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THE FLORIDA SENATE

In re: Executive Order of Suspension, Number 19-13
Suspension of Ms. Mary Beth Jackson, Superintendent of Schools
Okaloosa County, Florida

GOVERNOR DESANTIS' BENCH MEMORANDUM

COMES NOW, the Executive Office of Governor Ron DeSantis ("EOG"), by and through Deputy General Counsel Nicholas Primrose, pursuant to Special Master Goodlette's letter dated April 23, 2019, respectfully submits this bench memorandum for review in the matter of Executive Order 19-13, Suspension of Mary Beth Jackson ("Jackson"), Okaloosa County School Superintendent.

1. Introduction & Background

On January 11, 2019, Governor DeSantis issued Executive Order 19-13 suspending Mary Beth Jackson from her public office as Superintendent of Schools for Okaloosa County, Florida, after numerous criminal charges of child abuse/neglect by instructional personnel, numerous criminal charges of failing to report suspected child abuse/neglect by instructional personnel and staff, a finding of failure of leadership in training, policies and procedures, and a failure of Jackson's paramount duty to protect the health, safety and welfare of the students of Okaloosa School District ("Okaloosa Schools").

On January 16, 2019, Jackson requested a formal hearing in the Florida Senate. At a preliminary case management conference, Jackson requested a Bill of Particulars, pursuant to Florida Senate Rule 12.9(3). EOG filed the Bill of Particulars on February 15, 2019. On March 1, 2019, Jackson filed her Response to the Bill of Particulars. On the same day, Jackson filed an Emergency Petition for Writ of Quo Warranto in the Florida Supreme Court. This litigation abated the Senate proceedings. On April 16, 2019, the Florida Supreme Court denied Jackson's Petition. On April 17, 2019, EOG sent a joint proposed schedule to continue the proceedings in the Senate. Both parties submitted witness and exhibit lists, and exchanged exhibits prior to the Prehearing Conference on April 23, 2019. This matter proceeds on a Final Hearing (DATE).

The sole question presented to the Florida Senate is whether Jackson should be removed from her office as Superintendent of Okaloosa Schools for neglect of duty and/or incompetence.

2. Applicable Law

Superintendents in the State of Florida are bound by clear statutory duties, implemented by the Legislature, to protect the health, safety, welfare and education of the students within their school district. At a baseline, it is important to fully understand what statutory duties and responsibilities Mary Beth Jackson had. In applying the statutory duties and responsibilities to the facts, it becomes abundantly clear that Ms. Jackson neglected her duty or was incompetent in the discharge of her duties.

The crux of this matter starts with a duty everyone in the state of Florida has to immediately report suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other responsible person to the Florida Department of Children & Families (“DCF”). *See* § 39.201, Fla. Stat. (EOG0001). The operative requirement to report abuse is actual knowledge or reasonable cause to suspect. *Id.* School teachers and other school personnel are considered mandatory reporters requiring them to report the actual or suspected abuse without anonymity. DCF maintains a central state-wide hotline to take all calls, log all reports, and ultimately determine whether to investigate the report in further detail. Of equal import, each school district must post notices requiring the mandatory reporting of actual or suspected child abuse or neglect and act as a liaison to DCF in a case of actual or suspected child abuse or neglect. *See* § 1006.061, Fla. Stat. (EOG00022).

Florida law makes the Superintendent the chief executive officer of the district school board, responsible for the “administration and management of the schools and for the supervision of instruction.” *See* § 1001.32(3), Fla. Stat. (EOG00006). The Superintendent, as the chief executive officer of the district, oversees the development of policies to promote improvement in the district, policies and programs consistent with state law and rules, and advise on the entering of contracts. *See* § 1001.41, Fla. Stat. (EOG00007). All school districts must have standards of ethical conduct and their teachers and school personnel. *See*, § 1001.42(6), Fla. Stat. (EOG00009). The standards of ethical conduct must require training on the standards, establish a duty on teachers and personnel to report alleged misconduct which affects the health, safety, or welfare of a student, and “*require the district school superintendent to report to law enforcement misconduct by instructional personnel or school administrators that would result in disqualification from educator certification.*” *Id.* (EOG00009-00010); § 1012.796(3), Fla. Stat. (EOG00026-00027). The requirement on the district superintendent to report alleged misconduct carries penalties for any school board official who knowingly fails to adopt policies that require the reporting and investigation into all reports of alleged misconduct. §1001.42(7)(b), Fla. Stat. (EOG00010).

Superintendents are additionally governed general powers, duties, and responsibilities enumerated by the Legislature. A superintendent (1) exercises general oversight over the district to determine problems and needs, and recommend improvement; (2) advises and counsels the district school board on all educational matters, including recommending matters that require board action; (3) recommend policies to make the school district more efficient and; (4) recommend minimum standards above those required by the State Board of Education to ensure the needs of the district are met. *See* §1001.49, Fla. Stat. (EOG00017). Additionally, the superintendent “shall perform all tasks necessary to make sound recommendations, nominations, proposals, and reports required by law to be acted upon by the district school board.” *See* §1001.51, Fla. Stat. (EOG00018). This duty includes being responsible for the work of district

personnel, preparing all reports required by law, recommending to the Department of Education (“DOE”) the revocation of a teacher’s certificate, and the general improvement of the school. *Id.* (EOG00018-00020).

Section 1012.27, Florida Statutes, expands upon the superintendent’s role in instructing the work of personnel. (EOG00024). First, a superintendent plays a critical role in the transferring of teachers between schools in their district. § 1012.27(1)(b), Fla. Stat. (EOG00024). Second, the superintendent holds the exclusive authority and duty to suspend teachers, requiring the superintendent to notify the district school board immediately upon a suspension of a teacher. § 1012.27(5)(a), Fla. Stat. The superintendent must “notify the parent of a student who was subjected to or affected by misconduct under [the standards of ethical conduct] ... within 30 days after the date” the district learns of the misconduct, including if the allegations had been substantiated, if DOE was notified, and any sanctions imposed. § 1012.57(5)(b), Fla. Stat.

A school district must notify DOE, in writing, of all legally sufficient complaints of misconduct within 30 days of the date the subject matter of the complaint came to the attention of the school district. *See* § 1012.796, Fla. Stat. (EOG00026). This requirement is heightened *when the misconduct affects the health, safety or welfare of a student, and must be done before the conclusion of the school district’s investigation.* § 1012.796(1)(d)(2), Fla. Stat. (EOG00026). In order to ensure this critically important task is accomplished—to protect the health, safety and welfare of the student—the Legislature charged the superintendent with being properly informed of all legally sufficient complaints and being accountable for the training of all instructional personnel and staff on the standards of ethical conduct, policies and procedures. § 1012.796(1)(d)(3), Fla. Stat. (EOG00027). A superintendent who has knowledge and fails to report the complaint and follow the requirements is subject to a forfeiture of 1 year’s salary. § 1012.796(1)(d)(4), Fla. Stat. (EOG00027).

These statutory duties and responsibilities cannot and should not be delegated to anyone within the school district because the Superintendent is elected as the leader of the school district and the law does not allow for delegation of responsibility. At a baseline-level, the statutory provisions cited above, and will be presented during the Final Hearing, establish what Jackson was required to do and required to know.

3. Facts

The acts/omissions of Jackson can be traced back to the 2015-2016 academic year, but continue through the date she was suspend:

A. Teacher Frazier

In February 2016, a human resources official at Okaloosa Schools, Arden Farley (“Investigator Farley”) was made aware of allegations of suspected child abuse/neglect against a teacher of exceptional students, Roy Frazier (“Teacher Frazier”). Teacher Frazier worked at Silver Sands School, a school designed for exceptional students who needed additional attention and unique learning environments. The allegations against Teacher Frazier included, (1) inappropriate physical contact with students, including flicking, kicking, and punching the students and throwing shoes at the students, (2) verbal abuse of the students, and (3) taking students to garage sales and flea markets for his personal benefit. (EOG01000-01001).

Farley conducted his investigation into the allegations during February and March 2016, issuing his Investigative Summary and Findings on March 5, 2016 to Assistant Superintendent Stacie Smith (“Stacie Smith”). Investigator Farley found sufficient evidence that Teacher Frazier violated the Code of Ethics and Principles of Professional conduct by:

- His admission that he redirected a student with physical contact of two fingers to the shoulder area.
- His admission that he used a side kick to slide the student over. That he nudged the student leg with his foot, usually to gently move her so he could get to the computer.
- His admission that he (jokingly) asked an aide to pinch a student.
- His admission that he swung a muscular dystrophy student to get him out of a mood swing that resulted in the student hitting his head on the ground.
- His admission that he brought a BB gun to class with an umbrella used to camouflage the BB gun.
- His admission that during a school sponsored event, he used the time for personal use in which he stop by his home residence to off load items he purchased for resale.

(EOG01006). Investigator Farley recommended Teacher Frazier receive disciplinary actions, be evaluated to determine if he should continue to work with disabled students, and for the report to be forwarded to DOE’s Office of Professional Practices. (EOG01007). On March 17, 2016, Jackson wrote a letter to Teacher Frazier indicating she was recommending he be suspended without pay for three days for: “not following a student’s behavior intervention plan and not listing all traveled locations on your field trip forms.” (EOG01426). Jackson submitted a similar letter to the Okaloosa Schools Board. (EOG01428). On April 12, 2016, Okaloosa Schools, based on a recommendation from Jackson, suspended Teacher Frazier for three days, and subsequently sent Investigator Farley’s report to DOE. (EOG01407).

DOE’s Office of Professional Practices began an investigation into Teacher Frazier and the misconduct. (EOG01422). After finding probable causes existed to sanction Teacher Frazier, DOE filed an Administrative Complaint on May 30, 2017, seeking to revoke his educator’s certificate. (EOG01399-01402). Due to Teacher Frazier’s retirement, he voluntarily surrendered his educator’s certificate on June 16, 2017. (EOG01389).

B. Teacher Stillions

In April 2016, Investigator Farley was consulted to address a disagreement between a teacher and a classroom aide at Kenwood Elementary School. During his initial discussions, allegations of suspected child abuse/neglect were made against Marlynn Stillions (“Teacher Stillions”), a PreK exceptional student teacher. (EOG01551). On April 27, 2016, after Investigator Farley was made aware of the allegations, he switched his involvement into an investigation into alleged misconduct. The allegations against Teacher Stillions included (1) shoving her fingers into the mouth of a PreK student, (2) spraying students in the face with a vinegar solution, (3) inappropriate physical conduct with students, including kneeling, pushing a student with her feet, and picking up students by their waistband, (4) intentionally tripping a student, and (5) verbal abuse of students. (EOG01553-01555).

On May 18, 2016, Investigator Farley e-mailed Stacie Smith, [REDACTED] and Angelyn Vaughan (Principal of Kenwood Elementary) with an excerpt of the allegations the teacher aide made against Teacher Stillions. (EOG01114-01116). Investigator Farley indicated he was traveling to Kenwood to get Teacher Stillions' response and would seek guidance from Stacie Smith regarding the sensitive situation.

On May 19, 2016, Investigator Farley had a meeting with the teacher aide who alleged misconduct by Teacher Stillions and a CBS (communication, behavior, and social) specialist at Kenwood Elementary School, Mary Elias-Evans ("Specialist Elias-Evans"). On May 22, 2016, Specialist Elias-Evans e-mailed Investigator Farley her notes from that meeting, and expressed there was rumor about "a parent going to the local news/papers about mistreatment of one of the student's in that classroom." (EOG01099). In the meeting notes, it is recounted that Specialist Elias-Evans said that no one wants to do anything to Teacher Stillions because she is the union rep. (EOG01103). It is also recounted that Investigator Farley said this situation was "a big mess that should have been taken care of a while ago. Especially since you (Gina) had gone to administration about your concerns before." (EOG01105).

Specialist Elias-Evans also provided a written statement recounting an event earlier in the 2015-2016 academic year where she saw Teacher Stillions push a student to the ground and then lied to the CPI team that the child attacked her. (EOG01106).

E-mail evidence shows that on May 30, 2016, Investigator Farley informed Stacie Smith about the allegations against Teacher Stillions prior to the issuance of the final summary. (EOG01117). E-mail evidence shows that Investigator Farley also shared the information he compiled into Teacher Stillions with [REDACTED] and Melody Sommer (Exceptional Students Program Director) on June 16, 2016. (EOG01118).

After interviewing numerous teachers and school personnel, Investigator Farley issued his Investigative Summary Report on June 17, 2016 to Stacie Smit. (EOG01550). Investigator Farley confirmed some of the allegations and was unable to confirm others. Investigator Farley's ultimate findings into the allegations of Teacher Stillions were:

- Based on the totality of the circumstances and preponderance of the evidence, Teacher Marlynn Stillions violated the Code of Ethics and treated some of her students inappropriately.
- There is sufficient evidence that Teacher Stillions did exercise poor judgment in how she handled [REDACTED] with her feet. There is sufficient evidence that Teacher Stillions exercised poor judgment in regards to how food was given or not given to some students. There is sufficient evidence of how some student's food was consumed and taken home by Teacher Stillions. There is sufficient evidence that Teacher Stillions (without putting the strategy in the student's IEP) inappropriately sprayed a student's hand with vinegar. There is sufficient evidence that Teacher Stillions inappropriately picked up a student by his waistband and the back collar of his shirt.
- At least eight employees have had concerns ranging from minor to major in regards to how Teacher Stillions interacted with some of her disabled students. The common trend is that Teacher Stillions asks too much of three and four year old that have a disabilities. Some of the students are non-verbal and can't share their discomfort.
- The classroom working environment in Teacher Stillions room has deteriorated to a point where no aide wants to be with Teacher Stillions. The common perception is that Teacher Stillions is quick to get upset and often uses negative motivation to a population that may respond better to more patience and positive motivation.
- It is problematic that employees did not make an immediate report of alleged inappropriate interactions/procedures between Teacher Stillions and the Pre K disabled students. All employees are required to report any actual or suspected cases of child abuse, abandonment or neglect.

(EOG00129). The recommendations from Investigator Farley were:

- Respondent Marlynn Stillions receives disciplinary actions for violating the Code of Ethics and Principles of Professional Conduct for Educators/inappropriately interacting with students. Respondent Stillions not return to Kenwood where her actions has cause the classroom environment to deteriorate.
- Respondent Marlynn Stillions conference with Melody Sommer, Program Director Exceptional Student Education prior to the start of the next school year.
- Respondent Marlynn be re-certified in Nonviolent Crisis Intervention prior to the start of the next school year.
- Respondent Marlynn Stillions contact Human Resources for training on The Code of Ethics and The Principles of Professional Conduct of The Education Profession in Florida prior to the start of the next school year.
- Respondent Marlynn Stillions consider contacting our Employee Assistance Providers – Pattison Professional – 850-863-2873
- Staff personnel be briefed that they are mandated reporters and should immediately report abuse/neglect.
- This investigative report be forwarded to Professional Practices for review and or action.

(EOG01130). While Jackson may dispute whether are not any of the acts/omissions of Teacher Stillions were child abuse, it is the findings by Investigator Farley that Teacher Stillions did violate the Code of Ethics, must be re-certified in nonviolent crisis intervention, be trained regarding Code of Ethics, and that the report should be forwarded to DOE’s Office of Professional Practices for review and/or action that is important. Of equal import, Investigator Farley believed staff personnel needed to be brief on mandatory reporting of child abuse/neglect.

On June 3, 2016, there was a meeting with Investigator Farley, [REDACTED] Teacher Stillions, and Angelina Cox (Union Representative) to discuss the investigation’s findings and allow Teacher Stillions to respond to the allegations. (EOG01145-01152). On July 6, 2016, Teacher Stillions was transferred from Kenwood Elementary School to Silver Sands School. (EOG01210). A memo dated August 1, 2016 from Stacie Smith to the Equity file indicates that Teacher Stillions challenged Investigator Farley’s report based on timeliness in violation of the Master Contract with the Teachers’ Union, and therefore, the investigation would not be included in Teacher Stillions’ personnel records. (EOG01078).

On July 18, 2016, Stacie Smith e-mailed Joan Pickard (New Kenwood Elementary Principal), Melody Sommer (Exceptional Students Program Director), Investigator Farley, and Jackson regarding the upcoming school year. In the e-mail Stacie Smith directs training at Kenwood Elementary School due to “the recent events that have taken place.” (EOG01157). Stacie Smith also requested that Investigator Farley speak to the staff about the Code of Ethics and “a reminder during pre-planning of the mandatory requirement to report child abuse/neglect.” Joan Pickard (New Kenwood Elementary Principal) responds to the entire group regarding Stacie Smith’s directions:

From: Pickard, Joan </o=okaloosa school district/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=joan.pickard>
Sent: Monday, July 18, 2016 5:36 PM
To: Smith, Stacie (Hr)
Cc: Jackson, Mary Beth; Sommer, Melody; Farley, Arden
Subject: RE: Kenwood Training

I have contacted Arden for dates that he is available during preplanning.

As to training for staff to unify, I believe you are referring to their not reporting Ms. Stillions' behavior? I think having Arden share about their responsibilities will assist in this area. If there is another issue regarding lack of unity among the staff, please give me a call. I believe from reading Arden's report, that the not reporting was lack of knowing what/when to report and it seemed some fear of retaliation by a union rep. however unfounded that fear may have been.

(EOG01157).

Jackson won re-election in November 2016 for another four-year term as Superintendent. Per all accounts, nothing happened within Okaloosa County Schools regarding Teacher Stillions through the 2016-2017 academic year. The evidence will show that Investigator Farley's report was not referred to DOE's Office of Professional Practices in 2016.

Eleven months after the final report of Teacher Stillions was completed, in May 2017, [REDACTED], [REDACTED]. [REDACTED] notified the Okaloosa Sheriff's Office and signed a sworn affidavit and complaint. A copy of the Okaloosa County Sheriff's Office Offense Report can be found at EOG01562.

On May 18, 2017, Major Arnold Brown of the Okaloosa County Sheriff's Office e-mail Jackson a copy of Investigator Farley's report into the child abuse/neglect of Teacher Stillions and supplemental materials. (EOG01159-01185). Okaloosa County Sheriff's Office conducted a wide-ranging investigation over the course of several months. DCF started their own investigation into the allegations of child abuse at the same time. DCF found no indicators of child abuse based on the allegations. Of import, Okaloosa Sheriff's Office confirmed that DCF had no records of anyone calling them upon learning of the allegations in 2016 to report suspected child abuse/neglect from Okaloosa Schools—in direct contradiction to what Investigator Farley and other Okaloosa County Schools administrators claimed. Many employees told Okaloosa County Sheriff's Office they did not feel the actions rose to the level of abuse, but described them as inappropriate. While Okaloosa County Sheriff's Office conducted their criminal investigation,

In the fall of 2017, Angelyn Vaughan (Principal at Kenwood Elementary) and Investigator Farley turned themselves in to the Okaloosa Sheriff's Office, and Teacher Stillions was arrested. It is of importance to note that Teacher Stillions was back into the classroom, specifically at a school with developmentally disabled students, for the entire 2016-2017 academic year and the first month of the 2017-2016 academic year. She was not removed from the classroom until she was formally charged with felony child abuse.

It was at the same time that the community at-large became aware of the issues at Okaloosa County Schools, when the media started providing coverage of the Teacher Stillions investigation. Jackson recommended Teacher Stillions be suspended without pay until the disposition of her criminal court matter. EOG01377-01378. On October 13, 2018, a jury in the

First Judicial Circuit in and for Okaloosa County, Florida, found Teacher Stillions guilty of three counts of felony child abuse and was sentenced to seven years in prison. (EOG01655-01657).

C. Teachers Wolthers, Lacroix, and Madison

On November 14, 2018, witnesses provided sworn statements to Okaloosa County Sheriff's Office regarding alleged child abuse/neglect by Margaret Wolthers ("Teacher Wolthers") between September 1 and November 14, 2018 at Silver Sands School. (EOG01874-01876) The witnesses also indicated that Diana Lacroix and Carolyn Madison ("Teacher Aides") were also involved with the alleged child abuse/neglect. (EOG01877-01885).

D. Counselor Burt

In January 2019, Shalimar Elementary School guidance counselor, Sharen Burt ("Counselor Burt"), was arrested for failing to report suspected child abuse. Okaloosa Sheriff's Office revealed that in October 2018, when Jackson was still Superintendent, Counselor Burt had actual knowledge of suspected sexual abuse of a five-year-old, but failed to report that to the DCF hotline.

4. Charges Against Jackson

Executive Order 19-13 is the basis for suspension under review by the Florida Senate. The Executive Order lists neglect of duty and incompetence and the constitutional grounds for suspension. *See* Art. IV, § 7(a), Fla. Const. Jackson requests a Bill of Particulars, which EOG filed on February 15, 2019. The Bill of Particulars serves as more specific charges against Jackson under the grounds of neglect of duty and incompetence. There were twenty-four specific charges against Jackson.

A. Failure to Protect the Health, Safety and Welfare of Students

The primary charges against Jackson are bundled as her failing in her paramount duty to protect the health, safety and welfare of the children of Okaloosa County Schools. At the outset, the totality of the evidence prove that Jackson neglected her duty and/or was incompetent in the discharge of her paramount duty to protect the health, safety and welfare of the children of Okaloosa County Schools. Section 1001.32(c), Florida Statutes, made Jackson primarily responsible for the administration and management of Okaloosa Schools and the direct supervisory of the instruction at Okaloosa Schools. Jackson's entire case rests upon one premise—she never knew the full extent of the child abuse/neglect allegations and eventual findings and recommendations of Investigator Farley's report into Teacher Stillions. By statute, she is charged with being responsible for the entire school district, plausible deniability is not and should not be a valid defense. And contrary to Jackson's assertions, the evidence will show that she did know about the allegations, but covered it up because she was facing re-election. Jackson did not take any action until the press uncovered the issues over one year later.

i. Violating statute and school policy on notification of misconduct

Evidence shows that Jackson removed herself from being fully informed during the entire process of investigations into teachers and staff, at the outset of allegations through reviewing the actual report. *See* EOG01194. In 2015, Jackson was directly addressed as the recipient of an investigative report into teacher misconduct. *See* EOG01108-01113. At some point in the 2015-2016 academic year, Jackson stopped being the primary individual responsible for reviewing all

investigations into teacher misconduct. *See* EOG01194. The delegation of reviewing investigative reports to an Assistant Superintendent was a violation of the Okaloosa School Policy that was in place in 2015-2016, which directed that within 15 calendar days of the close of an investigation, the Superintendent must be informed of the violations and disciplinary action recommended. *See* Okaloosa School Policy 06-28 (EOG01199). Jackson correctly submits that the policy has since been changed—in December 2017 after the news exposed the issues at Okaloosa County Schools. *See* MBJ000329-000334. While there are many common-sense changes to the policy, including the requirement that a parent be notified immediately if their child is the subject of an investigation, it does not change the fact that Jackson neglected her duty and was incompetent in taking herself out of the process which lead to zero action against Teacher Stillions for over a year.

Jackson claims her policies were adequate and within the statutory requirements. She also claims protecting students was a top priority to her. However, compare an e-mail Jackson sent to Teresa Schroeder (Program Director of Student Intervention Services) prior to the 2015-2016 academic year regarding a DCF training for assistant principals with her comments in the fall of 2017 claiming she had no knowledge of the full extent of the investigation:

From: Jackson, Mary Beth
Sent: Wednesday, September 02, 2015 10:53 AM
To: Schroeder, Teresa; Assistant Principals
Cc: School Principals
Subject: RE: DCF Training for Assistant Principals

Please let me know how the training goes and who attends. This area is of special interest to me.

Thanks,
Mrs. Jackson

(MBJ006067). One cannot claim DCF training on child abuse investigations is an “area of special interest” and at the same time delegate the responsibility for reviewing investigations of child abuse/neglect and determining disciplinary action to another individual, and then claim plausible deniability. The two are not compatible.

One of these two premises must be true: (1) Jackson knew about the allegations, findings and recommendations regarding Teacher Stillions and chose to not accept the findings or recommendations or (2) Jackson was never informed of the allegations, findings and recommendations regarding Teacher Stillions and therefore she failed in her duties to be informed. There is no other conclusion. And either one shows a failure on Jackson’s part that demands removal from office for no protecting the health, safety and welfare of the students.

ii. Violation of § 1012.796 by failing to report allegations of misconduct timely and failing to immediately suspend teachers

Jackson repeatedly violated section 1012.796(1)(d), Florida Statutes by failing to timely report legally sufficient complaints to DOE. First, Randy Kosec, the Chief of DOE’s Office of Professional Practices, will testify as to the statutory requirements for reporting misconduct and violations to DOE. He will also testify as to how the statutory requirements were not followed by Jackson.

First, the statute requires that a school district submit, in writing to DOE, within 30 days of becoming aware of legally sufficient allegations of teacher misconduct. *See* EOG00026. This requirement is not dependent on the school district concluding its investigation into the matter if the complaint affects the health, safety or welfare of a student. *Id.* Evidence shows that on February 16, 2016, Kelsea Koch, an aide to Teacher Frazier, submitted a written complaint alleging inappropriate physical interaction by Teacher Frazier and non-verbal, exceptional students, to administrators and human resources for Okaloosa Schools. EOG01453-01454. This complaint squarely falls within the definition of a legally sufficient complaint, which demanded Jackson to immediately notify DOE’s Office of Professional Practices—regardless of the outcome of an investigation or subjective opinions of Jackson. Even using the more lenient 30-day requirement in section 1012.796(1)(d)1., Florida Statutes, Jackson should have referred the complaint to DOE’s Office of Professional Practices by March 21, 2016. Jackson did not send the complaints against Teacher Frazier to DOE until April 18, 2016—approximately 60 days after the allegations of child abuse came to the attention of Okaloosa Schools administrators and human resources.

Similarly, Okaloosa Schools became aware of allegations of teacher misconduct affecting the health, safety or welfare of Pre-K exceptional students involving Teacher Stillions on April 27, 2016. Evidence shows that on April 27, 2016, Investigator Farley was informed of allegations that Teacher Stillions violated the Code of Ethics and verbally and physically abused her students. *See* EOG01551. The complaints and allegations made on April 27, 2016, including a “Code of Ethics violation” and allegations of abuse, constituted a legally sufficient complaint that should have been immediately reported to Jackson and immediately sent the complaint to DOE’s Office of Professional Practices. However, that was not done. *See* EOG00873 (Stacie Smith testified Jackson told her not to send the report to DOE). Instead, Investigator Farley completed his report and shared it with multiple administrators within Okaloosa Schools, including Assistant Superintendent Stacie Smith, Brandi Hand (assistant to Smith and Jackson), [REDACTED] and Melody Sommer (Exceptional Students Program Director) on June 17, 2016. *See* EOG01118-01143. Within 30 days of June 17, 2016, the report was still not forwarded to DOE’s Office of Professional Practices, in violation of the statute. In fact, Jackson did not forward Investigator Farley’s report into the allegations against Teacher Stillions to DOE until September 2017, after criminal charges were made public. *See* EOG01545-01546. Almost 500 days went by after Okaloosa Schools first had knowledge of allegations of teacher misconduct affecting the health, safety and welfare of Pre-K exceptional students. And to be sure, Teacher Stillions continued to interact with developmentally disabled students the entire time without facing discipline or further investigation until she was arrested and suspended from teaching.

Second, section 1012.796(5), Florida Statutes requires “when an allegation of misconduct by [teachers] ... *is received*, if the alleged misconduct affects the health, safety, or welfare of a student, *the district superintendent* in consultation with the school principal ... *must immediately suspend the [teacher] from regularly assigned duties ... and reassign the suspended [teacher] to positions that do not require direct contact with students.*” *See* EOG00028. To date, there is no evidence to suggest that on February 16, 2016, after the allegations of misconduct were made against Teacher Frazier, that he was suspended and reassigned to another position. Rather, Jackson waited until March 16, 2016 to recommend to the Okaloosa Schools Board that Teacher Frazier be suspended for three days without pay. EOG01428. That recommendation was

approved by the Board and Teacher Frazier was notified of his suspension on April 12, 2016. EOG01424-01425.

Similarly, there is no evidence to suggest that on April 27, 2016, when Investigator Farley was informed of the allegations against Teacher Stillions that Jackson suspended her without pay or reassigned her to another position. Certain individuals testified they remember Teacher Stillions being placed on administrative leave on May 20, 2016, however there is no record of that action. *See* EOG00849. And, if Teacher Stillions was placed on administrative leave for the complaints of child abuse, that decision must have been made by Jackson because only the Superintendent can authorize that action. *See* EOG00845. The only physical evidence available shows Jackson made a recommendation to the Okaloosa Schools Board that Teacher Stillions be suspended without pay on September 13, 2017—over a year after the investigation was completed. EOG01379. The Okaloosa Schools Board approved that recommendation and Teacher Stillions was notified on September 26, 2017. EOG01377-01378.

The above violations can be directly related to a failure of Jackson having proper policies and procedures in place for handling complaints against teachers and staff. For example, Stacie Smith testified there was no written policy on how Investigator Farley would report complaints to Jackson's office, including no requirement on when a complaint must be reported to Jackson's office. *See* EOG00825-00827. Furthermore, the evidence proves that in both the Teacher Frazier and Teacher Stillions incident Jackson did not timely notify DOE's Office of Professional Practices of the legally sufficient complaints.

iii. Failing to properly discipline teachers based on findings of misconduct

Jackson also failed in how she handled the disciplining of her employees after findings of Code of Ethics violations that directly impacted the health, safety and welfare of students. Her punishment of Teacher Frazier was inappropriate and too lenient, including untimely. One only need to read about the physical abuse Teacher Frazier subjected developmentally disabled students, taking them to garage and estate sales and flea markets for his personal benefit, using instructional time to fix or repair items to sale for personal benefit, lying on field trip forms, and a total lack of respect for the trusted position of teacher to know that Jackson's recommendation to the school board of three days suspension without pay was wholly inadequate. The failure continues with how Jackson handled Teacher Stillions.

To be sure, Jackson's defense is she did not know about the findings or recommendations related to Teacher Stillions. However, evidence shows that is inaccurate. First, the statutes and school policies demand Jackson know about the reports. Second, the July 18, 2016 emails referencing the Teacher Stillions' incident, Code of Ethics, and mandatory reporting of child abuse requirements that were sent to Jackson imply she knew. EOG01157-01158. And, assuming *arguendo*, she didn't know about the report in June when it was completed, a responsible superintendent would ask what the e-mail in July was about and why there was a need for training on reporting child abuse. Third, Stacie Smith testified that Jackson was informed about the Teacher Stillions report, its findings and recommendations. *See* EOG00855-00856; 00901-00902.

ASA WILLIAM BISHOP: So when you met with Ms. Jackson, once again, you -- you may or may not have given her a copy of the report, what did -- what do you recall telling Ms. Jackson about the report?

STACIE E. SMITH: I know I told her or that she and I discussed what he had confirmed. I know, 100 percent certainty, we had that discussion.

ASA WILLIAM BISHOP: Okay. What were the things that you recall discussing with her about, that were in that report?

STACIE E. SMITH: I remember us discussing the spraying of the hands with the vinegar. And for some reason, I want to say she brought up her [REDACTED] as well. That basically, it was just what he had confirmed and then, you know, deciding, you know, where in the

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Code of Ethics does this fall, those types of things.

EOG00858-00859. Stacie Smith testified that she informed Jackson about the Master Contract with the Teacher’s Union requiring certain notification and timeliness on investigations involving teachers. EOG00867-00868. In fact, Smith testified that it was Jackson who decided no action would be taken against Teacher Stillions:

ASA WILLIAM BISHOP: So what was the final decision that was made between you and Ms. Jackson?

STACIE E. SMITH: That no disciplinary

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action would be brought before the Board.

ASA WILLIAM BISHOP: Okay. And what directions did Ms. Jackson give you?

STACIE E. SMITH: I informed Ms. Stillions -- I believe she came to my office with Mr. Butler as well. I informed them after speaking with the Superintendent that she would not be bringing a recommendation before the Board and then I also had told Mr. Farley of the decision that was made.

EOG00869-00870. It was also Jackson's decision to transfer Teacher Stillions to another school with developmentally disabled students, instead of removing her from Okaloosa Schools. And to make it worse, Jackson never provided the Okaloosa County School Board members a fully understanding of why Teacher Stillions was being transferred to Silver Sands Schools. *See* EOG00871.

B. Failure to Properly Train Employees

Another charge against Jackson was her responsibility for training all Okaloosa County Schools teachers and personnel and making sure they understood their duties, specifically with reporting child abuse, whether actual or suspected. This responsibility is outlined in Section 1012.796(1)(d)3, Florida Statutes. *See* EOG00027. At a bare minimum, the violations of the Code of Ethics found in Investigator Farley's reports into Teacher Frazier and Teacher Stillions, and the recent criminal charges of Teacher Wolthers, the Teacher Aides and Counselor Burt are evidence that Jackson neglected her duty or was incompetent in the discharge of the duty to train her employees. Additional evidence proves that training was severely lacking at Okaloosa County Schools under Jackson's tenure.

Prior to 2018, Okaloosa County Schools mandated only two trainings: a new teacher training and a new employee training ("newcomer training"). There was no annual training or refresher courses for existing employees. In her deposition, Karen Peek (Program Director) testified that prior the 2018-2019 academic year only new hires to the school district would receive training on the mandatory reporting of child abuse. *See* MBJ004682-004684; MBJ004716. In a previous deposition, Specialist Elias-Evans testified that she had not been trained on mandatory reporting regarding child abuse until after the criminal investigation in Teacher Stillions became public in the Fall of 2017. *See* EOG00181. Specialist Elias-Evans further testified she never knew she could report an incident of abuse to DCF, she felt it was the duty to tell an administrator to handle the issue. *See* EOG00191. This testimony is consistent with the findings from Investigator Farley that it was "problematic" that staff at Kenwood Elementary did not immediately report inappropriate behavior or abuse. *See* EOG01157.

It is troubling to not require, at a bare minimum, annual training on the duties and responsibilities of all district staff to report suspected child abuse to DCF on an annual basis. And it should not be lost that the employees involved in all the incidents discussed above were existing employees of Okaloosa County Schools. Jackson's argument that starting in the summer of 2018 all district staff, new hires or existing staff, were retrained does not absolve the failures that existed. Jackson's argument that handbooks available to all staff mention reporting child abuse is also insufficient, especially when it is not mandatory that all staff read the handbook and certify they have read and understand their duties and responsibilities.

Another failure of training stems from Teacher Stillions' certification in CPI (crisis prevention intervention). Jackson certified to DOE that Okaloosa Schools had appropriate policies and procedures in place for CPI, designed to protect the health, safety and welfare of developmentally disabled students. *See* EOG01853. Jackson certified that each school would have necessary, trained staff in CPI. Teacher Stillions was the only CPI at Kenwood Elementary School in the 2015-2016 academic year. However, evidence shows that Teacher Stillions' certification lapsed, meaning no teachers were certified CPI that year. To make matters worse, Investigator Farley recommended Teacher Stillions be re-certified in CPI but there are zero records that ever happened, even when she continued to teach in the 2016-2017 academic year.

Therefore, Jackson allowed a teacher, not re-certified in CPI even after a recommendation to do so, to continue teaching disabled students with inadequate training. Furthermore, a January 2019 site visit to Okaloosa County Schools revealed to DOE that many staff members believed there was still inadequate training in CPI and de-escalating techniques and responses. *See* EOG01866.

C. Failure of Leadership

i. Failing to inform Okaloosa Sheriff's Office, DCF, DOE, and parents

It is undisputed that Okaloosa Sheriff's Office was not notified about the investigations into Teachers Frazier and Stillions until months after the investigations were completed by Okaloosa Schools. This is because Jackson did not mandate reports of confirmed inappropriate physical contact by a teacher be reported to law enforcement, regardless of a subjective opinion of the school district. As evidenced by the ultimate criminal charges brought in the case of Teacher Stillions, upon learning of the findings by Investigator Farley, the report should have been forwarded to law enforcement for review.

Jackson may argue that DCF was informed about the Teacher Stillions allegations, however, as mentioned *supra*, there was no independent verification that Investigator Farley actually called DCF at first knowledge of allegations. And to be sure, all evidence available proves DCF was never called about Teacher Stillions until the spring of 2017. Jackson failed to have a proper policy of confirming DCF was notified, as statutorily required, and demanding that DCF be immediately notified.

It is also undisputed that Jackson did not properly inform and report teacher misconduct to DOE on a timely basis. Furthermore, it is undisputed that Jackson made the ultimate decision not to forward the Teacher Stillions investigation to DOE's Office of Professional Practices. This is because Jackson did not have a proper policy in place to forward reports to DOE even if the school district was not going to take disciplinary action due to a union contract.

Finally, it is undisputed that in the 2015-2016 academic year, there were no policies in place that required Okaloosa Schools to notify parents if their child was the subject of an investigation into teacher misconduct. While it is disputed whether one of the parents was informed in the matter of Teacher Stillions, both parents were not informed nor were either parent given a copy of the final report confirming inappropriate conduct and violations of the Code of Ethics.

Okaloosa Schools was required to notify parents anytime a student with a disability is restrained or secluded under section 1003.573, Florida Statutes, and a report must be made within 24 hours. The school district is mandated to report these incidents to DOE. Not only did Jackson fail to notify the parents of the children involved in the above-referenced incidents as required, but she also failed to notify DOE.

Jackson will argue that the policies have been changed to require better reporting and sharing of information post-Teacher Stillions' incident becoming public knowledge—that does not absolve her of negligence and incompetence.

ii. *Failing to instill a culture of diligence and protecting children*

Overall, Jackson has failed to instill a culture of protecting the health, safety and welfare of the student of Okaloosa Schools. One example is the lack of diligence in reporting disqualifying offenses to administration, see the July 11, 2016 e-mail from a principal to Stacie Smith telling her to look at criminal bookings, but cautioning not to credit him with exposing the criminal actions. EOG01155. There should be no hiding behind holding teachers and staff accountable for their actions, and being diligent in acting. Another example is Stacie Smith taking Investigator Farley's word on notifying DCF regarding Teacher Stillions and DCF's finding of no child abuse in the spring of 2016 without any proof. *See* EOG00855. To be sure, Investigator Farley did not call DCF's child-abuse reporting hotline in the spring of 2016—DCF has no report of a call at that time and there is no report related to Teacher Stillions until the spring of 2017. *See* EOG00550-00552 (Deposition of Arnold Brown). And Jackson should have required that anytime DCF is called, the administrator provide physical proof of the call and if there is a finding of no child abuse, physical proof of DCF's findings.

Jackson will argue that after the media exposed the Teacher Stillions incident she acted and the Board changed many policies designed to avoid another incident. And while the policies may have changed, the culture has not. Nor has Jackson's admission of failures and faults. In fact, Jackson did not cooperate with Okaloosa County Sheriff's Office or the State Attorney's Office in investigating the allegations of abuse, she refused to provide a sworn statement. If the culture had changed, as it should have after what parents had to endure the past two years in Okaloosa County, there would not be ongoing issues. In January 2019, four individuals were charged with felony child abuse and failing to report child abuse for incidents that happened in the fall of 2018, under Jackson's tenure. *See* EOG01874-01885. Jackson is responsible for making sure those who are entrusted to teach children and protect them while at school actually follow the policies. Jackson is statutorily responsible for making sure the entire staff at Okaloosa Schools understands the policies and follows them—a failure to follow policies is a failure of leadership. It is not sufficient for Jackson to claim that she changed policies and any immoral acts that happen are not her responsibility, nor can she avoid blame. Words on paper are useless if the leadership does not instill a culture of excellence in following the policies and protecting the health, safety and welfare of children.

5. Conclusion

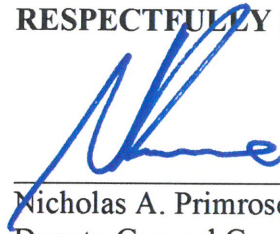
Okaloosa County Schools was neglected by Jackson. The neglect and incompetence is not limited to the events surrounding Teachers Frazier and Stillions. The evidence and testimony show a lack of leadership, lack of policies and procedures, and a lack of care or concern for the health, safety and welfare of the students of Okaloosa County Schools. There is no dispute that Okaloosa County Schools ranks academically near the top of Florida school districts, but academic ranking do not take into account how teachers treat the students and whether the district is diligent in protecting the health, safety and welfare of the students. There is also no dispute that certain policies were changed once the new media exposed the failures within the school district. However, the problems that were highlighted in the grand jury report, the reports into Teachers Frazier and Stillions, have not gone away. There continued to be a failure, which can only be attributed to the chief executive of the school district—Mary Beth Jackson.

The record is replete with statutory violations of Jackson. The record is replete with evidence that the students of Okaloosa County Schools were failed by Jackson. Taken in the

totality of the circumstances and evidence, Mary Beth Jackson neglected her duties and/or was incompetence in the discharge of those duties warranting the Senate permanently remove her from office.

EOG reserves the right, per instructions by Special Master Goodlette, to provide a rebuttal response to Jackson's bench memorandum. EOG also reserves the right to raise any new arguments, as applied to evidence already disclosed by both parties, either in the rebuttal memorandum or at the final hearing.

RESPECTFULLY SUBMITTED,



Nicholas A. Primrose
Deputy General Counsel
Executive Office of Governor Ron DeSantis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2019, a true copy of the foregoing has been e-mailed to counsel for Ms. Mary Beth Jackson: George Levesque, Esq. (George.levesque@gray-robinson.com).