

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLIE CRIST, AS COMMISSIONER)
OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 02-2909PL
)
LIBORIO J. MEJIA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 17, 2002, in Miami, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Gonzalo R. Dorta, Esquire
334 Minorca Avenue
Coral Gables, Florida 33134-4304

For Respondent: David S. Abrams, Esquire
Abrams & Abrams P.A.
9400 South Dadeland Boulevard
Penthouse 3
Miami, Florida 33156

STATEMENT OF THE ISSUES

Whether Respondent committed the violations alleged in the Administrative Complaint and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner, Charlie Crist, as Commissioner of Education (Petitioner or Commissioner), by Administrative Complaint dated July 26, 2001, seeks to impose sanctions against Respondent, Liborio J. Mejia (Respondent or Mejia), for an alleged act of gross immorality or moral turpitude. Specifically the Administrative Complaint states:

On or about March 3, 2000, Respondent armed with a screwdriver gained entry into a bathroom that had been locked by his wife, and a struggle ensued between Respondent and his wife over the wife's purse. In that struggle, the Respondent injured his wife by slashing her arm with the screwdriver. Thereafter, on March 8, 2000, the Respondent surrendered to the Miami-Dade law enforcement authorities. He was placed under arrest and charged. These charges were subsequently dropped on or about December 19, 2000.

Respondent timely exercised his right to request an administrative hearing.

The Commissioner unsuccessfully attempted to require Mejia to give a deposition. By order dated September 12, 2002, Administrative Law Judge Larry J. Sartin denied Petitioner's Motion to Compel Respondent to Appear for Deposition. The order further provided that Respondent would not be permitted to testify at the final hearing unless he sat for his deposition at least 24 hours prior to the final hearing.

The Commissioner's need to depose Respondent in order to be properly prepared to cross-examine him at hearing was rendered moot when Respondent elected not to attend the hearing. He was, however, represented at hearing by counsel.

The Commissioner presented the testimony of Officer Carlos Espinoza of the Miami-Dade Police Department. Respondent presented no testimony. Joint Exhibits 1-9 were received into evidence.

At the conclusion of the final hearing, the undersigned stated:

. . . By agreement of the parties they will have ten days from the filing of the transcript in this matter to submit proposed recommended orders. And as always, gentlemen, if something comes up and you find that you are unable to comply with the deadline, just give my office a call...If you need an extension and can agree on a date that is within reason, that will be fine.

Respondent's counsel understood this statement to mean that there was no need to advise the undersigned, on or before the proposed recommended order due date, if one side or the other wished an enlargement of time to a "date that is within reason." The foregoing statement was not so intended.

A conference call was initiated by the undersigned to resolve the miscommunication. Respondent's counsel stated that the hearing transcript fully sets forth all factual and legal

matters Respondent deems relevant to the case and waived his right to submit a proposed recommended order.

The undersigned has reviewed the hearing transcript (filed December 10, 2002) and the Joint Exhibits numbered 1-9, with special attention directed to the factual and legal matters argued by Respondent's counsel. Petitioner's Proposed Recommended Order has also been carefully considered.

FINDINGS OF FACT

1. Respondent holds a Florida Educator's Certificate in the areas of elementary education and the teaching of English to speakers of other languages (ESOL). The certificate is valid through June 30, 2003.

2. At all times material to this case, Respondent was employed as an ESOL Teacher at R. R. Morton Elementary School in the Miami-Dade County School District.

3. On or about March 3, 2002, the Respondent armed himself with a screwdriver and forced his way into the bathroom at his residence where his wife was taking a shower. An altercation ensued and resulted in an injury to Respondent's wife.

4. Mrs. Mejia required medical attention at the emergency room of Baptist Hospital. She received several stitches to close a wound on her hand. The wound was sustained in the struggle with her husband. Police were summoned to the

emergency room to investigate the allegation of domestic violence.

5. On or about March 8, 2000, Respondent surrendered himself to Miami-Dade police. He was arrested and charged with aggravated battery and strong arm robbery. These charges were later dropped.

6. The evidence clearly and convincingly established that Respondent's physical aggression toward his wife was a substantial departure from the standard of civilized behavior the public rightly expects of members of the teaching profession. It suggests an inability to conduct himself in a mature and appropriate manner under stress, and gives the public legitimate reason for concern as to whether Respondent is sufficiently stable to be trusted with the care and safety of school children.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding, pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

8. Petitioner has the burden of proof in this proceeding. Where an agency seeks to impose sanctions upon a professional license, the evidence must be, as it is here, clear and

convincing. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987);
Slomowitz v. Walker, 429 So. 2d 797(Fla. 4th DCA 1983).

9. The State's decision not to prosecute Respondent is not dispositive of the question of whether Respondent may properly be subject to administrative discipline. Here, the Commissioner contends that Mejia's attack on his wife constitutes an act of gross immorality or an act involving moral turpitude, in violation of Section 231.2615(1)(c), renumbered as Section 231.28(1)(c), now found at Section 1012.795(1)(c) of the Florida Statutes.

10. Gross immorality is not defined. "Immorality" is defined in Florida Administrative Code Rule 6B-4.009(2) as:

[C]onduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the educational profession into public disgrace or disrespect and impair the individual's service in the community.

11. "Gross immorality" requires conduct more egregious than that encompassed within the definition of "immorality" found in Rule 6B-4.009(2):

[t]he term "gross" in conjunction with "immorality" has heretofore been found to mean "immorality which involves an act of misconduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard of proper moral standards." Education Practice Commission

v. Knox, 3 FALR 1373-A (Department of Education 1981).

Frank T. Brogan v. Eston Mansfield, DOAH Case No. 96-0286.

12. "Moral turpitude" is defined by Florida Administrative Code Rule 6B-4.009(6) as:

a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

13. The court in Tullidge v. Hollingsworth, 146 So. 660, 661 (Fla. 1933), defined moral turpitude as:

Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or man to society. . . . It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent

14. Teachers are required to maintain a high standard of conduct. Whether a teacher's conduct constitutes an act of gross immorality or an act of moral turpitude should be measured against that high standard. Adams v. State, Professional Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981). In Tomerlin v. Dade County School Board, 318 So. 2d 159, 160 (Fla. 1st DCA 1975), the court observed:

A school teacher holds a position of great trust. We entrust the custody of our

children to the teacher. We look to the teacher to educate and to 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.

15. Respondent's willingness to resort to violence in his domestic dealings requires that measures be taken to assure that he will be able to maintain appropriate control of himself in the classroom.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent be found to have violated Section 231.2615(1)(c), Florida Statutes, as charged in the Administrative Complaint; that his certificate be suspended for a period of 90 days; and that he not be allowed to return to teaching until an appropriate mental health professional evaluates and pronounces him fit to teach and not a threat to the safety or well-being of students subject to his control.

DONE AND ENTERED this 6th day of February, 2003, in Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of February, 2003.

COPIES FURNISHED:

David S. Abrams, Esquire
Abrams & Abrams P.A.
9400 South Dadeland Boulevard
Penthouse 3
Miami, Florida 33156

Gonzalo R. Dorta, Esquire
334 Minorca Avenue
Coral Gables, Florida 33134-4304

Liborio J. Mejia
9118 Southwest 157th Court
Miami, Florida 33196

Kathleen M. Richards, Executive Director
Education Practices Commission
Department of Education
325 West Gaines Street, Room 224E
Tallahassee, Florida 32399-0400

Marian Lambeth, Program Specialist
Bureau of Educator Standards
Department of Education
325 West Gaines Street, Room 224E
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel
Department of Education
325 West Gaines Street
1244 Turlington Building
Tallahassee, Florida 32399-0400

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.