

THE FLORIDA SENATE

IN RE: SUSPENSION OF
MARY BETH JACKSON

Executive Order No. 19-13

SUPERINTENDENT JACKSON'S BENCH MEMORANDUM

COMES NOW, Mary Beth Jackson, Superintendent of Schools for Okaloosa County, Florida, and files this Bench Memorandum, pursuant to Special Master Goodlette's April 23, 2019 letter, and states:

INTRODUCTION

Mary Beth Jackson won her primary election and was re-elected in the General Election on November 8, 2016, by the voters of Okaloosa County to serve as Superintendent of Schools for Okaloosa County, Florida, for a second term commencing November 22, 2016. Superintendent Jackson dutifully served until January 11, 2019, when Governor DeSantis issued Executive Order 19-13 suspending Superintendent Jackson for alleged neglect of duty and incompetence. The allegations of Executive Order 19-13, the Bill of Particulars, and the Governor's Bench Memorandum, many of which are demonstrably false and without basis, fail to establish grounds sufficient to warrant removal of Superintendent Jackson from office for neglect of duty or incompetence. For the reasons stated below, the Special Master should recommend that Superintendent Jackson should be reinstated to office.

BACKGROUND

Superintendent Jackson has spent more than thirty years as an educator in the Okaloosa County School District (the District). Before that, Superintendent Jackson was a student in the District, having attended grade school at and graduated from Laurel Hill School in north Okaloosa County. After graduating high school, Superintendent Jackson attended William Carey University where she received her Bachelor's Degree in Social Science. Then she earned her guidance and counseling certification from Troy University, and her Master's Degree in Educational Leadership from the University of West Florida.

After graduating college, Superintendent Jackson returned to Okaloosa County Schools where her all-encompassing career has included work in the elementary, middle, and high schools. She began her career as a teacher, then became a guidance counselor, then worked her way through various administrative positions within the school district, and ultimately served at the District level as the Program Director of Career and Technical Education prior to first being elected Superintendent in 2012.

In her role as Program Director for Career and Technical Education, Superintendent Jackson helped create programs in drop-out prevention, developmental guidance, and career and technical education. Under her leadership, enrollment in career and technical education doubled while career

academy programs expanded from twelve to twenty-eight throughout the District, offering more students the choice and opportunity to excel.

Since being elected Superintendent, she has worked tirelessly to ensure every student in Okaloosa County is awarded the same opportunity to learn by developing a standard of service staffing pattern for the District's schools. In doing this, she restored funding for elective programs such as music and art in elementary schools, and band and chorus programs throughout the District. Knowing that time spent in school improves student achievement, Superintendent Jackson also ended out-of-school-suspension by replacing it with a Student Training Program (STP) where students stay in school, complete their assignments, and complete modules that address student behavior. Superintendent Jackson has also made student safety a primary concern, emphasizing training for all district staff, installing cameras on school busses, and pressing for School Resource Officers in all schools in Okaloosa County, including elementary schools.

To further her goals to provide all students with an opportunity to excel, Superintendent Jackson began early in her tenure to direct additional resources to the Exceptional Student Education (ESE) program in the District, increasing funding for that program by more than \$6 million between 2014 and 2018. MBJ Ex. 43. The additional funding allowed the District to implement a new Emotional Behavioral Disability (EBD) model beginning in the summer of 2015, to hire

additional staff and improve recruitment of qualified staff, and to separate the different grade levels in the program to provide more tailored learning opportunities for the students. MBJ Ex. 155.

The evidence will demonstrate that the safety and success of the children in Okaloosa County Schools is imperative to Superintendent Jackson and has been throughout her tenure with the District. It has always been her mission to provide every child in Okaloosa a safe environment filled with multiple opportunities to learn and thrive. Under Superintendent Jackson, the District has consistently ranked among the best school districts in Florida, and has ranked second out of sixty-seven in three of the past four years. MBJ Exs. 185-188. Superintendent Jackson's interests in the safety and success of the students in the District are not only professional, but also personal, as Superintendent Jackson's children are all graduates of Okaloosa County Schools, and two of her grandchildren are currently students within the District, [REDACTED]

I. ALLEGATIONS

Executive Order 19-13 suspends Superintendent Jackson for allegedly "fail[ing] her responsibilities and duties to the parents and students of the Okaloosa County School District due to her failure to provide adequate, necessary and frequent training, a lack of supervision of school district personnel, and a failure to implement adequate safe-guards, policies, and reporting requirements to protect the

safety and well-being of the students” and for allegedly “contravene[ing] her oath of office . . . to ‘faithfully perform the duties’ of Superintendent,” which the Executive Order suggests constitute a “clear neglect of duty and incompetence” by Superintendent Jackson “for the purposes of Article IV, section 7, of the Florida Constitution.” MBJ Ex. 2, p. MBJ000014. The predicate for the suspension of Superintendent Jackson was a letter from the Commissioner of Education, Richard Corcoran, dated January 9, 2019, which itself is predicated on the contents of two Okaloosa County Grand Jury Reports dated February 20, 2018 and June 13, 2018.¹ MBJ Ex. 2, p. MBJ000012-MBJ000013.

At their core, the allegations of Executive Order 19-13 contend that Superintendent Jackson was incompetent and neglected her duty as Superintendent “due to her failure to provide adequate, necessary and frequent training, a lack of supervision of school district personnel, and a failure to implement adequate safeguards, policies, and reporting requirements to protect the safety and well-being of the students.” MBJ Ex. 2, p. MBJ000014. While the Bill of Particulars contains a plethora of information unrelated to the issues identified in the Executive Order, it does little to illuminate the failures which purportedly led to or relate to the Stillions incident, or the other alleged incidents, and which allegedly

¹ The Grand Jury twice returned no bill against Superintendent Jackson relating to the conduct that allegedly forms the basis for her suspension under Executive Order 19-13. MBJ Ex. 1, p. MBJ000003-MBJ000010.

warrant Superintendent Jackson's removal from office for incompetence or neglect of duty. The sensationalized, one-sided allegations in the Governor's Bench Memorandum fare no better and provide no further clarity.

II. THE FACTS

As detailed herein and as will be shown at the hearing, the evidence demonstrates there were safeguards, policies, procedures, and reporting requirements in place to protect the safety and well-being of the students throughout Superintendent Jackson's tenure, including specifically preceding the Stillions and Frazier incidents. The facts also establish there was frequent training of school district personnel on numerous topics, including specifically the reporting of suspected child abuse. It is not disputed that incidents arose, as they do in any district, but those incidents were met with immediate and appropriate responses by removing the teachers from the classroom, investigating, and imposing discipline on the teachers for their improper actions where such actions were confirmed. The evidence refutes any allegation of neglect of duty or incompetence by Superintendent Jackson.

a. SCHOOL DISTRICT POLICIES

The School Board, not the Superintendent, adopts policies. See §§ 1001.41, 1001.42(3), (6) and (7)(b), Fla. Stat.; and School Board Policy 1-02, MBJ000066. But the allegation there were not or are not appropriate policies in place governing

the District is demonstrably false. For example, there has been a School Board policy in place for almost two decades requiring personnel to report suspected child abuse pursuant to chapter 39, Florida Statutes. MBJ Ex. 24. There similarly have long been policies on safety, child protective custody, prohibition of bullying and harassment, student restraint and seclusion, complaints relating to employees, reporting violations of equity policies, administrative leave, personnel investigations, and new teacher induction. MBJ Exs. 10-19, 23-32. Most policies are and have been substantially similar to policies of other top school districts in the State. MBJ Exs. 134-145.

Superintendent Jackson has routinely recommended the policies be reviewed and reaffirmed by the School Board. One such instance occurred during the summer of 2015, immediately preceding the school year during which the Stillions and Frazier incidents arose. MBJ Exs. 19-22. Specifically, at the July 13, 2015, meeting of the School Board, proposed changes were presented by Marcus Chambers, Stacie Smith, and Teresa Schroeder to chapters 3, 6, 7, 8, 9 and 10, of the School Board Policies, recommended by the Superintendent for approval, and adopted by the School Board. MBJ Ex. 19, MBJ000142-146. Never did anyone, including the School Board members, raise concerns that the policies in chapter 6 relating to investigation of complaints relating to school personnel were deficient.

In 2017, the School Board, *at the Superintendent's recommendation*, amended many of its policies in the wake of the Stillions incident to more expressly specify and incorporate the statutory reporting requirements relating to suspected abuse. MBJ Exs. 11, 23, 24. At the same time, the Board, *at the Superintendent's recommendation*, also instituted changes to the processes and procedures for investigating and resolving allegations involving suspected child abuse, and investigations relating to employees, including changes to more clearly specify some of the very things that the Governor suggests should have been in place to prevent later incidents described in the Bill of Particulars. MBJ Exs. 23-28. For example, the policy changes now expressly require parental notification of allegations of abuse and direct greater involvement of the Superintendent in the process to ensure awareness. MBJ Exs. 25, 27.

Those policy revisions were already in place when the Teacher Wolthers Incident and Counselor Burt Incident occurred. The unfortunate but unfailing truth is that even the best policies and procedures cannot prevent all incidents from occurring. Neither the Governor's Suspension Order, Bill of Particulars, nor the Bench Memorandum has proffered a policy that would prevent incidents of abuse from occurring altogether. If such prescient insight existed, the Legislature who would have enacted a law mandating that perfect policy for all 67 school districts. Just as there is no perfect law that will prevent bad things from happening, there is

no perfect policy that will prevent abuse from occurring. The District’s policies—which could only be adopted by the School Board—were more than adequate to address the safety and welfare of the students. Superintendent Jackson’s continued reliance on those policies in 2015-16, and her recommended amendment of those policies in 2017, was wholly appropriate.

b. TRAINING

To further Superintendent Jackson’s goals of safety and success for the District’s students, she has demanded frequent and rigorous training of school personnel since she became Superintendent, including in the areas of reporting of suspected child abuse or teacher misconduct. As noted in the Governor’s Bench Memorandum, Superintendent Jackson expressed her special interest in training for school personnel on DCF issues in a September 2015 email to Teresa Schroeder, the Program Director for Student Intervention Services. Ms. Schroeder oversaw much of the training on DCF issues, including reporting of suspected child abuse. MBJ Ex. 166. Superintendent Jackson’s interest in safety in the schools is similarly expressed through an email from Ms. Schroeder in October 2015 where Ms. Schroeder notes that Superintendent Jackson directed her “rev up” the district’s school safety awareness at the next principals’ meeting in October 2015. MBJ Ex. 173. These are just two examples of Superintendent Jackson directly expressing her interest in the safety of students and training of personnel. These

examples precede the incidents which purportedly led to the Superintendent's suspension, and demonstrate that her interest in the safety and welfare of the students and the importance of reporting abuse was consistent and continuing, not new or contrived.

Moreover, Karen Peek, the Program Director for Professional Services with the District since July 2013, testified that the District maintains records going back to 2013, and those records confirm the frequent and thorough training that has been in place during Superintendent Jackson's tenure. MBJ Ex. 125. For example, Ms. Peek discussed the newcomer and new teacher training materials for the District going back to 2013, including specific training on the reporting of suspected child abuse, employee misconduct, and equity policies. MBJ Exs. 125, 98-122. *All* new employees were trained on reporting of child abuse, and new teachers actually received the training twice upon hire, once in the newcomer training and once in the new teacher training. MBJ Ex. 125, MBJ004663-4664. There were also trainings throughout the year that would remind employees, including existing employees, of their mandatory reporting obligations. MBJ Ex. 125, MBJ004664.

The training for reporting abuse is not new, nor was it limited to only new hires. MBJ Ex. 125, MBJ004665. Ms. Peek, who was a teacher in the District for twenty-nine years before taking over as Program Director for Professional Services in 2013, testified that as a teacher she knew of the obligation to report suspected

child abuse, that she was frequently told of that obligation by the District, and that she had never come across anyone in her time as a teacher who was not aware of the obligation to report suspected child abuse. MBJ Ex. 125, MBJ004665-4666. In Ms. Peek's words, knowledge of the requirement to report suspected child abuse was so ingrained in the District it is "just kind of like breathing." MBJ Ex. 125, MBJ004716. Such a profound statement deflates any claim of insufficient training or lack of knowledge of the requirement to report suspected child abuse, let alone the suggestion there was a culture of indifference in protecting the children of the District.

Looking specifically at the timeframe leading to the 2015-2016 school year—the year in which the Stillions and Frazier investigations occurred—there was frequent and persistent training that specifically included the reporting of suspected child abuse. For example, on July 16, 2015, there was a Department of Children and Families (DCF) Workshop and Training held for all school administrators. MBJ Ex. 159, 160. There was also a DCF Workshop and Training for school counselors during the week of pre-planning preceding the 2015-2016 school year, and an Assistant Principals DCF Workshop and Training early in September 2015. MBJ Ex. 159, 160, 165, 166, 167. This was on top of the New Teacher Orientation training conducted by Ms. Peek on August 7, 2015, which

specifically covered reporting of suspected child abuse or employee misconduct. MBJ Exs. 125, 158.

There were also legislative changes that went into effect in the summer of 2015 that required posting of notices in the schools relating to reporting of suspected child abuse, which the District implemented through preparing and posting the required notices, and discussing the requirements with school administrators. On July 15, 2015, Ms. Schroeder emailed Superintendent Jackson to advise her that Jeff McInnis, the School Board's counsel, had brought to her attention the new legislation. MBJ Ex. 162. Ms. Schroeder advised Superintendent Jackson she had contacted the Department of Education (DOE) to obtain their proposed form of the notices, which she attached to the email, had obtained a cost estimate for the printing, and requested approval from Superintendent Jackson to proceed with the printing the posters, which Mr. McInnis would explain and distribute at the upcoming Principals Retreat on July 29, 2015. MBJ Ex. 162. Superintendent Jackson directed Ms. Schroeder to proceed with the proposed course of action. MBJ Ex. 161. The final agenda for the July 29, 2015, meeting, which was prepared and forwarded on July 28, 2015 by Marcus Chambers, the Assistant Superintendent for Curriculum and Instruction at the time, included an agenda item for Mr. McInnis and Ms. Schroeder to address "Child Abuse." MBJ Ex. 163. And, Ms. Schroeder's follow-up email on July 30,

2015, confirms the issue was discussed at the July 29, 2015, meeting and that it would be covered at the other upcoming trainings for other groups, including guidance counselors and assistant principals. MBJ Ex. 164.

The training and discussion of reporting of suspected child abuse did not cease but continued throughout the 2015-2016 school year. For example, on September 8, 2015, Mr. Chambers circulated a list of topics for coverage at upcoming principals' meetings. MBJ Ex. 168. Among the topics were Equity, and Training and Development, both areas that touch on the reporting of suspected abuse and misconduct. MBJ Ex. 168. Mr. Chambers followed that correspondence with an email on September 15, 2015, attaching the agenda he had prepared for the September 16, 2015, meeting, which agenda included a topic for training and development presented by Ms. Peek and Arden Farley, the key individual in charge of performing much of the actual training for the District on child abuse reporting. MBJ Ex. 170.

On September 11, 2015, Ms. Schroeder circulated a portion of the Student Services Manual to all guidance counselors, which manual added a link to the latest DOE Child Abuse Source Book, and a link to the DCF training for teachers on the reporting of suspected child abuse. MBJ Ex. 169.

On February 8, 2016—before the allegations relating to Stillions or Frazier had been made—Stacie Smith, the Assistant Superintendent of Human Resources

at the time, requested assistance from Arden Farley and Melody Sommer, the Program Director for ESE, for assistance with additional training for teachers and staff in the ESE program. MBJ Ex. 176. Ms. Sommer responded on February 10, 2016, citing a plethora of training that had been offered and continued to be offered for staff in the ESE program, and District staff generally, on various topics relating to the ESE population. MBJ Ex. 176. The information provided by Ms. Sommer demonstrates that between July 2012 and January 2016 the ESE program offered 93 separate trainings attended by more than 1350 participants on areas including Crisis Prevention and Intervention (CPI), Social and Emotional Curriculum for Emotional and Behavioral Disorders (EBD), Classroom Strategies for Autism and Aspergers, Individualized Education Plan (IEP) Compliance, and Discipline in the Secondary Classroom, among others. MBJ Ex. 176. Ms. Sommer also provided a schedule of upcoming trainings that identified twelve full days of training already scheduled for 2016, and offered to provide any additional trainings. MBJ Ex. 176.

Superintendent Jackson's focus on training and the importance of training is evidenced again later in 2016 in an email to Ms. Schroeder addressing additional training on de-escalating bad behavior, particularly among the ESE students. MBJ Ex. 179. In the email, Superintendent Jackson indicates that most out-of-school suspensions in elementary are students with behavior issues, and that the answer is not to suspend them, but to learn to better manage and de-escalate bad behavior so

they can remain in school where they can learn. MBJ Ex. 179. Superintendent Jackson insisted this training be provided without delay to teachers, classroom aides, and assistant principals who handle discipline. MBJ Ex. 179. Ms. Sommer, as the Program Director for ESE, and Mr. Chambers, the Assistant Superintendent in charge of the ESE program at the time, were both included in the email to alert them of the directive, which Ms. Sommers agreed to arrange. MBJ Ex. 179.

Similar trainings and procedures continued through the 2016-2017 school year, including additional training specifically in response to the Stillions report. On July 18, 2016, after receiving Mr. Farley's report, Stacie Smith wrote Joan Pickard, the then Principal at Kenwood Elementary, and asked that Kenwood Elementary receive various additional training during the 2016-2017 school year, including on the code of ethics, and a reminder during pre-planning for the new school year of the requirement to report suspected child abuse or neglect. MBJ Ex. 130, MBJ00473. Ms. Pickard responded later that same day to state she had contacted Mr. Farley for dates during pre-planning when he would be available to do the training. MBJ Ex. 130, MBJ004733. Ms. Pickard also noted in her response that Kenwood had "an excellent ESE staff and CPI team with procedures clearly in place," but that additional training is "always appreciated" because one can never "over prepare for all that students can do." MBJ Ex. 130, MBJ004733.

Ms. Pickard's testimony confirms that the additional training was completed. MBJ Ex. 153, MBJ006001.

Once Superintendent Jackson knew of the details of the incident with Ms. Stillions in late 2017, she made further attempts to bolster training for the District's personnel. For one, she placed Mr. Chambers in charge of Human Resources starting in January 2018 upon the resignation of Stacie Smith. Combined with Mr. Chambers' longstanding oversight of the ESE program beginning well prior to the 2015-2016 school year, this move put Mr. Chambers directly in charge of all training within the District, including specifically the training of personnel on reporting of suspected child abuse and training related to ESE.

In June 2018, Superintendent Jackson also mandated that every District employee be retrained on the reporting of suspected child abuse, including training performed directly by DCF. MBJ Ex. 125, MBJ004664-4665. Superintendent Jackson also mandated that all trainings and attendees be documented to confirm it had been completed. MBJ Ex. 125, MBJ004664-4665.

These facts demonstrate that the alleged failure to adequately train school personnel is unfounded, and there is absolutely no support for any contention that teachers and other school personnel were not aware of the requirement to report suspected child abuse.

If the facts demonstrated a failure of training, particularly on the subject of child abuse and particularly regarding the ESE program, it begs the question of why Mr. Chambers would have been selected to replace Superintendent Jackson. Mr. Chambers was the Assistant Superintendent of Curriculum beginning even prior to the 2015-2016 school year and continuing through the date of Superintendent Jackson's suspension in January 2019, when Mr. Chambers was appointed the acting Superintendent. MBJ Exs. 2, 46-49. In that role, Mr. Chambers had direct oversight over Student Intervention Services and the ESE program. MBJ Exs. 46-49. Both Ms. Sommer, who was responsible for the ESE program and training of ESE personnel, and Ms. Schroeder, who was responsible for training on the reporting of suspected child abuse, reported directly to Mr. Chambers. MBJ Exs. 46-49, 129, 176. To the extent there were any shortcomings regarding training of ESE personnel, or regarding the training for reporting of suspected child abuse—which there were not—such shortcomings would be directly attributable to Mr. Chambers as the Assistant Superintendent with direct oversight over those programs. It defies logic that Superintendent Jackson could be justifiably removed from office by the Governor for alleged shortcomings which were the more direct responsibility of Mr. Chambers, only to be replaced by Mr. Chambers himself.

c. THE STILLIONS INCIDENT

██████████ is the ██████████ of ██████████ the child at the center of the Stillions incident. MBJ Ex. 150. ██████████ started in Ms. Stillions' class for the 2014-2015 school year, and continued in Ms. Stillions' class for the 2015-2016 school year. MBJ Ex. 150. ██████████ was heavily involved with ██████████ in relation to school. ██████████ was the president of the Kenwood Elementary PTO and spent at least three-fourths of the day, three days a week in Ms. Stillions' class with ██████████ during the 2014-2015 school year. MBJ Ex. 150, MBJ005764, 5776. For the 2015-2016 school year ██████████ ██████████ ██████████ so ██████████ time spent at the school was reduced, but ██████████ was still in the classroom two to three times a month, and ██████████ always took ██████████ to school and picked ██████████ up from school. MBJ Ex. 150, MBJ005776. ██████████ also continued to spend some days during lunch at the school with ██████████ MBJ Ex. 150, MBJ005776.

According to ██████████ while ██████████ was in Ms. Stillions' class, Ms. Stillions and ██████████ would attend autism seminars together in Tallahassee to help ██████████ ██████████ better understand how to provide for ██████████ MBJ Ex. 150, MBJ005764. They also jointly attended training seminars presented by the District. MBJ Ex. 150, MBJ005764. Ms. Stillions taught ██████████ a lot about how to care for ██████████ at home, including through tutoring ██████████ outside of school. MBJ Ex. 150,

MBJ005764. She taught ██████ that ██████ could do a lot more than ██████ thought he could do or allowed ██████ to do. MBJ Ex. 150, MBJ005765.

According to ██████ Ms. Stillions cared about ██████ and ██████ had no concerns for ██████ well-being around Ms. Stillions. MBJ Ex. 150, MBJ005764. ██████ noted that every single autistic child, like ██████ has different needs, and according to ██████ Ms. Stillions was very good at accommodating those needs. MBJ Ex. 150, MBJ005766-5767. For example, ██████ liked to sit in the rocking chair in the classroom, so Ms. Stillions allowed ██████ to sit in the rocking chair. MBJ Ex. 150, MBJ005767. Another child wanted to sit in the laundry basket, so she let the child sit in the laundry basket. MBJ Ex. 150, MBJ005767. ██████ described Ms. Stillions as “no-nonsense, but with love, without a doubt.” MBJ Ex. 150, MBJ005767. For example, ██████ would have carried ██████ lunch tray for ██████ until he was a senior, but Ms. Stillions helped her see that the children—including children who might face challenges because of their unique abilities—can learn and need to learn to do it for themselves. MBJ Ex. 150, MBJ005767.

This was true even though ██████ struggled at lunchtime; ██████ hated the cafeteria. MBJ Ex. 150, MBJ005768. According to ██████, ██████ would throw ██████ on the floor and, you know, throw a fit, scream, holler, cry” until ██████ was removed from the cafeteria. MBJ Ex. 150, MBJ005769. Ms. Stillions had 13 or 14 kids to

watch, and only one aide, which is why [REDACTED] would often come to lunch to help with [REDACTED] MBJ Ex. 150, MBJ005769-5770.

In her visits, [REDACTED] also learned from Ms. Stillions how to help [REDACTED] try new foods. MBJ Ex. 150, MBJ005771-5772. She would give Ms. Stillions some of [REDACTED] favorite foods that Ms. Stillions would keep in the refrigerator in the room for Ms. Stillions to use as a reward for [REDACTED] if he would try other new foods. MBJ Ex. 150, MBJ005771-5772. If he didn't like the new food, that was fine. He could spit it out, and then have the food he liked. MBJ Ex. 150, MBJ005771-5772. [REDACTED] never saw Ms. Stillions try to force [REDACTED] to eat something, nor was [REDACTED] one to allow such a thing. MBJ Ex. 150, MBJ005771-5772.

In the early summer of 2016, [REDACTED] and [REDACTED] father, [REDACTED], separated. MBJ Ex. 150, MBJ005773. It was a difficult time for [REDACTED]. In June or July of 2016, [REDACTED] contacted Ms. Stillions to ask if [REDACTED] could come live with Ms. Stillions for a short time because [REDACTED] needed a place to stay, and Ms. Stillions obliged. MBJ Ex. 150, MBJ005773. Around this time Ms. Stillions shared with [REDACTED] that Ms. Stillions was under investigation by the District, and shared a redacted copy of Mr. Farley's investigative report with [REDACTED]. MBJ Ex. 150, MBJ005773-5774.

The inquiry into Ms. Stillions originally began in late April 2016 as a request by Ms. Stillions for help resolving ongoing disputes and differences with

Regina Mercer, a classroom aide who joined Ms. Stillions' class beginning in around 2013. MBJ Ex. 153, MBJ005960; MBJ Ex. 194, MBJ006268. The dispute between Ms. Stillions and Ms. Mercer went back years. Ms. Pickard, the Assistant Principal at Kenwood Elementary from 2013 to 2016, testified that over the 2013 to 2016 timeframe she met numerous times with Ms. Mercer and Ms. Stillions about their ongoing disagreements. MBJ Ex. 153, MBJ005957-5960. Ms. Stillions repeatedly complained that Ms. Mercer was not doing what she was asked to do, things that Ms. Pickard said "were duties that you would assume an assistant would do: make copies, get things laminated, have straws or spoons or whatever the kids would need to have lunch, and have it ready; coordinate getting the kids lined up to go to lunch, and then getting them through the door; you know, helping them when they're in line to get them where they need to go." MBJ Ex. 153, MBJ005960-61. Ms. Stillions "wasn't asking more for Miss Mercer to do than what [Ms. Pickard] would have thought an assistant should do." MBJ Ex. 153, MBJ005960-61.

After Ms. Stillions would complain, Ms. Pickard would attempt different solutions to help resolve the issue. MBJ Ex. 153, MBJ005961-5962. One time she tried making a list of the specific things Ms. Mercer needed to do, and then going over that with Ms. Mercer. MBJ Ex. 153, MBJ005962. The effort failed, and the disagreements continued, with the primary complaint always being that Ms.

Mercer was not doing what Ms. Stillions needed her to do. MBJ Ex. 153, MBJ005962-5963). In fact, Ms. Pickard did not recall Ms. Mercer ever complaining about Ms. Stillions during all those discussions. MBJ Ex. 153, MBJ005963. And Ms. Mercer never mentioned to Ms. Pickard she had any concerns about the teaching practices of Ms. Stillions, and certainly never mentioned that she thought any of Ms. Stillions' practices were abusive. MBJ Ex. 153, MBJ005959-5960, 5963.

In [REDACTED] testimony, [REDACTED] echoed Ms. Stillions' concerns about Ms. Mercer. MBJ 150, MBJ005795-5798. Based on [REDACTED] extensive time spent in Ms. Stillions' classroom, [REDACTED] testified that [REDACTED] found Ms. Mercer to be lazy and defiant. MBJ 150, MBJ005795-5798. And [REDACTED] witnessed many of the very things that Ms. Stillions complained about: Ms. Mercer's refusal to do simple tasks that Ms. Stillions asked her to do; Ms. Mercer's defiance toward Ms. Stillions; and Ms. Mercer's snide comments. MBJ 150, MBJ005795-5798. As [REDACTED] put it, "I feel as though Miss Stillions had to not only do her job, but also Miss Mercer's job." MBJ 150, MBJ005795-5798.

On May 11, 2016, Mr. Farley began the process of intervention and mediation between Ms. Stillions and Ms. Mercer through a meeting, first with Ms. Stillions.² MBJ Ex. 194, MBJ006279-6282. Then, on the afternoon of May 19,

² The Governor's Bench Memorandum suggests Farley learned of the allegations of misconduct against Ms. Stillions on April 27, 2016. (Gov. Bench Memorandum, at p. 11). However, the

2016, Mr. Farley met with Ms. Mercer and Mary Evans, a paraprofessional at Kenwood Elementary at the time and also the Instructional Union Representative. EOG Ex. H, EOG01079-EOG01085; MBJ Ex. 194, MBJ006269. At this meeting, Ms. Mercer first shared concerns with Mr. Farley about Ms. Stillions' conduct toward students in the classroom. EOG Ex. H, EOG01079-EOG01085. This was the first time Ms. Mercer had ever shared her concerns about Ms. Stillions' conduct with anyone at Kenwood Elementary or the District. Ms. Mercer couldn't recall ever doing so previously. EOG Ex. B4, EOG00227-234. And, Ms. Pickard testified that despite all the meetings she had with Ms. Mercer regarding the ongoing issues between her and Ms. Stillions, Ms. Mercer never mentioned to her the conduct that Ms. Mercer had described to Mr. Farley. MBJ Ex. 153, MBJ005963-5966.

The next day, May 20, 2016, because of the allegations by Ms. Mercer against Ms. Stillions in the meeting with Mr. Farley, and as was standard practice, Ms. Stillions was removed from the classroom and placed on administrative leave pending the resolution of the investigation into the allegations by Ms. Mercer.³

evidence shows that it was not until May 11, 2016, that Mr. Farley actually met with Ms. Stillions to begin his mediation between her and Ms. Mercer, and that it was not until May 19, 2016, that Mr. Farley met with Ms. Mercer and first learned of the alleged actions by Ms. Stillions against students. EOG Ex. H, EOG01079-EOG01085; MBJ Ex. 194, MBJ006269-6282.

³ The Governor's Bench Memorandum suggests that there is no record of Ms. Stillions being placed on administrative leave on May 20, 2016. Governor's Bench Memorandum, p. 11. Ms. Smith specifically testified that Ms. Stillions was placed on administrative leave on May 20,

EOG Ex. B10, EOG00737; EOG Ex. C, EOG00842-849. Ms. Stillions remained on administrative leave through the remainder of the school year and never returned to the classroom at Kenwood Elementary. EOG Ex. C, EOG00849-850.

After the meeting with Ms. Mercer, Mr. Farley continued his investigation, interviewing at least twenty individuals in connection with the allegations against Ms. Stillions. MBJ Ex. 194, MBJ006269. And prior to June 2016 when Mr. Farley finalized his report, Mr. Farley called DCF to report what he had been told, and inquire whether the conduct raised any concerns of child abuse, and maintains that DCF confirmed the conduct was not child abuse. MBJ Ex. 151, MBJ005865-5871; MBJ Ex. 181; EOG Ex. B10, EOG00744-745. ██████████ testified that ██████████ recalled being in the car with Mr. Farley when he called DCF to ask about the Stillions matter, and specifically recalls that DCF said there were “no indicators” of abuse. MBJ Ex. 151, MBJ005865-5871. He said that the conversation stuck out in his mind because he had not previously heard the term “no indicators” and that he and Mr. Farley had a conversation after the call about what the expression meant. MBJ Ex. 151, MBJ005865-5871.

Mr. Farley completed his investigation and issued a report dated June 17, 2016. EOG Ex. N. He forwarded the report to Ms. Smith, the Assistant

2016, and that the date could be verified through review of the payroll records for Ms. Stillions which would show the change to administrative leave on May 20, 2016. EOG Ex. B10, EOG00737; EOG Ex. C, EOG00842-849. The Governor could have easily obtained those payroll records if he still had doubt as to the date Ms. Stillions was placed on leave.

Superintendent for Human Resources, and also sent a copy of the report to [REDACTED] and to Ms. Sommer, as the Program Director for ESE. EOG Ex. N; EOG Ex. B10, EOG00744. Shortly thereafter, Mr. Farley and Ms. Smith met to discuss the report and Mr. Farley's findings. EOG Ex. B10, EOG00744-745. Mr. Farley specifically advised Ms. Smith he had "to make the decision to investigate child abuse or code of ethics, that he made the decision to investigate the code of ethics because he had called DCF, and DCF confirmed with him that this was not child abuse." EOG Ex. B10, EOG00744-745, 755-756.

In his findings, Mr. Farley concluded that Ms. Stillions exercised poor judgment in how she handled [REDACTED] with her feet; in how she sprayed a student's hands with vinegar without documenting it in the student's IEP; in how she picked up a student by [REDACTED] waistband and the back of [REDACTED] shirt; and in how food was given or not given to students; and in consuming or taking home leftover food. MBJ Ex. 194, MBJ006274-6277. None of the other allegations against Ms. Stillions were confirmed by Mr. Farley, and nowhere in the report is there ever a mention of child abuse by Ms. Stillions. MBJ Ex. 194, MBJ006267-006278.

Ms. Stillions was provided a copy of the report and given an opportunity to respond. She submitted her response on July 5, 2016. MBJ Ex. 194, MBJ006279-6281. Ms. Smith testified that based on her review of the confirmed findings, her discussion with Mr. Farley, and her review of Ms. Stillions' response, she did not

believe that the confirmed findings constituted child abuse. EOG Ex. B10, EOG00745. Her conclusion was underscored by her discussion with Mr. Farley wherein he specifically advised her he had contacted DCF and that DCF had confirmed there was no child abuse. EOG Ex. B10, EOG00744-745, 755-756; EOG Ex. C, EOG00853-855. She also did not believe the confirmed findings rose to the level of something that required a report to DOE. EOG Ex. B10, EOG00768-769.

Ms. Smith testified that once she had gathered all the information and the rebuttal, she then discussed the matter with Superintendent Jackson. Ms. Smith never testified that she told Superintendent Jackson there were any allegations or concerns about child abuse as relates to Ms. Stillions. EOG Ex. B10; EOG Ex. C. Ms. Smith could not give any specific details about her conversation with Superintendent Jackson other than to say they discussed the spraying of a child's hands with vinegar as a hand sanitizer and the contract timing issues that Ms. Stillions had raised. EOG Ex. B10, EOG00760-769; EOG Ex. C, EOG00858-859. Ms. Smith never testified that she gave Superintendent Jackson a copy of the report, or that she otherwise had knowledge that Superintendent Jackson had read the report at that time. EOG Ex. B10; EOG Ex. C.

Based on the discussion between Ms. Smith and Superintendent Jackson, Superintendent Jackson made the determination not to impose further discipline

against Ms. Stillions. EOG Ex. C, EOG866-870. Ms. Stillions was transferred from Kenwood Elementary to Silver Sands for the 2016-2017 school year. EOG Ex. C, EOG00870-871. As noted previously, additional training on the mandatory reporting of child abuse was also implemented at Kenwood Elementary prior to the 2016-2017 school year. There were no other discussions regarding Ms. Stillions or the investigation until the spring of 2017. EOG Ex. C, EOG00876-879.

Around May 2017, [REDACTED] came to the District and requested a copy of the Farley report on Ms. Stillions. EOG Ex. C; EOG00876-886. Ms. Smith contacted Mr. McInnis, the School Board's counsel, to advise that [REDACTED] had requested a copy of the Farley report and to ask how to respond. EOG Ex. C; EOG00876-886. Mr. McInnis relayed to Ms. Smith he had gotten a call from Ms. Raymer, another teacher at Kenwood Elementary, back in March of 2017 stating that she (Ms. Raymer) had been called to testify on [REDACTED] behalf in a custody hearing against [REDACTED], and asked Mr. McInnis whether she should take with her a copy of the Farley report, which Ms. Ramer clearly had a copy of already.⁴ EOG Ex. C; EOG00876-886. Ms. Ramer had been asked by [REDACTED] to testify because [REDACTED] had asked Ms. Stillions to be a witness on her behalf

⁴ The Governor has implied that there may have been a concerted effort to cover up the Farley report, but there is not one scintilla of evidence that suggests such an effort was made. It would have been customary for the accused and each witness to receive a copy of Mr. Farley's investigation, in addition to Ms. Smith and Ms. Sommer. With more the 20 copies being distributed, it cannot reasonably be maintained there was a concerted effort amongst top administrative officials to suppress the report.

in the custody proceeding. EOG Ex. C; EOG00876-886. Ultimately, Ms. Smith, at Mr. McInnis' direction, prepared a memorandum noting closing the file, prepared redacted copies of both the Farley report and Ms. Stillions' response, and provided the records to [REDACTED]. EOG Ex. C; EOG00876-886.

Mr. Smith also called Ms. Stillions to let her know that she had received a request from [REDACTED] for the Farley report. EOG Ex. C; EOG00876-886. Shortly thereafter, [REDACTED] received a frantic call from Ms. Stillions. MBJ Ex. 150, MBJ005801. Ms. Stillions told [REDACTED] that [REDACTED] had obtained a copy of the report, and he would come after Ms. Stillions. MBJ Ex. 150, MBJ005801-5802. Ms. Stillions had been afraid [REDACTED] would retaliate when he learned that Ms. Stillions had given [REDACTED] estranged wife a place to stay. MBJ Ex. 150, MBJ005801-5802. As [REDACTED] put it, when [REDACTED] gets angry "he tends to take everyone down in the path." MBJ Ex. 150, MBJ005801-5802.

Shortly after receiving the call from Ms. Stillions, [REDACTED] texted [REDACTED] asking [REDACTED] to leave people alone, and that is when [REDACTED] forwarded to [REDACTED] an *unredacted* copy of the report, which would not have been the redacted copy he had received from the District. MBJ Ex. 150, MBJ005801-5802. When [REDACTED] spoke with [REDACTED] about the report, [REDACTED] told [REDACTED] immediately that [REDACTED] was getting an attorney in Tallahassee to sue the District. MBJ Ex. 150, MBJ005804.

██████████ recalled reading the redacted report in the summer of 2016 when Ms. Stillions shared it with ██████████ MBJ Ex. 150, MBJ005764, 5773-5775. However, ██████████ says the allegations were so unlike what ██████████ actually witnessed in the classroom ██████████ did not initially make the connection that the report even related to ██████████ MBJ Ex. 150, MBJ005773-5776. Based on her experience and time in Ms. Stillions' classroom, ██████████ just "couldn't fathom any of it. Just none of it made sense. [Ms. Stillions] wouldn't do that to anybody, I mean, not even the child that was the hardest to behave." MBJ Ex. 150, MBJ005799-5800.

Thus, it was not until ██████████ received the unredacted report from ██████████ that ██████████ realized that the allegations against Ms. Stillions related to ██████████ MBJ Ex. 150, MBJ5802-5804. Once ██████████ realized it was ██████████ specifically recalled some events alluded to in the report, and said "that's not how it happened." MBJ Ex. 150, MBJ005777. Even knowing it was ██████████ ██████████ found the allegations to be "fabricated and extreme." MBJ Ex. 150, MBJ005800. And there was absolutely nothing in the report ██████████ believed to have been child abuse. MBJ Ex. 150, MBJ005804.

In terms of the events differing from the description in the report, for example, ██████████ provided an iPad to Ms. Stillions so ██████████ could record ██████████ in the lunchroom on days that ██████████ could not be there so ██████████ could see what ██████████ behavior was like. MBJ Ex. 150, MBJ005777-5779. At the end of the

day, Ms. Stillions would send the iPad home with [REDACTED] for [REDACTED] to review. MBJ Ex. 150, MBJ005777-5779. It was not Ms. Stillions videoing other children for gratuitous or malicious purposes. MBJ Ex. 150, MBJ005777-5779.

[REDACTED] also recalled the allegation about vinegar being sprayed in the child's face. MBJ Ex. 150, MBJ005779. [REDACTED] said "it was not vinegar. It was the sour candy spray you can find in Publix in the checkout, in the candy aisle. . . . some of the kids liked it, so it was a reward. She would spray it in their mouth for them." MBJ Ex. 150, MBJ005779-5780. "For the children that enjoyed that [candy spray] it worked very well for them." MBJ Ex. 150, MBJ005779-5781.

[REDACTED] even tried the candy spray herself, but [REDACTED] didn't find it very tasty. MBJ Ex. 150, MBJ005779-5781. As to the use of a vinegar solution, [REDACTED] said she never saw a bottle of vinegar or spray bottle of vinegar in all [REDACTED] time spent in Ms. Stillions' classroom. MBJ Ex. 150, MBJ005779-5781.

[REDACTED] also discussed the allegation that Ms. Stillions had pushed [REDACTED] down outside. MBJ Ex. 150, 005783-5784. She lamented "[t]hat, I suppose, is what frustrated me the most when I read it, made me angry" because that was not what happened. MBJ Ex. 150, 005783-5784. [REDACTED] recalled discussing with Ms. Stillions that incident when it happened, long before any investigation. MBJ Ex. 150, 005783-5786. [REDACTED] was actually at the school that day. *Id.* [REDACTED] heard [REDACTED] screaming, and although [REDACTED] didn't actually see the incident, [REDACTED] was on

the scene immediately after it happened. *Id.* ██████ had tried to run out of the play area and Ms. Stillions had to call in the resource officer to help catch ██████ *Id.* Ms. Stillions explained she had grabbed ██████ shirt to catch ██████ but ██████ stated that “there was no dirt on ██████ knees, there was no marks that ██████ had been pushed down.” MBJ Ex. 150, 005788. And based on everything ██████ knew, ██████ certainly would not have expected that event to be categorized as child abuse. MBJ Ex. 150, 005789.

████████ also was familiar with ██████ disdain for the lunchroom, and ██████ frequent attempts to place ██████ on the floor or otherwise refuse to move through the line or otherwise. ██████ observed that sometimes physical intervention was required to help coax ██████ along, or even pick ██████ up and carry ██████ out of the lunchroom. MBJ Ex. 150, MBJ005791-5795. ██████ testified that she never saw unnecessary force used and had no issue with Ms. Stillions’ actions regarding the lunchroom incident and scooting ██████ along or helping get ██████ through the line. MBJ Ex. 150, MBJ005791-5795.

In early 2017, upon learning of the Farley report, ██████ contacted the Okaloosa County Sheriff’s Office (OCSO), where ██████ was previously employed as an officer as recently as 2015. EOG Ex. B1, EOG00035-36; MBJ Ex. 190, MBJ006227. Per ██████ has a history of using ██████ contacts at the OCSO for personal gain. MBJ Ex. 150, MBJ005807. ██████, an

investigator with the OCSO, called and reported the allegations to the DCF hotline on May 18, 2017. MBJ Ex. 190, MBJ006227. DCF investigator Jenny Hess and OCSO investigator ██████████ conducted a joint investigation into the allegations. MBJ Ex. 190, MBJ006227-6231; MBJ Ex. 147. On July 17, 2017, DCF closed its investigation into the allegations against Ms. Stillions, having found “no indicators” of abuse. MBJ Ex. 190, MBJ006227-6231; MBJ Ex. 147. Ms. Hess testified that, prior to closing her report, she discussed her conclusions with ██████████ and understood from ██████████ that the OCSO had reached the same conclusion—there was no abuse. MBJ Ex. 147. Ms. Hess noted at least three different times in her report that the OCSO had no findings to date and that no further actions were being taken by the OCSO regarding Ms. Stillions. MBJ Ex. 190, MBJ006229-6230.

Not satisfied with DCF’s findings from the Stillions investigation, ██████████ lodged a complaint. EOG Ex. B1, EOG00051. ██████████ alleged that the investigator, Ms. Hess, was biased against ██████████ based on a prior investigation that Ms. Hess had conducted regarding alleged child abuse *by* ██████████ against ██████████ two children in the home. MBJ Ex. 147, MBJ005522-5524; EOG Ex. B1, EOG00051. DCF Quality Assurance staff in the DCF Northwest Region reviewed both the findings of the prior investigation into ██████████ alleged abuse, and the investigation into Ms. Stillions, and determined that both investigations were

conducted properly and that the findings were appropriate, including specifically the findings of “no indicators” of abuse regarding Ms. Stillions. MBJ Ex. 189.

On August 10, 2017, DCF received a second report to the DCF hotline from [REDACTED] relating to Ms. Stillions’ conduct from the 2015-2016 school year. MBJ Ex. 190, MBJ006232. The allegations were the same, but [REDACTED] stated that additional potential victims had been identified. MBJ Ex. 190, MBJ006232-6237. Because DCF had closed the prior investigation into Ms. Stillions, a new initial intake was generated. MBJ Ex. 190, MBJ006232-6237. Because of the report, DCF again investigated Ms. Stillions and the new allegations, and again, on October 9, 2017, DCF closed its investigation, having found “no indicators” of abuse against Ms. Stillions.

Still not satisfied, [REDACTED] used [REDACTED] connections with the OCSO to pressure the OCSO to move forward with charges against Ms. Stillions. MBJ Ex. 150, MBJ005807. Ultimately, the matter made it into the press in mid-August 2017. Ms. Stillions was charged with child abuse stemming from the allegations against [REDACTED] Others, including Mr. Farley, Ms. Smith, and Ms. Vaughan, were charged with failing to report suspected child abuse. Ms. Stillions was convicted of child abuse, and her case is on appeal to the First DCA. MBJ Ex. 146. Others who were charged reached plea agreements relating to the charges against them.

The Governor has alleged that the failure of teachers and others to report suspected child abuse against Ms. Stillions is due to a lack of training or policies. That is not so. As detailed above, there have long been policies requiring the reporting of suspected child abuse, and training has been frequent and thorough. As Ms. Peek said, knowledge of the requirement to report suspected child abuse is “like breathing.” Rather, the reason that no one reported Ms. Stillions for suspected child abuse is that no one believed her actions to constitute suspected child abuse. Ms. Mercer did not think it was child abuse. EOG Ex. B4, EOG00248. Mr. Farley did not find child abuse had occurred, and even reported to and confirmed this conclusion with DCF. MBJ Ex. 194, MBJ006267-6278; EOG Ex. B10, EOG00744-745, 755-756; EOG Ex. C, EOG00853-855. Ms. Pickard did not think it was child abuse. MBJ Ex. 153, MBJ006000-6001. Ms. Smith did not think it was child abuse. EOG Ex. B10, EOG00744-745. Ms. Hess, the DCF investigator who investigated the Stillions allegations twice, did not think it was child abuse. MBJ Exs. 147, 190. The DCF Quality Assurance reviewer did not think it was child abuse. MBJ Ex. 189. [REDACTED] the OCSO investigator who investigated the Stillions allegations alongside Ms. Hess, at least as of October 2017 did not think it was child abuse. MBJ Ex. 190; MBJ Ex. 147, MBJ005546-5548. Even the child’s own [REDACTED] [REDACTED], who was constantly in the classroom and who witnessed or otherwise participated in some events

detailed in the Farley report, did not think it was child abuse. MBJ Ex. 150, MBJ005804. There is no evidence that a single person who witnessed Ms. Stillions' conduct or was involved with the many Stillions investigations has ever testified that they suspected that the actions by Ms. Stillions constituted child abuse when they observed them.

A fundamental aspect of the requirement for reporting child abuse to DCF is that one must *know or have a reasonable cause to suspect a child is abused*. See § 39.201(2), Fla. Stat. In the events involving Ms. Stillions, the facts conclusively demonstrate why the matter could reasonably have been handled in the way it was—because reasonable people might disagree on what actually occurred. Moreover, with the additional color of the long and contentious history between Ms. Stillions and Ms. Mercer, and the representations that DCF confirmed there was no abuse, it is easy to understand how upper administrative staff, like Superintendent Jackson and Marcus Chambers, may not have been fully apprised in the details of the saga.

Regardless, the evidence will demonstrate that immediately upon learning of the allegations of misconduct against Ms. Stillions, Stacie Smith removed Ms. Stillions from the classroom. A thorough investigation was conducted that resulted in findings of inappropriate conduct and poor judgment by Ms. Stillions, but never was there a finding of abuse or harm to a child. Ms. Stillions was moved to

another school where she taught without incident in 2016-2017. And, additional training was held for Kenwood Elementary, including on the reporting of suspected child abuse.

d. THE FRAZIER INCIDENT

On February 16, 2016, allegations of misconduct by Roy Frazier, a teacher at Silver Sands, were brought to the attention of Mr. Farley and Human Resources. The next day, February 17, 2016, Mr. Frazier was removed from the classroom and placed on administrative leave pending an investigation of the alleged misconduct. Mr. Frazier's conduct was also immediately reported to DCF by [REDACTED], [REDACTED], upon [REDACTED] hearing of the allegations on February 12, 2016. MBJ Ex. 191.

Mr. Farley concluded his investigation into the allegations against Mr. Frazier and issued his report to Stacie Smith and [REDACTED] on March 5, 2016. EOG Ex. CC, EOG01433-01441. On March 16, 2016, Ms. Smith recommended to Superintendent Jackson that Mr. Frazier be suspended for three days without pay based on her review of the findings. EOG Ex. CC, EOG01431. Under Ms. Smith's recommendation, on March 17, 2016, Superintendent Jackson recommended to the Board that Mr. Frazier be suspended for three days. EOG Ex. CC, EOG01429. On April 11, 2016, the Board approved the Superintendent's recommendation and suspended Mr. Frazier for 3 days without pay. EOG Ex. CC,

EOG0124-0126. At the same time, the District also reported Mr. Frazier to the DOE, Office of Professional Practices Services. DOE acknowledged receipt of the report to DOE by letter dated April 29, 2016. EOG Ex. CC, EOG01421. Teacher Frazier retired from teaching at the end of the 2015-2016 school year. Notably, Mr. Frazier has not been prosecuted for child abuse.

In his Bench Memorandum, the Governor objects to the length of the suspension imposed upon Mr. Frazier by Superintendent Jackson. Governor's Bench Memorandum, p. 11. Specifically, the Governor suggests that a three day suspension without pay is too lenient for a teacher who has subjected students to "physical abuse." *Id.* However, the Governor's examples of "physical abuse" include "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 benefits, lying on field trip forms, and a total lack of respect for the trusted position of teacher," none of which constitute child abuse. *Id.* Rather, they are evidence of inappropriate behavior for which a three day suspension without pay is appropriate.

e. WOLTHERS AND BURT INCIDENTS

The incident involving Margaret Wolthers, a teacher at Silver Sands School, and Diana Lacroix and Carolyn Madison, both teacher's aides at Silver Sands School, arose in late 2018, including allegations of abuse. All policies and

procedures were appropriately followed, including that the individuals were immediately removed from the classroom and placed on administrative leave, the incident was immediately reported to DCF, and the parents were notified. There is no allegation to the contrary.

The incident involving Sharen Burt, a counselor at Shalimar Elementary School, arose in January 2019. The allegations are that Counselor Burt actually knew of suspected child abuse in October 2018, which abuse did not occur within the school District, but failed to report it to the DCF hotline. Again, all policies and procedures were followed in addressing the alleged failures of Counselor Burt, and there is no allegation to the contrary.

The only statements about the Wolthers or Burt incidents in the Governor's Bench Memorandum are basically that the incidents occurred and are therefore "evidence that Superintendent Jackson neglected her duty or was incompetent in the discharge of the duty to train her employees." Governor's Bench Memorandum, pp. 8, 13.

The Wolthers and Burt incidents occurred in late 2018/early 2019 even after the policies, procedures, and personnel changes were made in the wake of the Stillions incident. For example, the School Board policies had been changed for over a year. In June 2018, prior to the Wolthers and Burt Incidents, every employee in the District had been retrained on child abuse reporting, including

training conducted specifically by DCF. There was absolutely no lack of training of employees as of the time the Wolthers and Burt incidents occurred.

And, Marcus Chambers had been in charge of Human Resources for the District for almost a year, having taken over those responsibilities in January 2018. Given his roles overseeing SIS, ESE, and Human Resources, Mr. Chambers was the individual directly responsible for overseeing all training within the District, including specifically training on child abuse and child abuse reporting. As noted above, Mr. Chambers was selected by Governor DeSantis as Acting Superintendent of Schools for Okaloosa County during the pendency of Superintendent Jackson's suspension. The arrests in the Wolthers and Burt incidents actually occurred during Mr. Chambers' tenure as acting Superintendent.

If occurrence of the incidents in and of themselves constituted incompetence or neglect of duty by Superintendent Jackson, it is hard to imagine a scenario in which Mr. Chambers, the person immediately in charge of Human Resources, including training of individuals on the reporting of suspected child abuse, and overseeing investigations of such conduct, would be selected to replace Superintendent Jackson.

f. ACTIONS SUBSEQUENT TO SUPERINTENDENT JACKSON'S SUSPENSION

Superintendent Jackson was suspended January 11, 2019. MBJ Ex. 2. Mr. Chambers was named the acting Superintendent that same day. Since that time,

almost four months ago, Mr. Chambers has not recommended a single policy change, or identified any deficiencies in the School Board policies in place under Superintendent Jackson. MBJ Exs. 63-90. Nor has the School Board taken any action to adopt any new or revised policies thought to be deficient under Superintendent Jackson. MBJ Exs. 63-90.

Rather, on February 9, 2019, less than a month after taking over as Superintendent, Mr. Chambers wrote a glowing review of the District in an email to all personnel. MBJ Ex. 127. In the words of Mr. Chambers,

“Okaloosa County Schools have been and continue to be one of the BEST school districts in the state of Florida. How many school districts across the state can stand up and state with pride they are ranked towards the top of the state in Academics, Athletics, the Arts, and Career and Technical Education? Many districts excel in one of the four areas, but NOT ALL FOUR!!”

MBJ Ex. 127. Mr. Chambers didn’t stop there with his praise, but stated,

“[w]e have over 3,000 employees in our school district and situations are bound to happen. But as I have shared with parents and community leaders, 99.9% of our employees are making the right decisions for our students and schools each day. To all that will listen, I’ve shared that our teachers, support staff and administrators work tirelessly for their students and schools and they are not in this for the money . . . they are in this for the STUDENTS!!”

MBJ Ex. 127.

I am sure Mr. Chambers would not suggest those accomplishments had been achieved over the prior month since he took over as Superintendent, or that the

hardworking and dedicated school personnel have only just gotten that way. Those are accomplishments and accolades earned under Superintendent Jackson's tenure, under her leadership, and as a result of the very hardworking and dedicated personnel that Mr. Chambers mentioned in his letter. Certainly, Mr. Chambers' words do not describe a district led by a superintendent who had neglected her duty or demonstrated incompetence. They prove exactly the opposite.

III. Legal Analysis

Generally, neglect of duty as the term is used in Article IV, section 7(a), refers "to the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law. *See Israel v. Desantis*, 2019 WL 1771730, 3 (Fla. April 23, 2019), quoting *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (1934). In contrast, incompetency refers to "any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office' and 'may arise from gross ignorance of official duties or gross carelessness in the discharge of them .. [or] from lack of judgment and discretion.'" *Id.* Mrs. Jackson has faithfully carried out the duties imposed upon her, has done so in a competent manner, and maintains the full capacity to continue to competently fulfil her responsibilities as Superintendent of Okaloosa County Schools.

But in his Bill of Particulars and in his Bench Memorandum, the Governor seeks to impose duties on Mrs. Jackson that are statutorily imposed on other elected officials. Going further, the Governor then seeks to justify his suspension order by claiming she failed to fulfil those duties which she, as a matter of practical and legal reality, lacked the authority to carry out. The Special Master should reject these assertions for what they are: grasping at straws to bolster a case that lacks factual support.

As the prime example, the Governor purports to have suspended Mrs. Jackson for failing to adopt sufficient or adequate policies to protect the health, safety, and welfare of students and for reporting misconduct in violation of section 1001.41, Florida Statutes. *See* MBJ Ex. 3, MBJ000023, MBJ000026, MBJ000030, MBJ000032. While Mrs. Jackson agrees that she serves as the Secretary and Executive Officer of the Okaloosa County School Board, she is not the School Board, is not a member of the School Board, and the scope of her powers and authority as Superintendent are much more limited than those which the Governor erroneously attributes to her. As Superintendent, Mrs. Jackson was statutorily tasked with *general* oversight of the school district; advising, counseling and making recommendations to the school board on all educational matters; recommending policies; and recommending rules and executing rules and minimum standards once they are adopted. §§ 1001.49, and 1001.51, Fla Stat.; *see*

also School Board Policy 1-03, MBJ Ex. 8, MBJ000066. Notably absent from these duties and powers is any authority to adopt a single policy, let alone a set of policies to address what the Governor contends is deficient.

The authority to adopt policies rests *exclusively with the school board*. See § 1001.41, Fla. Stat. (directing *the school board* to determine policies and programs and adopt policies and rules); § 1001.42(3), (6) and (7)(b), Fla. Stat. (directing *the school board* to adopt a program for the entire school district, to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators, and providing penalties for a *school board official* who knowingly fails to adopt policies requiring personnel and school administrators to report certain misconduct and investigate misconduct affects the health, safety, or welfare of a student); *see also* School Board Policy 1-02, MBJ Ex. 7, MBJ000066.

Likewise, the Governor asserts that Mrs. Jackson failed “to provide for the proper attention to the health, safety and welfare of students . . . in violation of § 1001.42(8)” and failed to fulfil her duty to visit schools with “sufficient regularity . . . in violation of § 1001.42(27).” MBJ Ex. 3, MBJ000034. These are legal duties imposed upon school board members not superintendents. § 1001.42, Fla. Stat. (“The district school board, acting as a board, shall exercise all powers and perform all duties listed below . . .”).

As a matter of law and simple fairness, Mrs. Jackson should not be subjected to removal from office for failing to adopt policies where she lacked any authority to do so. That is akin to impeaching the Governor for failing to enact laws, the authority for which is constitutionally vested exclusively in the Legislature.

Additionally, it is important to understand the framework for reporting allegations of abuse and teacher misconduct that applies to Mrs. Jackson. Examining the abuse reporting obligations first, any person who “knows, or has reasonable cause to suspect, that a child is abused shall immediately report the abuse to DCF central abuse hotline. § 39.201(1) and (2), Fla. Stat. Contrary to the Governor’s assertions, the legal duty of a person who knows or suspects a child is being abused is to call the DCF hotline, not to report it to law enforcement or the child’s parents. § 39.201(2), Fla. Stat.

Nor do the allegations in the Stillions matter give rise to a reasonable suspicion that abuse had occurred—either at the time the allegations were made to Arden Farley, and certainly not by the time the investigative report was brought to Mrs. Jackson’s attention. This position is based upon the legal definition of abuse. “‘Abuse’ means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.” § 39.01(2), Fla. Stat. Moreover, “harm” has a particularly complex definition that requires

consideration of a variety of facts including “any physical, mental, or emotional injury to a child; the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted.” § 39.01(35), Fla. Stat. “‘Physical injury’ means death, permanent or temporary disfigurement, or impairment of any bodily part.” § 39.01(63), Fla. Stat. “‘Mental injury’ means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.” § 39.01(48), Fla. Stat. This was the definition and standard that DCF used when it twice investigated the allegations against Marlynn Stillions and found no indicators of abuse. *See* MBJ Ex. 190, MBJ006230, MBJ006235. And nowhere in Mr. Farley’s report or in the correspondence which Mrs. Jackson received is there any mention of abuse. *See* EOG Ex. F, EOG01066-77; EOG Ex. S, EOG01157-58. Even if Mrs. Jackson knew of Mr. Farley’s report when it was issued in June 2016, the allegations contained therein do not meet the threshold of abuse as a matter of law.

The reporting of misconduct by educational personnel differs from reporting abuse of a child. The obligation to report legally sufficient complaints of misconduct is imposed on the school district generally, which must report within 30 days after the date on which subject matter of the complaint comes to the

attention of the school district, regardless of whether the subject of the complaint is still an employee of the school district. Where “the alleged misconduct affects the health, safety, or welfare of a student,” the subject instructional personnel must be immediately suspended from regularly assigned duties, with pay, and reassigned to positions that do not require direct contact with students in the district school system. § 1012.796(5), Fla. Stat. The facts and evidence will demonstrate that the school district, under the leadership of Mrs. Jackson, complied with these requirements for every single incident raised in the Governor’s Bill of Particulars.

Even here, the Governor attempts to heighten or expand Mrs. Jackson’s duty beyond that which is required by the law. As referenced above, it is the school board’s obligation to “develop and adopt policies and procedures to comply with [teacher misconduct] reporting requirement.” § 1012.796(1)(d)3, Fla. Stat. A district school superintendent is “charged with knowledge of these policies and procedures and is accountable for the training of all instructional personnel and school administrators of the school district on the standards of ethical conduct, policies, and procedures.” *Id.* This obligation is contrasted against the Governor’s assertions of duty and responsibility—that Mrs. Jackson is responsible for the alleged failure of instructional and administrative personnel to follow the Code of ethics and Principles of Professional Conduct for Educators—which have no basis in law. In the Governor’s view, every elected superintendent should be subject to

suspension and removal any time a teacher in their district violates the Code of ethics or Principles of Professional Conduct for Educators. Imposing such sweeping responsibility upon elected officials for the conduct of their colleagues and subordinates finds no basis in law, establishes a frightening precedent, and must not be used to guide the Senate's actions in this case.

CONCLUSION

Superintendent Jackson fulfilled her responsibilities in a conscientious, competent manner. She hired skilled, talented staff and placed them in positions befitting their abilities, like Marcus Chambers, and expected them to perform their duties competently. As a result of her tenure, student achievement has skyrocketed, and the District has risen to be consistently one of the top performing districts in the state. The Governor argues that such rankings are not indicative of competence, because they do not account for how teachers treat students. Those superintendents in the bottom of the rankings may breathe a sigh of relief knowing they may not be targeted by the Governor for their failures, but the State measures because it matters. And common sense would counsel students who are subjected to pervasive abusive environments do not perform as well academically.

The Stillions matter was a complex case that reasonable people can view differently, and reasonable people did so. Nor is that matter closed, as Ms.

Stillions still has appellate rights that have not been exhausted. The final chapter on that saga has yet to be written.

The Governor argues the record is replete with statutory violations—Superintendent Jackson vehemently disagrees—but if there are violations, the statutes which are violated do not apply to Superintendent Jackson, but to the School Board. In any event, for every incident that occurred, the District followed the law, followed its policies, and did the right thing. And this was all done under Superintendent Jackson’s supervision.

Marcus Chambers said it aptly when he observed the District had more than 3,000 employees, and 99.9% of them are making the right choices for the students. Things are not that bleak in the District, nor have they ever been under Superintendent Jackson’s tenure. The District is a beacon of excellence for the State, and Superintendent Jackson should be commended for her work in the district, not suspended from office.

For the foregoing reasons, Superintendent Jackson requests the Special Master recommend that she be reinstated to office.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2019, a true copy of the foregoing has been filed via email with Dudley Goodlette, Special Master, Goodlette.Dudley@flsenate.gov, and served via email to Nicholas Primrose, Counsel for the Governor, nicholas.primrose@eog.myflorida.com.

/s/ George T. Levesque _____

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