

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN ROLLE,)
)
 Petitioner,)
)
 vs.) Case No. 01-2644
)
 CHARLIE CRIST, AS COMMISSIONER)
 OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

The parties having been provided proper notice,
Administrative Law Judge John G. Van Laningham of the Division
of Administrative Hearings convened a formal hearing of this
matter on September 25, 2000, in Miami, Florida.

APPEARANCES

For Petitioner: John Rolle, pro se
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For Respondent: Charles T. Whitelock, Esquire
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STATEMENT OF THE ISSUES

The issue in this case is whether the Education Practices
Commission should deny Petitioner's application for a teaching
certificate on the grounds that Petitioner lacks the requisite

good moral character and that he has committed an act or acts for which such a certificate could be revoked.

PRELIMINARY STATEMENT

By a Notice of Reasons dated March 28, 2001, Respondent Charlie Crist, as Commissioner of Education (the "Commissioner"), notified Petitioner John Rolle ("Rolle") that the Department of Education intended to deny his application for a teaching certificate pursuant to Section 231.17, Florida Statutes. As grounds for the denial, the Commissioner asserted that Rolle lacked the good moral character required to be eligible for a teaching certificate and that, as a temporary teacher, Rolle had violated the Principles of Professional Conduct for the Education Profession, committing acts that would authorize the Education Practices Commission to revoke a teaching certificate. In particular, the Commissioner charged that Rolle had shown his students R-rated movies in class; told one or more sexually explicit jokes in the classroom; and instructed or allowed students to act out sexually-themed plays.

Rolle disputed the factual allegations and timely requested a formal hearing. On July 2, 2001, the Commissioner referred this matter to the Division of Administrative Hearings for a formal hearing.

At the formal hearing held on September 25, 2001, Rolle, appearing pro se, called the following witnesses: Kenneth Cooper;

Carolyn Kaloostian; Beverly Ann Salomatoff, and Darrel Brown, all of whom were, during the relevant time frame, employees of the Miami-Dade County School District; parents Ruby Pearson and Margaret McGarty; student L. P.¹; and himself. Rolle also offered two Petitioner's Exhibits, numbered 1 and 2, into evidence, and these were received without objection.

The Commissioner called five witnesses: parents Vickie Myer and Sue Pratt; and students D. M., K. S., and M. M. Finally, the Commissioner, without objection, moved into evidence Respondent's Exhibits 1 through 8.

The transcript of the final hearing was filed on October 29, 2001. The Commissioner timely submitted a proposed recommended order, which was carefully considered in the preparation of this Recommended Order. Rolle did not submit any post-hearing papers.

FINDINGS OF FACT

The evidence presented at final hearing established the facts that follow.

1. During the 1999-2000 school year, Rolle was employed as a public school teacher in the Miami-Dade County School District (the "District"). He was assigned to Mays Middle School, where he taught drama to sixth, seventh, and eighth grade students.

2. Holding a temporary Florida Educator's Certificate, Rolle was hired initially to work as a substitute teacher. Later during the 1999-2000 school year, Rolle's contract status

was reclassified, and he became a "3100" or "temporary" teacher. A 3100 teacher's contract automatically expires at the end of the school year.

3. Before the close of the subject school year, Rolle was removed from the classroom after allegations of misconduct were made against him. When the school year ended, Rolle's supervisor gave him an unsatisfactory evaluation and recommended that the temporary teacher not be re-hired. Consequently, Rolle separated from employment with the District following the 1999-2000 school year.

4. In the meantime, Rolle applied to the Department of Education for a professional (i.e. non-temporary) teaching certificate, pursuant to Section 231.17, Florida Statutes.

5. On March 28, 2001, the Commissioner, as the head of the Department of Education, issued a Notice of Reasons setting forth the grounds for denying Rolle's application. In a nutshell, the Commissioner alleged that Rolle lacked the good moral character required of a teacher and that he had violated the Principles of Professional Conduct for the Education Profession.

6. Below are the relevant historical facts concerning the specific incidents upon which the preliminary denial of Rolle's application was based.²

The Vulgar Joke

7. On March 17, 2000, Rolle told a vulgar joke to his sixth grade class. One of his students, an 11-year-old girl named D. M., reported the joke to the school's administration, submitting a handwritten statement dated March 23, 2000, that quoted Rolle's monologue.³

8. Rolle admits having told the joke; indeed, he repeated it in full while testifying at hearing. Therefore, no useful purpose would be served by including the entire joke in this Recommended Order. The punch line—"Your mouth smells exactly like your butt"—is sufficient to convey the crudity of Rolle's ill-considered attempt at comedy, which would have been inappropriate in polite adult company. Telling such a coarse joke in the classroom to a group of young schoolchildren at a minimum reflected appallingly poor judgment on the teacher's part.

The R-Rated Movies

9. On several occasions during the school year, Rolle showed movies to his sixth and seventh grade classes.⁴ At least two of the movies, Rolle admitted, are rated "R." Another, Rolle claimed, is rated "PG-13."⁵ Rolle did not obtain the permission of his students' parents to show the children any of these films in class.

10. While the movies themselves were not offered into evidence, it is a matter of general knowledge based on common experience that R-rated movies are intended for a "restricted" audience and typically contain language, images, and plots to which children under the age of 17 should not be casually exposed. At any rate, clearly, children aged 11 and 12 should not be shown R-rated movies in a public school classroom without parental knowledge and consent.

11. Rolle showed these movies, not for a pedagogic purpose, but merely to entertain the children.

12. Making matters worse, Rolle instructed his students to have sheets of paper on their desks while a videotape was playing so that they could pretend to be "critiquing" the movie if someone (presumably another teacher) were to enter the classroom. Rolle also directed the children not to tell others that R-rated films were being screened in his class, warning the students that if word got out, then someone might complain, with the predictable result that the school's administration would forbid such movies from being shown in the future.

The Impromptu Skits

13. In class, Rolle often required small groups of his students to act in impromptu skits as a means of developing improvisational skills. Rolle would describe a scene in broad

terms, and the students selected to perform would play assigned parts, making up appropriate dialogue extemporaneously.

14. The plots for some of these impromptu skits were taken from the students' textbooks. But Rolle required the students to act out some other scenes that he had imagined on his own. Several of these skits were highly inappropriate, to say the least.

15. In the sixth grade class, for example, Rolle assigned children to play in a scene involving a lesbian having an affair with her female boss at work; a skit in which a girl describes losing her virginity and becoming pregnant; and a vignette wherein a girl who has been raped reports the crime to her parents and the police. Students not chosen to perform in these skits were obligated to watch them.

16. D. M., the young girl who reported the gauche joke discussed above, was one of the sixth-grade students chosen to play a lesbian. She refused the assignment, whereupon Rolle threatened her with a failing grade.

17. Rolle also instructed his seventh grade students to perform in impromptu skits having adult themes.⁶ More than once, the plot required these adolescent (or pre-adolescent) children, aged 12 and 13, to explore the subject of homosexual relationships. On one occasion, according to the credible testimony of a (then) seventh-grade student named M. M., Rolle

suggested that two girls kiss. One of the girls refused. M. M. described a separate incident during which she and another girl, playing lesbians in an impromptu skit under Rolle's direction, actually did kiss one another, although M. M. professed not to have been adversely affected by the experience.

Rolle's Explanations

18. Rolle conceded that he had exercised "bad judgment" in connection with the incidents described above and stressed that he had been "reprimanded" by the District for them. Rolle admitted that he had believed his actions were appropriate at the time taken, but upon reflection he now recognizes that he made what he calls "first year teacher" mistakes. Rolle adamantly denied having intended to harm or embarrass any student.

Ultimate Factual Determinations

19. Rolle's classroom conduct during the 1999-2000 school year repeatedly fell short of the reasonable standard of right behavior that defines good moral character. By any reasonable measure, it is wrong for a teacher to show R-rated movies to impressionable sixth and seventh grade students; when that teacher, an authority figure acting in loco parentis, further instructs the students to be prepared to lie about or conceal the fact that such films are being shown, as Rolle did, he not only exhibits a propensity for dishonesty that is incompatible

with the position of great trust he holds but also encourages the children in his charge likewise to be deceitful. Similarly, when Rolle told that scatological joke to his sixth grade class, he revealed a lack of respect for the rights of others and behaved in a manner inconsistent with the high standard expected of a public school teacher. Finally, asking children as young as 11 years old to act out or watch scenes in which lesbians discuss an illicit workplace romance; a rape victim describes her trauma; and a pregnant girl speaks about her first sexual experience, as Rolle did, reveals a personality that is preoccupied with subjects unsuitable for the middle school curriculum. If Rolle were soon permitted to teach again, parents understandably would question their children's safety and well-being. The risk of allowing Rolle to return to the classroom, at this juncture, is too great.

20. The conduct in which Rolle engaged, moreover, took place in the classroom during the 1999-2000 school year and directly involved the students in his care. Thus, the conduct involved in this case is both recent and rationally connected to Rolle's fitness to teach in the public schools of Florida.

21. In sum, the evidence fails to establish that, more likely than not, Rolle possesses the good moral character required of a teacher to whom the custody of children is

entrusted. For that reason, Rolle is not eligible for certification.

22. There is, further, ample proof that Rolle failed on numerous occasions to exert a reasonable effort to protect students from conditions harmful to learning, health, or safety as required under Rule 6B-1.006(3)(a), Florida Administrative Code, which is part of the Principles of Professional Conduct. Rolle's multiple violations of this Rule would be grounds for revocation of a teaching certificate and hence independently justify the denial of his application for one.

23. Finally, the greater weight of evidence does not demonstrate that Rolle specifically intended to expose his students to unnecessary embarrassment or disparagement in violation of Rule 6B-1.006(3)(e), Florida Administrative Code.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

25. Section 231.17, Florida Statutes, governs the issuance of teaching certificates. In pertinent part, this statute provides as follows:

(2) ELIGIBILITY CRITERIA.-To be eligible to seek certification pursuant to this chapter, a person must:

* * *

(e) Be of good moral character.

* * *

(10) DENIAL OF CERTIFICATE.-

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to revoke a teaching certificate.

(b) The decision of the department is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of the notice of denial.

26. Section 231.2615, Florida Statutes, prescribes the grounds upon which the Education Practices Commission is authorized to revoke a teaching certificate. As relevant to this case, Section 231.2615(1)(i), Florida Statutes, authorizes the Education Practices Commission to take disciplinary action, including the revocation of a guilty teacher's certificate, against a certified teacher who has "violated the Principles of Professional Conduct for the Education Profession in Florida prescribed by State Board of Education rules."

27. The Principles of Professional Conduct for the Education Profession in Florida are contained in Rule 6B-1.006, Florida Administrative Code, which provides in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional

Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

28. The foregoing statutory and rule provisions are penal in nature and must be strictly construed, with ambiguities being resolved in favor of the licensee. Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

29. In this application dispute proceeding, the burden of producing evidence shifted between the parties according to the issue at hand. Initially, Rolle needed to introduce evidence of his eligibility for certification. Then, the Commissioner⁷ bore the burden of bringing forth evidence demonstrating that Rolle had committed an act or acts for which the Education Practices Commission would be authorized to revoke a teaching certificate.⁸ At all times, however, the burden of ultimate persuasion remained on Rolle, the applicant, to prove his entitlement to

certification by a preponderance of evidence. See Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996).

30. If the applicant fails to meet his burden of proving entitlement to certification, then the Education Practices Commission

shall enter a final order . . . imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

Section 231.262(6), Florida Statutes.⁹

31. In the Notice of Reasons served on Rolle, the Commissioner made the following allegations of fact:

During the 1999-2000 school year, [Rolle] was employed by the Dade County School Board as a drama teacher at Mays Middle School. During said school year [Rolle] engaged in inappropriate conduct in that he:

(a) exhibited R-rated movies in class;

(b) told one or more sexually explicit jokes to his students; and

(c) instructed and/or allowed students to act out scenes that were sexual in nature.

On these allegations, the Commissioner asserted that Rolle lacks the good moral character required for certification as a

teacher, and he accused Rolle of having engaged in conduct that would authorize revocation of a teaching certificate, namely, violating subsections (3)(a) and (3)(e) of Rule 6B-1.006, Florida Administrative Code, which are part of the Principles of Professional Conduct for the Education Profession in Florida.

32. Whether Rolle possesses the requisite good moral character, and whether he violated the Principles of Professional Conduct for the Education Profession in Florida, as charged, are questions of ultimate fact. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

33. As set forth in the Findings of Fact above, the trier has determined as matter of ultimate fact that Rolle failed to establish his good moral character by a preponderance of evidence; that Rolle failed to protect his student from harmful conditions, in violation of Rule 6B-1.006(3)(a), Florida Administrative Code; but that Rolle did not intentionally embarrass or disparage his students in violation of Rule 6B-1.006(3)(e).

34. These factual findings, however, were necessarily informed by the administrative law judge's application of the law. A brief discussion of the pertinent legal principles, therefore, will illuminate the dispositive findings of ultimate fact.

Good Moral Character

35. At the outset, the distinction should be clearly drawn between, on the one hand, the requirement that an applicant be of "good moral character" to be eligible for certification pursuant to Section 231.17(2)(e), Florida Statutes, and, on the other hand, the disciplinable offense of committing an act involving "gross immorality or . . . moral turpitude," which conduct is proscribed in Section 231.2615(1)(c), Florida Statutes. The former sets a standard of decency that an applicant must meet to be allowed to enter the teaching profession; the latter is a species of misconduct warranting the punishment of the certificate holder, including the removal of that person from the teaching profession.

36. The eligibility criterion of good moral character operates as a screen to filter out applicants who, because of established behavior or personality traits, pose a potential danger to the health, safety, or well-being of students. Importantly, at the application stage, the focus is on protecting the public and prospective students—not on safeguarding the applicant's rights; hence, the regulatory agency is afforded wide discretion in denying certification to applicants it deems unfit. See Astral Liquors, Inc. v. Department of Business Regulation, 463 So. 2d 1130, 1132 (Fla. 1985). In contrast, in a disciplinary proceeding in which a

teacher's certificate may be revoked, preventing future harm remains a goal, but great emphasis is placed on protecting the teacher's significant property rights: the agency must establish specific wrongdoing by clear and convincing evidence. For these reasons, conduct that justifies denial of an application upon a finding that the applicant lacks good moral character might not warrant revocation of a teaching certificate in a disciplinary proceeding.

37. Consequently, a person seeking certification must do more, in demonstrating his or her good moral character, than merely show that he or she is not a degenerate. Rather, the burden is on the applicant to establish affirmatively that, as an honest, decent, law-abiding citizen, the applicant consistently conforms his or her behavior to generally accepted societal norms.

38. The standard of conduct to which prospective teachers are held is a high one, owing to the exceptional degree of trust and confidence that the public places in teachers. As the First District Court of Appeal wrote:

A school teacher holds a position of great trust. We entrust the custody of our children to the teacher to educate and prepare our children for their adult lives. To fulfill this trust, the teacher must be of good moral character; to require less would jeopardize the future lives of our children.

Tomerlin v. Dade County School Board, 318 So. 2d 159, 160 (Fla. 1st DCA 1975).

39. In Zemour, Inc., v. State Division of Beverage, 347 So. 2d 1102, 1105 (Fla. 1st DCA 1977), the court described the term "good moral character" as follows:

Moral character, as used in this statute [which prescribes eligibility requirements for obtaining a liquor license], means not only the ability to distinguish between right and wrong, but the character to observe the difference; and the observance of the rules of the right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence. An isolated unlawful act or acts of indiscretion wherever committed do not necessarily establish bad moral character. But as shown by the evidence here, repeated acts in violation of law wherever committed and generally condemned by law abiding people, over a long period of time, evinces the sort of mind and establishes the sort of character that the legislature, as Judge Rawls said in [White v.] Beary, [237 So. 2d 263, 265 (Fla. 1st DCA 1970)], "in its infinite wisdom," has determined should not be entrusted with a liquor license.

The trust and confidence placed in public school teachers being at least as great as that repositied in holders of alcoholic beverages licenses, the foregoing analysis holds true in the present context.

40. Likewise, in Florida Board of Bar Examiners v. G.W.L.,
364 So. 2d 454, 458, (Fla. 1978), the Florida Supreme Court
stated:

In our view, a finding of a lack of "good moral character" should not be restricted to those acts which reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts and conduct which should cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

[T]he practice of law provides the unscrupulous attorney with frequent opportunities to defraud the client or obstruct the judicial process. It is our constitutional responsibility to protect the public by taking necessary action to ensure that the individuals who are admitted to practice law will be honest and fair and will not thwart the administration of justice. In our view, a definition of good moral character which limits an adverse finding to those acts which constitute an offense evincing moral turpitude is inadequate because, as we have held in bar disciplinary matters, it would not sufficiently protect the public interest. The inquiry into good moral character which emphasizes honesty, fairness, and respect for the rights of others and for the laws of this state and nation is a proper and suitable standard for those who desire to be an integral part of the administration of justice in the courts of this state. We recognize . . . that the standard of conduct required of an applicant for admission to the bar must have a rational connection to the applicant's fitness to practice law, and the standard must be applied with that limitation in mind or the term "good moral character" could

become "a dangerous instrument for arbitrary and discriminatory denial of the right to practice law."

(Citations omitted). The court's observations about the nature of the practice of law are equally applicable to the teaching profession. Just as an unscrupulous attorney has frequent opportunities to defraud clients or obstruct the judicial process, so too does a teacher whose inability to observe generally accepted standards of socially acceptable behavior have frequent opportunities, as an authority figure acting in loco parentis, to corrupt the schoolchildren in his charge.

41. In this case, the trier has determined, based on competent and substantial evidence, that, regardless whether Rolle committed an act or acts involving gross immorality or moral turpitude, he repeatedly failed in the classroom to conform his behavior to standards of conduct relating to honesty, fairness, and respect for the rights of others that reasonable people would (or should) recognize are required of an applicant for a teaching certificate. Rolle's conduct, in a word, was indecent. Moreover, the conduct in question here—all of which occurred recently, in the classroom—is rationally related to Rolle's fitness to enter the teaching profession.

Rule 6B-1.006(3)(a)

42. Rule 6B-1.006(3)(a), Florida Administrative Code, imposes on teachers the affirmative duty to protect students

from harmful conditions. The standard against which a teacher's performance of this duty is measured is an objective one: he must make a "reasonable effort." Therefore, a teacher's subjective intent is not determinative of whether Rule 6B-1.006(3)(a) was violated.

43. The specific standard of care owed under legal duty is typically a question of fact. See Dennis v. City of Tampa, 581 So. 2d 1345, 1350 (Fla. 2d DCA), rev. denied, 591 So. 2d 181 (1991); Spadafora v. Carlo, 569 So. 2d 1329, 1331 (Fla. 2d DCA 1990). As such, it is susceptible to ordinary methods of proof. Accordingly, when a teacher is charged with having failed to make a reasonable protective effort under Rule 6B-1.006(3)(a), Florida Administrative Code, the final hearing necessarily entails: (1) evidence regarding the teacher's actual actions in the face of a harmful condition; (2) evidence from which the trier of fact can conceptualize a standard of conduct in the form of the action of a "reasonable teacher" under the same or similar circumstances; and (3) a comparison of the teacher's conduct against the theoretical, objectively reasonable standard of conduct. Cf. Wal-Mart Stores, Inc. v. King, 592 So. 2d 705, 707 (Fla. 5th DCA 1991), rev. denied, 602 So. 2d 942 (1992)(enumerating facts that must be proved in trial of premises liability action).

44. Here, Rolle's grossly inappropriate conduct created conditions that were unambiguously harmful. His conduct was patently unreasonable. On these facts, Rolle's violation of Rule 6B-1.006(3)(a) is so obvious as to be readily apparent to persons of common experience, obviating the need for lay or expert testimony regarding the applicable standard of reasonable conduct. Compare Commissioner of Education v. Chavero, DOAH Case No. 4020PL (Recommended Order Feb. 15, 2001), adopted in toto, EPC Case No. 00-0769-RT (Final Order Apr. 27, 2001)(Rule's violation was not so obvious as to be readily apparent to persons of common experience; thus, proof concerning the standard of reasonable protective effort was required).

45. Based on the evidence presented, the trier of fact easily found that Rolle had failed reasonably to protect his students from harmful conditions.

Rule 6B-1.006(3)(e)

46. The First District Court of Appeal has described Rule 6B-1.006(3)(e), Florida Administrative Code—which, recall, proscribes the intentional infliction of unnecessary embarrassment—as an "aspirational" rule, the "violation of which could only justify suspension of a teaching certificate if there was factual evidence that the violation was so serious as to impair the teacher's effectiveness in the school system." Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995);

MacMillan v. Nassau County School Board, 629 So. 2d 226, 228
(Fla. 1st DCA 1993).

47. Significantly, moreover, to be prohibited by Rule 6B-1.006(3)(e), the offending conduct must be committed with a specific intent to disobey the rule. Accordingly, "[t]here can be no violation in the absence of evidence that the teacher made a conscious decision not to comply with the rule." Langston, 653 So. 2d at 491.

48. Although an inference of intentional harm very reasonably could be drawn from the conduct involved here, the record is short of direct evidence that Rolle specifically intended to violate Rule 6B-1.006(3)(e) or to embarrass or disparage a student. After careful consideration of the evidentiary record as a whole, the trier determined that the inference of intentional harm, though not negligible, was yet insufficiently strong to warrant finding the fact. Therefore, the offense proscribed by Rule 6B-1.006(3)(e), Florida Administrative Code, was not established by the greater weight of the evidence.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order denying Rolle's application for a teaching certificate and providing that he shall not be eligible to

reapply for certification for a period of 15 years from the date of the final order, during which time the Department of Education, in its discretion pursuant to Section 231.262(6)(a), Florida Statutes, may refuse to consider his application, neither granting nor denying same.

DONE AND ENTERED this 14th day of December, 2001, in Tallahassee, Leon County, Florida.

JOHN G. VAN LANINGHAM
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of December, 2001.

ENDNOTES

^{1/} Rolle's former students, who are minors, will be identified in this Recommended Order by their initials. Their full names are revealed in the record.

^{2/} The evidentiary record contains a good deal of proof of arguably inappropriate actions by Rolle that were not alleged with particularity in the Notice of Reasons. For the most part, the facts concerning Rolle's "other" (i.e. not pleaded) conduct were undisputed. Nevertheless, to avoid raising any due process concerns, the evidence regarding Rolle's other conduct has been disregarded.

In addition, the record is replete with hearsay, such as parents' testimony regarding classroom incidents of which they could claim only second-hand knowledge. Under the

Administrative Procedure Act, this testimony was admissible and might properly have served as secondary proof, to supplement other competent substantial evidence forming the primary basis of fact findings. See Section 120.57(1)(c), Florida Statutes. In this case, however, the compelling testimony of the several student-witnesses, who had direct personal knowledge of the incidents in question, together with Rolle's own testimony, constitutes such a solid evidential foundation for the fact findings in this Recommended Order that reliance on hearsay for corroboration was not necessary. The trier nevertheless did give some weight to the prior handwritten statements of L. P., D. M., and M. M., which are in evidence, respectively, as Petitioner's Exhibit 1 and Respondent's Exhibits 5 and 6. These students testified—and were subject to cross-examination—at hearing, and their prior written statements supplemented and explained not only their hearing testimony but also Rolle's.

Finally, there was evidence at hearing concerning certain adverse effects that Rolle's conduct purportedly had on some students' physical and emotional states. While this evidence was believable as far as it went, the trier determined that the relationship between Rolle's conduct and the alleged consequences thereof was shown to be associational at best; expert testimony (of which there was none) would have been required to make the connection causal. Therefore, this evidence was ultimately deemed irrelevant.

^{3/} For obvious reasons, D. M. was not asked to repeat the joke on the witness stand. D. M.'s handwritten statement, in evidence as Respondent's Exhibit 5, is hearsay, and thus has been used only to supplement and explain other admissible evidence. See Section 120.57(1)(c), Florida Statutes. Specifically, D. M.'s out-of-court statement corroborates Rolle's testimony.

^{4/} Although there is no direct, unambiguous evidence that Rolle showed the same movies to his eighth grade class as well, it would be reasonable to infer the fact, except that doing so would not affect the outcome. The findings, therefore, are limited to Rolle's conduct in his sixth and seventh grade classes.

^{5/} Undoubtedly, many of Rolle's sixth and seventh grade students were younger than age 13, so it was, at least, irresponsible to show them a PG-13-rated movie. Because showing the students R-

rated films was egregious, however, the Commissioner understandably focused on that misbehavior.

^{6/} As with the R-rated movies, it would be reasonable to infer that Rolle staged sexually-charged impromptu skits in his eighth grade class too, despite the absence of direct, unambiguous proof of that fact. Doing so, however, would not affect the outcome. The findings, therefore, are limited to Rolle's conduct in his sixth and seventh grade classes.

^{7/} When a disappointed applicant challenges the preliminary denial of his application for a teaching certificate, the Commissioner is responsible for prosecuting the Department's case against the applicant in the ensuing administrative proceeding. See Sections 231.262(5) and 231.262(6), Florida Statutes.

^{8/} The denial of a teaching certificate is not a disciplinary sanction; it is, rather, the application of a regulatory measure. For that reason, where an intended denial of certification is based on the allegation that the applicant has committed an act or acts which would warrant revocation of a teaching certificate, the Commissioner is not required to prove the charges of wrongdoing by clear and convincing evidence; instead, the factual predicate need only be established by the greater weight of the evidence. See Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932, 934-35 (Fla. 1996). The issue is largely academic here, however, because the evidence that Rolle violated Rule 6B-1.006(3)(a), Florida Administrative Code, is not merely persuasive under the preponderance of evidence standard but is clear and convincing and would have satisfied that more rigorous standard of proof were this a proceeding to revoke a certificate.

^{9/} Technically speaking, the designation "penalty" is a misnomer as applied in the statute to the regulatory act of application denial. The denial of an application for a teaching certificate, unlike the revocation of such a certificate, is not penal in nature and does not—again in contrast to revocation—implicate significant property rights. Osborne Stern, 670 So. 2d 934-35.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.