

STATE OF VERMONT
AGENCY OF EDUCATION

In Re: LI 17-253 (Mario Macias)

HEARING PANEL'S FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION

In the above-captioned matter, following a hearing and upon due consideration of the evidence presented, the Hearing Panel hereby issues the following findings, conclusions, and disposition. The findings and conclusions issued below are limited to those necessary to dispose of each Count charging Licensee with unprofessional conduct per 16 V.S.A. 1698. The findings herein are established by clear and convincing evidence, unless otherwise noted.

I. Count 1

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, deliberately falsified information regarding the evaluation of a learner, specifically a student transcript which was a single egregious act of willful misconduct in violation of duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E)".

a. Findings of Fact

1. Secretary's Exhibit 3 is a Burlington High School ("BHS") student transcript prepared on or about September 21, 2017 at the request of Agency of Education Investigator Robert Stafford (hereafter, the "Transcript").
2. Licensee may have received direction to adjust this particular student's credits from Assistant Principal Herb Perez and Registrar Brittany Langevin. See Hearing Transcript at 43;8-12;
3. The Transcript was prepared on or about 9/21/17, in a joint effort involving Licensee, Principal Tracey Racicot, Assistant Principal Herb Perez, and Registrar Brittany Langevin. See Id. at 38, 730-31. See also, Id. at 738;5-14.
4. According to the testimony of Robert Stafford, and that of Licensee, the preparation of the Transcript on September 21, 2017 was hurried and disorganized. See Id. at 38;7-25, 730.
5. The transcript in question may have contained some errors. See, e.g., Id., 45;17-24.
6. Robert Stafford testified that the total credits reflected on the Transcript as "Total Credits Earned" (25.12 credits) do not match the itemized credits reflected, totaling 22.125 credits.

7. The evidence does not establish what credits or courses the student's transcript might have reflected at the time of the student's graduation.
8. The evidence does not establish that the student in question should not have graduated.
9. The evidence does not establish that Licensee falsified information on the transcript, deliberately or otherwise.
10. The evidence presented, taken as a whole, fails to establish that any errors contained in the transcript at issue, either attributable directly to the actions Mr. Macias or for which he might be indirectly responsible by virtue of his position as Director of Guidance, arise from *deliberate falsification*. Specifically, an *intent* to falsify does not appear.

b. Conclusions of Law

11. In the context of 16 V.S.A. 1698, "*willful misconduct*" means conduct that is intentional and by design, rather than accidental:

"The word 'wilful' [sic] though given different definitions under different circumstances cannot well mean less than intentionally and by design; see also *Wendell v. Union Mut. Fire Ins. Co.*, 123 Vt. 294, 297, 187 A.2d 331, 332 (1963) (stating that willful means intentional as opposed to accidental, and that intentional means an act done with intention of purpose, designed and voluntary.)"

See *In re Appeal of Chase*, 186 Vt. 355, 987 A.2d 924, 2009 VT 94, (2009); some internal citations and quotations omitted.

12. Without a factual finding of *deliberate falsification*, as charged, the required element of *willful misconduct* contained in 16 V.S.A. 1698(1)(E) is not met. Therefore, it is not necessary to reach further findings of fact relative to Count 1.¹

Count 1 is NOT substantiated.

¹ Any student aware that his or her transcript is at issue in this case might understandably look to this decision as a ruling on the validity of his or her high school diploma. Any such student should note that this proceeding did not result in a determination that any diploma was flawed or that any graduation was invalid. Any such student should continue to consider his or her diploma with the full measure of pride and satisfaction rightfully owed to such a significant accomplishment, which has in no way been diminished by the outcome of this proceeding.

II. Count 2

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, failed to maintain a professional relationship with a college student who was substitute teaching at Burlington High School. Licensee used the power and authority of his position as an administrator and created an intimidating, hostile or offensive working environment, and together such conduct is a single egregious act of willful misconduct in violation of the duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E)".

a. Findings of Fact

1. Mollie Bachner offered credible testimony upon which the following findings are based. Id. at 237 et seq.
2. Ms. Bachner worked at Burlington High School as a student teacher in the fall of 2015, and as a long-term substitute teacher at BHS in the spring of 2016, and between those engagements worked at BHS as a per-diem substitute. Id. at 237-238.
3. Licensee made social overtures to Ms. Bachner, including sending multiple texts inviting her, for example, to lunch, and visiting the classroom in which she was substitute teaching. Id. at 239-243.
4. Licensee's behavior made Ms. Bachner uncomfortable. Id. at 240;9-10, 241;20, 243;23, 244;11-16.
5. Ms. Bachner perceived Licensee's conduct as "predatorial" and characterized it as "sexual harassment." Id. at 246;2-4.
6. Licensee's texts were never of a sexual nature. Id.
7. Licensee's conduct does not appear to have been overtly sexual. Id.
8. Ms. Bachner reported Licensee's conduct to Francesca Dupuis, then-current chair of the history and social studies department, who referred the complaint to Principal Tracey Racicot. Id. at 243;12-14, 244;3-8.
9. As a result of Ms. Bachner's complaint, a written notice "Re: Behavioral Concerns" dated January 26, 2016 was sent by Principal Racicot to Licensee, apparently documenting the subject of a meeting with Licensee on January 31, 2017, and signed by Licensee to acknowledge receipt on January 31, 2017. See Secretary's Exhibit 13.

10. The record does not suggest that Licensee was actually aware, prior to January 31, 2017, that his conduct was making Ms. Bachner uncomfortable. See, e.g. Hearing Transcript. at 241;17-21.
11. The record does not show that Licensee's conduct after January 31, 2017 made Ms. Bachner uncomfortable. Id.

b. Conclusions of Law

12. Licensee's conduct may have created an offensive working environment for Ms. Bachner.
13. The record does not support a conclusion that Licensee *willfully* created an offensive working environment for Ms. Bachner.
14. Specifically, the evidence does not establish that Licensee was aware that his advances were unwanted prior to January 31, 2017, nor that his advances continued after he was made so aware on that date.
15. Without a showing that Licensee *knowingly or intentionally* made Ms. Bachner uncomfortable or offended, it is unnecessary to reach the question of whether Licensee's actions constituted misconduct.

Count 2 is NOT substantiated.

III. Count 3

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, unreasonably impaired colleagues' ability to perform their professional duties, specifically, by pointing his finger in an employee's face and shouting in an angry voice, by ridiculing an employee in front of others including a practicum student, and by intimidating employees who complained to the principal about these incidents, and together such conduct demonstrates a pattern of willful misconduct in violation of the duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E)".

a. Findings of Fact

1. Yvette Amblo offered credible testimony upon which the following findings are based. Id. at 276 et seq.

2. Ms. Amblo has significant experience working as a guidance counselor and interacting with co-workers and superiors. Specifically, she had been a guidance counselor for 24 years, 20 of them being at Burlington High School. Id. at 277; 9-13.
3. In October of 2016, Ms. Amblo attended a regular weekly department meeting at which Ms. Amblo questioned a new department policy. Licensee responded in an overtly hostile and physically threatening manner, specifically by leaping to his feet, leaning toward Ms. Amblo, pointing in her face and yelling. Id. at 284;24 - 285;3.
4. As a result of this interaction, Ms. Amblo felt "shaky inside and nervous", "uncomfortable around" Licensee, and "on guard from that time on." Id.
5. On other occasions Licensee was "upset and hostile with [the guidance department] as a group or [Ms. Amblo] and another colleague". Id. at 288;13-21.
6. As a result of Licensee's conduct, Ms. Amblo credibly testified that she left Burlington High School:

"I felt forced to leave. I felt like it was the only option given what was happening and what had happened in that year. I felt like I became aware that I was working in a hostile work environment. I didn't know from day to day or hour to hour if I was going to be yelled at or shamed in front of other people or ignored. For a long period of time I was on edge. I cried a lot at home. I dreaded going to work. I felt unsafe. I couldn't do good work because there wasn't any communication or leadership from the director in our office. I felt like students weren't being served the way that I was capable of serving them and what they deserve from a school counselor."

Id. at 289; 8-21.

7. Larissa Urban offered credible testimony upon which the following findings are based. Id. at 321 et seq.
8. Ms. Urban was a guidance counselor at Burlington High School for 14 years. Id.
9. Ms. Urban attended the October 2016 weekly department meeting about which Ms. Amblo testified above. Id. at 327; 7-14.
10. Ms. Urban's testimony corroborates Ms. Amblo's recollection of the October 2016 meeting:

"And Mario got up and pointed -- got close to Yvette, pointed at her, and said, You are the problem; you need to stop asking questions. And it was extremely uncomfortable and -- and scary, and we all felt -- although it was directed at Yvette, I think we -- I will say myself I felt that it could have been anybody who was being shamed and pointed at in a very forceful way."

Id. at 327;7-14.

11. Licensee testified about the events of the October 2016 meeting. His testimony suggests that Ms. Amblo was "the leader of the resistance", and that she "led the rest of the group into fighting everything that [he] tried to do", as an explanation for his conduct. Id. at 659. That description is not corroborated by the other evidence of the record, and is not found to be credible. Further, the Panel notes that whether or not a power struggle existed, such a struggle would not justify a pattern of intimidation, and the enquiry is irrelevant.
12. Licensee's testimony acknowledges that the actions at issue in the October 2016 impaired colleagues' ability to perform their duties:
"Q: Did you get anything accomplished at that meeting?
[Licensee]: To the point -- to that conversation, yes. And afterward, no." Id. at 661;25.
13. Ms. Urban also testified about a different incident that took place at a meeting attended by Ms. Urban, Ms. Amblo, BHS guidance counselors Adrien Preston and Karen Prouty, and an intern. Id. at 330.
14. In that incident, Ms. Urban credibly testified that Licensee "yelled at Adrien in an escalated voice, and it felt like another shaming situation in front of other counselors and an intern." Id. at 330;20-23.
15. Ms. Urban credibly testified that, as a result of witnessing the foregoing conduct, Ms. Urban "felt like this could happen to any one of us, it was confusing, it was unprofessional, and it made me not feel like it was a safe work space." Id. 331;1-4.
16. Ms. Urban credibly testified that her dissatisfaction with the working environment created by Licensee's conduct resulted in her leaving her job at BHS for another job at which she has experienced a \$12,000 pay cut and now commutes an hour each way and has more responsibility and stress, but finds it preferable to the working environment at BHS. Id. at 338;2-9.
17. Simrat Peltier offered credible testimony, on which the following findings are based. Id. at 350 at seq.
18. Ms. Peltier was employed as a guidance counselor by Burlington High School during the 2017-2018 school year. Id. at 350;24.
19. Licensee was Ms. Peltier's direct supervisor at BHS. Id. at 351;17-18.
20. Ms. Peltier's employment began after Yvette Amblo and Larissa Urban departed from Burlington. Id.
21. In September of 2017, Ms. Peltier's experiences with Licensee left her feeling "disrespected and belittled," which is how she "would characterize the relationship for the remainder of the school year." Id. at 352;9-11.

22. In approximately mid-January, 2018, in response to an email Ms. Peltier had sent to Licensee, containing professional concerns about Licensee, with a copy to Principal Racicot, Licensee angrily confronted Ms. Peltier about Principal Racicot having been copied. Id. at 354;3-15.
23. During that confrontation Licensee attempted to intimidate her by threatening to copy Principal Racicot on Licensee's emails to Ms. Peltier if Ms. Peltier continued to copy Principal Racicot on Ms. Peltier's emails to Licensee. Id. at 354-55.
24. During that confrontation Ms. Peltier felt uncomfortable having the conversation alone with Licensee, who was blocking her exit, and voiced her discomfort and asked him to continue the conversation another time. Licensee did not acquiesce to Ms. Peltier's request to continue the conversation another time, and instead remained in Ms. Peltier's office, and proceeded with the conversation. Id.
25. Ms. Peltier's practice of copying Principal Racicot on emails with guidance department business was requested by Principal Racicot, but Ms. Peltier felt intimidated by Licensee. Id. at 356;12.
26. Ms. Peltier testified that being supervised by Licensee was a "toxic environment" and "emotionally unsafe". Id. at 357;8-9.
27. Ms. Peltier testified that concerns for her mental health arising out of the toxic and emotionally unsafe environment led her to seek other employment at the end of the school year. Id. at 357; 6-19.
28. Emily Russen testified by telephone. Id. at 374.
29. Ms. Russen's testimony did not change the findings or conclusions herein.

b. Conclusions of Law

30. The foregoing facts demonstrate, by clear and convincing evidence, a pattern of knowing and intentional misconduct.
31. Such pattern of knowing and intentional misconduct was therefore willful.
32. Such pattern of willful misconduct had been shown by clear and convincing evidence to have unreasonably impaired colleagues' ability to perform their professional duties.
33. The Licensee's actions constituted a pattern of willful misconduct in violation of the duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E).

Count 3 IS substantiated.

IV. Count 4

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, revealed his knowledge of highly sensitive personal information regarding a student to the student and a third party and in the presence of the third party made the student discuss the highly traumatic events in the student's past which was an [sic] grossly negligent conduct placing a student in meaningful emotional jeopardy in violation of 16 V.S.A. 1698(1)(A)".

a. Findings of Fact

1. Heidi Caldwell offered credible testimony, on which the following findings are based. Id. at 404 et seq.
2. Ms. Caldwell was a UVM practicum student placed at BHS in the spring of 2017. Id. at 404;21-25.
3. As a practicum student, Ms. Caldwell was bound to adhere to confidentiality rules governing the content of student discussions. Id. at 414; 5-11.
4. With Ms. Caldwell in attendance, Licensee met with a particular student (identified hereinafter as "Student 1"²) on Ms. Caldwell's caseload to enquire about Student 1's prior experience d. at 407-10.
5. Prior to the meeting in question, Ms. Caldwell had been working with Student 1 once a week for a "handful of weeks". Id. at 410;22-24.
6. Licensee informed Ms. Caldwell that, prior to the meeting, he had been contacted by Planned Parenthood to suggest opening a dialogue with Student 1 about the history of Id. at 410.
7. During the meeting, Licensee raised the subject of the and encouraged Student 1 to talk about it. Id. at 410; 9-14.
8. The student appeared to be uncomfortable. Id. at 410 1-19.
9. The meeting lasted for approximately five minutes. Id.

² Identifiers "Student 1" and "Student 2" used herein are not intended to correspond with similar identifiers which may have been used to refer to students at other stages of this proceeding, eg in witness testimony, Secretary's charging packet, etc.

10. Licensee testified, on the subject of the meeting in question, that Student 1's parent had prompted Planned Parenthood to contact Licensee. Planned Parenthood contacted Licensee to inform him of Student 1's history of assault and relay Student 1's parent's suggestion that Licensee discuss with Student 1. Id. at 700;7-20.
11. The evidence does not show that Licensee "made the student discuss the highly traumatic event", as charged, once it became apparent that student was uncomfortable and did not wish to discuss it.

b. Conclusions of Law

12. Licensee is charged with grossly negligent conduct, which is "more than an error of judgment, momentary inattention, or loss of presence of mind; rather, it amounts to a failure to exercise even a slight degree of care, and an indifference to the duty owed to another. Gross negligence is substantially and appreciably higher in magnitude and more culpable than ordinary negligence.... It is a heedless and palpable violation of legal duty respecting the rights of others."

See Hardingham v. United Counseling Service of Bennington County, Inc., 164 Vt. 478, 672 A.2d 480, (1995) internal citations and quotes omitted; See also *Mellin v. Flood Brook Union School Dist.*, 173 Vt. 202, 790 A.2d 408, (2001).

13. Licensee's conduct may have had a legitimate basis, having been prompted by an unsolicited call from Planned Parenthood with the encouragement of Student 1's parent.
14. Licensee's disclosure of sensitive material in the presence of the third party may not have been unreasonable because the third party was a graduate student placed with the guidance department, who had a working history with Student 1 in her professional capacity, and was bound by formal confidentiality requirements.
15. The evidence does not establish that Licensee's conduct was grossly negligent, whether or not the student experienced "meaningful emotional jeopardy", as charged. Therefore, with the utmost respect and sympathy for the student's difficult experience, it is unnecessary to reach the question of whether the student was placed in "meaningful emotional jeopardy", as charged.

Count 4 is NOT substantiated.

V. Count 5.

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, failed to provide appropriate supervision of learners taking a standardized test by allowing students to talk to one another during the administration of the test and creating a disruptive testing environment for a student who had not yet completed the exam.

As a result of Licensee's comments and gestures toward the student, the student felt pressured and stopped working before the expiration of the allotted time and before completing the exam, and together this conduct is a single egregious act of willful misconduct in violation of duties and obligation[s] of the position in violation of 16 V.S.A. 1698(1)(E)".

a. Findings of Fact

1. Jackson Elder offered credible testimony on which the following findings are based. *Id.* at 481 et seq.
2. Mr. Elder is a BHS Student who took the AP Statistics exam proctored by Licensee. *Id.* at 483.
3. Marcel Girouard offered credible testimony on which the following findings are based. *Id.* at 456.
4. Mr. Girouard is an AP statistics teacher at BHS who received secondhand reports about the events occurring during the exam as proctored by Licensee. *Id.* at 460.
5. Licensee offered testimony about the AP Statistics exam. *Id.* at 647 et seq.
6. The testimony of Mr. Elder, Mr. Girouard, and Licensee establishes the following:
7. On or about May 17, 2018, Licensee proctored the AP Statistics exam. See *Id.* at 456-57.
8. Licensee was asked to co-proctor the exam in place of another counselor who had to be absent that day. *Id.* at 648;7-10.
9. Licensee co-proctored the exam with another counselor. See *Id.* at 649;1-3.
10. Assistant Principal Herb Perez was the "test coordinator" that day, who is the on-site person in charge of administering the exam. *Id.* at 649.
11. Licensee allowed two students to use the restroom at the same time. Those students were escorted out of the testing room by the co-proctor and returned with the co-proctor. *Id.* at 652;1-9.
12. During the exam several students finished early and were disruptive of other test-takers. *Id.* at 652;11-15.
13. Licensee testified that he met with Herb Perez during the exam to determine how to respond to the disruptive early finishers. *Id.* at 653; 11-13.
14. Licensee testified that Herb Perez gave him "the direction to let the students out early if they had finished the test." *Id.*

15. The record does not establish what particular rules or instructions governing the proctoring of AP exams were in place on the day in question.
16. The record does not establish that any particular rules governing the proctoring of AP exams were violated.
17. The record does not establish that the proctoring of AP exams is a duty or obligation of the position of Guidance Director.

b. Conclusions of Law

18. The charge is *willful misconduct* in violation of the duties and obligations of the position.
19. The evidence does not show any particular rule for AP exam proctoring which Licensee knowingly or intentionally violated.
20. Furthermore, while Licensee's conduct during the exam may have shown him to be an incompetent AP exam proctor, the charge is willful misconduct, not incompetence.
21. Even if the charge were construed as incompetence, proctoring of the AP exam in question was not shown to be within the scope of the duties and obligations of the position of Guidance Director.

Count 5 is NOT substantiated.

VI. Count 6.

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, was unaware of the basic functions of the guidance department and demonstrated incompetence, meaning inability or incapacity to perform the duties and competencies required by the license in violation of 16 V.S.A. 1698(2).

a. Findings of Fact

1. Jeffrey E. Renard offered credible testimony on which the following findings are based. Id. at 500 et seq.
2. Mr. Renard is director of Vermont Virtual Learning Cooperative ("VTVLC"), an organization that provides online courses for many Vermont schools, including BHS. Id. at 501.

3. VTVLC provided, in 2017-18, courses to 1409 different students, through working arrangements with over 100 different guidance counselors. Id. at 514;4-8.
4. Licensee was Mr. Renard's point of contact at BHS. Id. at 501;9-11.
5. Licensee had a persistent difficulty enrolling students in VTVLC online courses, requiring remedial technical assistance that was unique among the 80 schools served by VTVLC. Id. at 504;19-24, 514;15-18.
6. Licensee's difficulties with the VTVLC online enrollment system caused courses to be overenrolled, resulting in financial hardship for VTVLS and BHS. Id. at 508.
7. Licensee's difficulties with the VTVLC online enrollment system raised the *possibility* that students would need to be dropped from the second semester of courses in which they had enrolled. Whether students *actually* were dropped is not established by the record. Id. at 508;11-13.
8. Mary Markley offered credible testimony on which the following findings are based. Id. at 526 et seq.
9. Ms. Markley was a senior at BHS during the 2017-18 school year. Id. at 527.
10. Licensee was Ms. Markley's guidance counselor during her senior year. He was also Guidance Director at that time. Id.
11. In the fall of 2017, Ms. Markley was invited to apply for a National Merit Scholarship. Id. at 528;25.
12. In order to apply for the National Merit Scholarship, a portion of a student's application must be submitted by the student's guidance counselor. Id. at 529;3-8.
13. Ms. Markley asked Licensee to complete the portion of the application required of students' guidance counselors. Id. at 529;7-8.
14. Ms. Markley received conflicting statements from Licensee as to whether he was familiar with the National Merit Scholarship and able to complete his part of the application, or not. Id. at 530.
15. The submission deadline was October 11, 2017. As of October 9, despite repeated requests, the Licensee still had not submitted the required guidance counselor portion. Id. at 530;20-23.
16. On October 9, 2017, Ms. Markley requested a meeting with Principal Tracey Racicot in order to attempt to compel Licensee to complete his portion of the application, and to discuss other concerns about Licensee. Id.

17. Such a meeting was scheduled for October 10, 2017. Id.
18. On October 10, 2017, prior to the meeting, Licensee interrupted Ms. Markley's German class to tell her that the application had been submitted and to suggest that the meeting was unnecessary. Id. at 536;3-11.
19. While Ms. Markley was waiting to enter the meeting with Principal Racicot, Licensee approached Ms. Markley with his laptop in order to demonstrate that the application had been submitted, and asked that the meeting be cancelled. Id. at 536;17-24.
20. Ms. Markley learned from a fellow student, whose guidance counselor was Karen Prouty, that Ms. Prouty routinely submitted mid-year reports to colleges to which students had applied. Id. at 542;2-6.
21. Ms. Markley "looked up" the significance of submitting mid-year reports and confirmed that they are "an essential part of college applications that contain the grades from the first semester of senior year and also any other updates that a student might want to send after they've already submitted their application." Id. at 542;10-13.

22. In particular, Ms. Markley's mid-year reports were significant because she "had several new developments that [she] wanted to mention, including a UVM class that [she] was in and some awards that [she] had received, and of course [her] first semester grades." Id. at 542;20-22.

23. When Ms. Markley enquired with Licensee about sending mid-year reports, her testimony is that Licensee told her:

"that the process only needed to be undertaken if I had not been accepted or denied yet at a school but only if I was awaiting news from a school even though I had already been accepted at two schools and they both said that they still wanted to see my midyear reports. They, like, said that online after I had been accepted. And he said that he would be happy to send midyear reports on request but he wouldn't do it automatically for all students even though it's a standard part of the college application process. So I then decided to meet with him in person on the 29th of January to clear up any confusion, and he told me that I must be confused about the midyear reports because he had already sent them all, and this was despite telling me that it wasn't done unless by request, and which I had technically made no such request."

Id. at 542; 1-17.

24. When Licensee did eventually submit mid-year reports for Ms. Markley, he used an incomplete "blank form", without entering relevant information or with incorrect information. Id. at 544, 548.

25. When Ms. Markley enquired of Licensee as to the status of her submissions to Yale and Georgetown, she received status reports that were conflicting and not credible. Id. at 551, 552.
26. In particular, Licensee appeared to be unfamiliar with the Naviance system as it was used to submit mid-year reports. Id. at 551-52.
27. As a result of the foregoing difficulties, Ms. Markley's senior year was "significantly more stressful and confusing than I was hoping it would be" Id. at 554;2-3.
28. Licensee testified that, in order to fulfill the obligations of Director of Guidance at BHS, "You have to know the -- the computer applications that we use, such as Naviance, PowerSchool, Maestro from VTVLC..." Id. at 605;22-24.
29. Lance C. Smith offered credible testimony on which the following findings are based. Id. at 443 et seq.
30. Mr. Smith is the coordinator or director of the graduate counseling program at University of Vermont. Id. at 443;21-24.
31. UVM has historically placed graduate students at Burlington High School as a field placement site, intermittently since 2008. Id. at 444;18-19.
32. In years in which UVM was unable to place students at BHS between 2008 and 2017, such lack of placement was due only to lack of physical office space at BHS. Id. at 445;10-17.
33. In the spring of 2017, two UVM graduate students were placed at BHS. Id. at 444;19-21.
34. One of the graduate students was directly clinically supervised by Mr. Smith, specifically entailing an hour each week of confidential conversation about "their counseling experience at Burlington High School, both the skills and the issues that would come up when they were counseling students at Burlington High School and their experience within the guidance department at Burlington High School", and the same student was also directly supervised by Licensee when on-site at BHS. Id. at 444-45.
35. In May of 2017, the UVM graduate program decided to freeze BHS as a placement site because it "was not an environment conducive for school counselors to learn the skills, responsibilities, and the dispositions of a professional school counselor." Id. at 446;1-4.
36. According to Mr. Smith's testimony, that kind of decision has not been made regarding any other schools in the Chittenden County area. Id. at 446;5-8.

b. Conclusions of Law

37. Considered in the aggregate, the foregoing show by clear and convincing evidence that Licensee demonstrated incompetence, meaning inability or incapacity to perform the duties and competencies required by the License in violation of 16 V.S.A. 1698(2).

Count 6 IS substantiated.

VII. Count 7

The Secretary of Education has charged Licensee as follows:

"Mario Macias, Licensee, while employed as the Guidance Director for Burlington High School in the Burlington School District, inappropriately engaged a student witness in a discussion of the licensing charges against him, in a manner that he should have known would cause the student severe emotional distress. The student did experience severe emotional distress because of Licensee's conduct, and together this conduct is a single egregious act of willful misconduct in violation of duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E).

a. Findings of fact

1. Joshua Edelbaum offered credible testimony, on which the following findings are based. Id. at 423 et seq.:
2. Mr. Edelbaum is a licensed social worker who has been employed by BHS since 2014. Id. at 424;1-6.
3. Mr. Edelbaum has a particular student on his caseload, hereinafter referred to as "Student 2", who had previously experienced Id. at 428; 1-3.
4. In or about September, 2018, following service upon Licensee of the first six Counts charged above, Mr. Edelbaum received an email from Student 2 asking for his help with a situation Student 2 described to Mr. Edelbaum involving Licensee.
5. According to Student 2's narrative as relayed to Mr. Edelbaum, Student 2 had been visiting with Licensee outside Licensee's office when Licensee invited Student 2 into Licensee's office, closed the door, raised the subject of the pending charges, indicated that Student 2 was the subject of one of the pending Counts, and solicited Student 2's assistance in defending against some or all of the pending charges. Id. at 426. Student 2's narrative related to the panel by Mr. Edelbaum is hearsay, and though the credibility of Mr. Edelbaum and the obvious legitimate reasons for not requiring Student 2 to testify in person support the veracity of the hearsay statement, it is established by Mr. Edelbaum's testimony, standing alone, by a preponderance of the evidence only. Id. at 426; 2-15.

6. Mr. Edelbaum found Student 2 to be "legitimately in distress and unsure how to proceed" as a result of Licensee's conduct. Id. at 427;14-20.
7. Mr. Edelbaum was in Student 2's company later the same day, "sometime around noon" when she received an email from Licensee containing the pending charges and indicating that Student 2 was the subject of one of the Counts. Id. at 429;1-2.
8. Mr. Edelbaum's testimony in the preceding paragraph is corroborated by Secretary's Exhibit 14-2 (also previously misidentified as Secretary's 20), the email correspondence between Licensee and Student 2.
9. Licensee's email contained in Secretary's 14-2 is as described by Mr. Edelbaum and was received at 12:24 on Wednesday, September 12, 2018. See Secretary's Exhibit 14-2.
10. Secretary's Exhibit 14-2 reflects an email exchange. In that exchange Licensee forwarded a copy of the then-pending initial Charges to Student 2, and indicated to Student 2 that Student 2 was the subject of Count 4. See Id.
11. Licensee testified that, as reflected in Secretary's Exhibit 14-2, he had emailed Student 2 a copy of the charges with the message "Count 4." Transcript at 750;8-12.
12. Licensee's message to Student 2, "Count 4", is clear and convincing evidence that Licensee had communicated to Student 2 that Student 2 was the subject of one of the Counts, and not vice-versa.
13. Agency of Education Investigator Robert Stafford offered testimony concerning his interview with Student 2 and Student 2's mother following the events above. Id. at 806-07.
14. Mr. Stafford testified that the interview occurred on June 12, 2018. This date is obviously in error. Id. at 806. Based on the corroborating testimony of Mr. Edelbaum, Mr. Stafford's interview occurred on the day of the events above, or on or about September 12, 2018. Id.
15. Mr. Stafford's testimony of Student 2's narrative as relayed to Mr. Stafford closely matches Student 2's narrative as related to Mr. Edelbaum. Id. at 807. Student 2's narrative related to the panel by Mr. Stafford is hearsay, and though the credibility of Mr. Stafford and the obvious legitimate reasons for not requiring Student 2 to testify in person support the veracity of the hearsay statement, it is established by Mr. Stafford's testimony, standing alone, by a preponderance of the evidence.
16. In the aggregate, the testimony of Mr. Edelbaum and Mr. Stafford, and the email correspondence contained in Secretary's Exhibit 14-2, establish the following facts by clear and convincing evidence:

17. On or about September 12, 2018, Licensee invited Student 2 into his office and closed the door.
18. Licensee brought up the pending charges and suggested to Student 2 that Student 2 was the subject of one of the pending Counts.
19. Licensee asked Student 2 for assistance in defending against the charges.
20. By involving Student 2 in Licensee's pending charges, Licensee caused Student 2 distress.
21. Licensee's misconduct was not a single instance but involved an extended conversation, initiated in person and continued by email after Student 2 left Licensee's office.

b. Conclusions of Law

22. Licensee inappropriately engaged a student in a discussion of the licensing charges against him.
23. Licensee's conduct was *willful misconduct* because he intentionally and knowingly engaged Student 2 in a dialogue about the pending charges that was inappropriate.
24. Further, Licensee's conduct was *willful misconduct* because he should have known it would cause Student 2 distress, and it did in fact cause Student 2 distress.
25. Licensee's misconduct was especially egregious because it continued from the initial conversation by email over the course of several hours.
26. Secretary's Exhibit 22 contains the American School Counselor Association's "Ethical Standards for School Counselors" as revised 2016, requiring School Counselors to "avoid dual relationships that might impair their objectivity and increase the risk of harm to students" and to "establish and maintain appropriate professional relationships with students at all times." Secretary's Ex. 22 at p.3.
27. The Ethical Standards both illustrate that Licensee's conduct was inappropriate, and underscore that Licensee was aware or should have been aware that his conduct was inappropriate.
28. The foregoing establishes by clear and convincing evidence a single egregious act of willful misconduct in violation of duties and obligations of the position in violation of 16 V.S.A. 1698(1)(E).

Count 7 IS substantiated.

HEARING PANEL'S DECISION

WHEREAS, the Secretary of Education's Counts 1, 2, 4, and 5 are NOT SUBSTANTIATED;
and

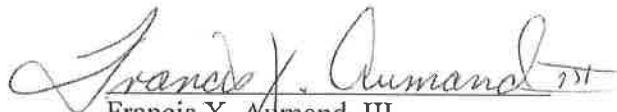
WHEREAS, the Secretary of Education's Counts 3, 6, and 7 ARE SUBSTANTIATED by clear
and convincing evidence; and

WHEREAS, the conduct forming the bases for those substantiated counts above, taken as a
whole, establishes a broad pattern of unprofessional conduct as contemplated by 16 V.S.A 1698;


NOW, THEREFORE, the Vermont Educator License of Mario Macias, together with any and all
endorsements thereto, is hereby REVOKED.

SO ORDERED.

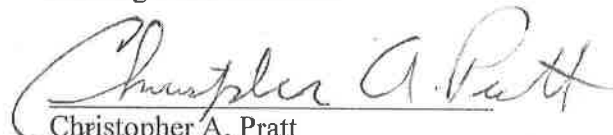
2/14/2019
Date


Francis X. Aumand, III,
Hearing Panel Chair

2/14/19
Date


Dana A. Peterson,
Hearing Panel Member

2-14-19
Date


Christopher A. Pratt
Hearing Panel Member