice/growth plans and student data components was recorded as exactly 3.0. The final evaluation for Mr. Delucia in 2014/2015, computed by combining these unequally weighted scores, was 2.511, an "effective" rating.^{1/}

31. Mr. Delucia was transferred to Piper High School for the 2015/2016 school year. The administration there did not place Mr. Delucia on a Professional Development Plan.

32. Mr. Delucia has not been subjected to disciplinary action during his time at Piper High School, and he has exhibited positive rapport with his students and colleagues.

33. Mr. Delucia's weighted overall evaluation score for the 2015/2016 school year at Piper High School was 2.831, "effective."

34. Mr. Delucia's demeanor at hearing was defiant. His testimony was sometimes evasive and defensive.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

36. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional personnel. §§ 1012.795(1) and 1012.796(6), Fla. Stat.

37. Petitioner seeks to take action against Respondent's educator certificate. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Amended 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).

38. Clear and convincing evidence has been said to require:

[T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind

of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

COUNT 1

39. During the 2014/2015 school year, section 1012.795(1)(c) provided that the Education Practices Commission (Commission) might discipline the educator certificate of a person found incompetent to teach or perform duties as an employee of the public school system or to teach in or to operate a private school.

40. The meaning of "incompetent" for purposes of section 1012.795(1)(c) is not specifically defined by statute or rule.^{2/} The term is defined in Black's Law Dictionary as "lack of ability, knowledge, legal qualification, or fitness to discharge the required duty or professional obligation." Black's Law Dictionary 765 (6th ed. 1990).

41. Neither section 1012.34 nor the BrIDGES version of the Marzano evaluation system adopted for use in the Broward County District Schools is binding on the Commission in its evaluations of educator competency under section 1012.795(1)(c). However, it is Respondent's performance in Broward County that is under

review, and those evaluations, as well as other performance indicators, are relevant when evaluating competency.

42. In the instant case, however, no introduced Broward County District School performance evaluations indicated less than effective performance. Although some components were less than effective on some reports, Respondent's overall performance was always scored in the "effective" range. Section 1012.34 provides that neither "performance of students" nor "instructional practice" is alone sufficient to constitute a performance evaluation. Instead, each of these factors must contribute at least one-third of the overall performance evaluation, and other factors, such as professional and job responsibilities, peer reviews, survey information from students and parents, and other information may also be used. There was no evidence as to exactly how Respondent's "Student Growth" or "Student Data" scores were calculated, but all reported student performance scores were exactly 3.0, "effective."

43. Although involving a different statutory scheme, the older case of Walker v. Turlington, 516 So. 2d 1123, 1124 (Fla. 3d DCA 1987), involved a similar issue. The Commission in that case had increased a recommended three-year suspension to a three-year revocation, in part because it found allegations of incompetency had been demonstrated by ten years of unsatisfactory evaluations. The Third District Court of Appeals reversed and

remanded, noting that while Respondent had been found deficient in certain areas over this extended period, there was only one year in which Respondent's overall evaluation had been determined to be unacceptable.

44. Principal Doll testified that Respondent was in the initial stages of a cycle of assistance during the 2011/2012 school year, but his later Instructional Practice Score, Student Growth Score, and overall Final Evaluation Score prepared at the end of that school year were nevertheless all rated as "effective." Principal Doll's testimony regarding Respondent's teaching performance deficiencies at Cooper City High School was considered, but that evidence was largely outweighed by the actual formal evaluation which followed based upon observations conducted at Cooper City High School.

45. Petitioner did show repeated instances in which Respondent failed to communicate with students and colleagues in a professional manner, and the evidence indicates that his interactions with, and attitude toward, his students were far from nurturing. The evidence showed a complete lack of rapport with his middle school charges. In fact, the evidence suggests that he held his students in disdain. He demonstrated little respect for either their potential or his own ability to overcome the obvious obstacles to make a positive contribution to their education.

46. Had Respondent's documented behaviors been accompanied by student performance scores that were less than effective, it might be reasonably inferred that Respondent was in fact incompetent to teach. But these behaviors, while in some cases warranting discipline in and of themselves, as discussed below, do not clearly or convincingly show incompetency when considered in connection with the formal documented evidence of student performance. It was also compelling that for the most recent school years, during which Respondent has been teaching at Piper High School, there have apparently been no incidents, no less than effective performance factors, and no allegations of incompetency. The fact that Respondent improved his performance at Piper High School (regardless of whether or not he did so in anticipation of potential discipline) confirms that the performance issues at the middle school were not caused by any inherent lack of ability, knowledge, legal qualification, or fitness; in other words, confirms that the deficiencies there were not based upon incompetency.

47. Petitioner failed to prove by clear and convincing evidence that Respondent violated section 1012.795(1)(c).

COUNT 2

48. Section 1012.795(1)(g) provided that the Commission might suspend the educator certificate of a person found guilty of

personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

49. In some instances, serious reduction in effectiveness may be inferred simply from the nature of the misconduct. See, e.g., Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2d DCA 2000) (commotion in class, including intoxicated student, showed class was out of control such that no evidence of impaired effectiveness was necessary; misconduct "spoke for itself").

50. Here, it is not self-evident that Respondent's derogatory comments toward students necessarily resulted in a serious reduction in effectiveness. All of the evidence indicated that Respondent's students were orderly and well-behaved. While Respondent's attitude and comments were clearly inappropriate, all misconduct does not qualify for the inference. Petitioner put on scant evidence of reduced effectiveness as a result of Respondent's actions. Further, any testimony of impaired effectiveness is greatly outweighed by the direct evidence of his formal performance evaluations, which consistently reflected effective student performance.

51. Petitioner failed to show by clear and convincing evidence that Respondent was found guilty of personal conduct that seriously reduced his effectiveness, in violation of section 1012.795(1)(g).

COUNT 3

52. Count 3 alleges that Respondent is in violation of section 1012.795(1)(j), in that he has violated the Principles of Professional Conduct for the Education Profession. Counts 4 through 10 go on to allege the specific violations of these principles. Count 3 does not constitute a distinct disciplinary violation and is considered only in relation to these later counts.

COUNT 4

53. Count 4 alleges that Respondent violated Florida Administrative Code Rule 6A-10.081(3)(a), which at the time of the alleged offense provided:

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.

54. Respondent made several comments that violated this rule. Respondent's warning, "Don't you even piss me off," said in an angry and loud voice to a student on December 2, 2014, in response to the student's statement that the student did not understand something, was harmful to learning and to the student's mental health.

55. Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(a).

COUNT 5

56. Count 5 alleges that Respondent violated rule 6A-10.081(3)(e), providing that an individual shall not intentionally expose a student to unnecessary embarrassment or disparagement.

57. This rule requires a finding of intent on the part of the teacher. Respondent's statement to student [REDACTED] that she should put the bungee cord around her neck when she jumped intentionally exposed her to unnecessary embarrassment and disparagement.

58. The courts have held that a violation of this rule occurs when a teacher makes a "conscious decision not to comply with the rule." Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

59. Petitioner has proven by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(e).

COUNT 6

60. Count 6 alleges that Respondent violated rule 6A-10.081(3)(f), providing that an individual shall not intentionally violate or deny a student's legal rights.

61. The Amended Administrative Complaint alleges that Respondent used a projector to post students' grades along with the students' names in his classroom, in violation of the students' legal rights.

62. The only testimony at hearing from anyone present in the classroom on this occasion was that of Respondent, who testified that the grades were posted only by student number and that student names did not appear. There was no competent evidence to the contrary introduced at hearing. Only hearsay evidence was presented to support the allegation that student names and grades were published. As discussed at hearing, section 120.57(1)(c), Florida Statutes (2017), states in part that "[h]earsay evidence may be used for the purposes of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding." No competent evidence supports a finding that grades were posted along with students' names in violation of students' rights.

63. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(f).

COUNT 7

64. Count 7 alleges that Respondent violated rule 6A-10.081(3)(g), which provided that an individual:

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.

65. Petitioner does not specifically cite to any of the material allegations of the Amended Administrative Complaint to support this alleged violation, but simply concludes in her Proposed Recommended Order that "respondent is guilty" of this count. It is not at all clear from a review of the Amended Administrative Complaint which factual allegations Petitioner considered to have constituted a violation of rule 6A-10.081(3)(g), or even the basis of the alleged discrimination. None of Respondent's statements make explicit reference to a student's race, color, religion, sex, or other possible basis of harassment or discrimination set forth in the rule, and no implicit discrimination on any such basis was apparent. While there was evidence of inappropriate comments made to students generally, as discussed earlier, there was no evidence that this constituted "harassment or discrimination" on any basis prohibited by the rule.

66. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(g).

COUNT 8

67. Count 8 alleges that Respondent violated rule 6A-10.081(3)(i), providing that an individual shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

68. As with Count 6 above, this allegation appears to relate to the allegation that Respondent posted grades with student names. Petitioner introduced no competent evidence to support this allegation.

69. Petitioner failed to prove by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(i).

COUNT 9

70. Count 9 alleges that Respondent violated rule 6A-10.081(5)(d), which provided that an individual:

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

71. Neither the Amended Administrative Complaint nor Petitioner's Proposed Recommended Order explicitly identifies the factual basis supporting this alleged violation. Past orders of the Commissioner seem to have involved sexual or racial harassment or discrimination. See, e.g., Stewart v. Roney, Case No. 16-3897PL (Fla. DOAH Jan. 23, 2017; Fla. EPC Mar. 27, 2017); Stewart v. Shannon, Case No. 15-0335PL (Fla. DOAH Jul. 31, 2015; Fla. EPC Jan. 17, 2017); Stewart v. Madison, Case No. 14-5479PL (Fla. DOAH Jun. 5, 2015; Fla. EPC Sep. 30, 2015). Violation of

rule 6A-10.081(5)(d) is presumably not limited to such traditional forms of harassment or discrimination, but would theoretically prohibit harassment or discrimination on some other basis, beyond even the extensive list set forth in rule 6A-10.081(3)(g) governing obligations toward students.

72. However, the only competent evidence adduced at trial which seemingly even remotely related to others' "professional or work responsibilities" concerned Respondent's derogatory comments about his former principal, his current principal, and the administration at Ramblewood made on December 8, 2014. It was not clearly shown that these comments represented harassment or discrimination against Ms. Poindexter or Ms. Dori Gustafson, the peer reviewers, as the comments were not directed toward them.

73. Were it to be assumed that the comments constituted "harassment" or "discrimination" on some unspecified basis against administrators, there would still have been no evidence presented that the December 8, 2014, comments "unreasonably interfered" with any administrator's professional performance. There was no evidence that Ms. Doll, or anyone at her school, was ever aware of these statements. As for Ms. Smith, her response to the derogatory comments seemed both professional and quickly concluded. After submission of the "fit for duty" packet and determination that no criminal action was appropriate, it was handled administratively.

74. Finally, there was no convincing evidence showing the comments created a hostile or oppressive environment at Ramblewood. After all, the peer reviewers themselves were not even employed at Ramblewood, the comments were not made in front of students or widely known, and there was no evidence that Respondent made similar comments to other teachers or anyone else at the school that might have collectively created such an environment.

75. Petitioner failed to show by clear and convincing evidence that Respondent violated rule 6A-10.081(5)(d).

COUNT 10

76. Count 10 alleges that Respondent violated rule 6A-10.081(5)(e), which provided that an individual shall not make malicious or intentionally false statements about a colleague.

77. The parties cite to no case defining the term "colleague" in this context, and none was found. The ordinary dictionary definition of "colleague" is "a person with whom one works in a profession or business." See, e.g., English Oxford Living Dictionary, Oxford University Press, 2017, at <https://en.oxforddictionaries.com/definition/us/colleague>; Random House Dictionary, Random House, Inc., 2017, at <http://www.dictionary.com/browse/colleague?s=t>; and American Heritage Dictionary of the English Language, Fifth Edition (2017), at <https://ahdictionary.com/word/search.html?q=colleague>. The

rule's use of "colleague" therefore reasonably includes some superiors, such as Respondent's principals and the school administrators in this case (as they are fellow education professionals).

78. Malice is defined as the "the desire to harm someone; ill will." See, e.g., English Oxford Living Dictionary, Oxford University Press, 2017, at <https://en.oxforddictionaries.com/definition/malice>; and Random House Dictionary, Random House, Inc., 2017, at <http://www.dictionary.com/browse/malice?s=t>. Respondent's December 8, 2014, statement that his "motivation was to destroy [Ms. Smith] with everything that he has" clearly indicates a desire to do harm and was clearly malicious.^{3/}

79. Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(5)(e).

Penalty

80. The Commission adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.795 in Florida Administrative Code Rule 6B-11.007.

81. Rule 6B-11.007(2)(i)22. provided that probation to revocation was the appropriate range of penalty for other violations of the Principles of Professional Conduct and the Florida Administrative Code.

82. Rule 6B-11.007(3) provided:

(3) Based upon consideration of aggravating and mitigating factors present in an individual case, the Commission may deviate from the penalties recommended in subsection (2). The Commission may consider the following as aggravating or mitigating factors:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (e) The number of times the educator has been previously disciplined by the Commission;
- (f) The length of time the educator has practiced and the contribution as an educator;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty upon the educator's livelihood;
- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;
- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;

(n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;

(o) Actual negligence of the educator pertaining to any violation;

(p) Penalties imposed for related offenses under subsection (2) above;

(q) Pecuniary benefit or self-gain inuring to the educator;

(r) Degree of physical and mental harm to a student or a child;

(s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;

(t) Any other relevant mitigating or aggravating factors under the circumstances.

83. Respondent has never before been disciplined by the Commission, and there is no evidence that any need for disciplinary action has arisen during his most recent two years at Piper High School.

84. No aggravating or mitigating circumstances are present here to the extent necessary to warrant deviation from the wide range of penalties already permitted within the guidelines.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED that the Education Practices Commission enter a final order finding Eric Delucia in violation of section

1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rule 6A-10.081(3)(a), (3)(e), and (5)(e); imposing a fine of \$3,000.00; placing him on probation under conditions specified by the Commission for a period of two years; and imposing costs of investigation and prosecution.

DONE AND ENTERED this 20th day of November, 2017, in Tallahassee, Leon County, Florida.



F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of November, 2017.

ENDNOTES

^{1/} While not directly applicable here, it is important to note that for purposes of discipline under section 1012.33, performance evaluation ratings must be based upon both instructional practice and performance of students, as set forth in section 1012.34. This statutory requirement is not met if there has been a failure to factor in actual student performance data, whether through characterization of student performance as "not applicable" or through use of some agreed-upon fictional value.

^{2/} It should be noted that the State Board of Education has defined the term "incompetency" for purposes of suspension or dismissal of a teacher by a school board pursuant to

section 1012.33 not applicable here. Florida Administrative Code Rule 6A-5.056(3) states that incompetency means inability, failure, or lack of fitness to discharge a required duty as a result of inefficiency or incapacity. It goes on to include within the definition of inefficiency the "failure to communicate appropriately with and relate to students," as well as the "failure to communicate appropriately with and relate to colleagues, administrators, subordinates, or parents."

^{3/} While any constitutional issue regarding free speech could not be decided in an administrative hearing, it does not appear that the comments here relate to any matter of political, social, or educational concern to the community, but are instead of purely personal interest. Both elements of the test set forth in Pickering v. Board of Education of Township High School District 205, 391 U.S. 563 (1968), as refined in Connick v. Myers, 461 U.S. 138 (1983), must be satisfied.

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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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, as Commissioner of
Education,

Petitioner,

v.

DOAH CASE# 17-1221

ERIC DELUCIA,

Respondent.

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

The Respondent, ERIC DELUCIA, excepts as follows to the Recommended Order of Administrative Law F. Scott Boyd (ALJ), issued on November 20, 2017, as follows:

1. The Respondent excepts to the ALJ's recommendation that the Respondent be subjected to an administrative fine of \$3,000.00, as such fine is clearly excessive and does not comport with the amount of administrative fines generally imposed by the Commission in similar cases.
2. The Respondent excepts to the ALJ's recommendation that the Respondent be required to pay an unspecified amount representing the Petitioner's "costs of investigation and prosecution." The imposition of such a penalty does not have a basis in Florida law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2017, I filed this document with the Education Practices Commission, via email transmission (epc@fldoe.org), and forwarded this document, via email transmission, to Charles T. Whitelock, Esquire

(charles@ctwpalaw.com) (ark@whitelocklegal.com), 300 SE 13th Street, Suite E., Ft.

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