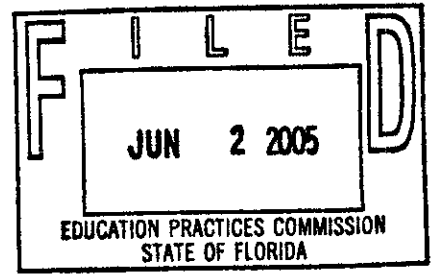


10-2904

FILED
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Before the Education Practices Commission of the State of Florida



JIM HORNE as the
Commissioner of Education,

Petitioner,

vs.

CASE N°: 03-0371-RT
DOAH CASE N° 04-0733PL
EPC Index N° 05-189-FOF
CERTIFICATE: 764746

*FSR
closecl*

MARK SANCHEZ,

Respondent.

AP.

Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1) Florida Statutes, on January 21, 2005, in Tampa, Florida, for consideration of the Recommended order entered in this case by Florence Snyder Rivas, Administrative Law Judge, dated October 29, 2004.

Petitioner filed Exceptions to the Recommended Order. These were not Exceptions to the Findings of Fact but to the Conclusions of Law and the resulting penalty.

After reviewing the complete record accompanying the Recommended Order, considering the arguments of counsel for both Petitioner and Respondent, the Panel hereby adopts the Findings of Fact in paragraphs 1-49 of the Recommended Order, a

copy of which is attached to and made a part hereof. The Panel further adopts the Conclusions of Law in paragraphs 50-62, 64-69, and 71-75 of the Recommended Order.

EXCEPTIONS

The Panel upon considering Petitioner's Exceptions and on its own motion grants Exceptions to the Conclusions of Law in paragraphs 63, 70, and 76 in the Recommended Order as follows:

1) In paragraph 63, the Administrative Law Judge states; "With reference to Section 1012.795(1)(c), Petitioner has failed to prove by clear and convincing evidence that Sanchez ' [h]as been guilty of gross immorality or an act involving moral turpitude.' "

The Panel modifies that conclusion to state, "With reference to Section 1012.795(1)(c), Petitioner has proven by clear and convincing evidence that Sanchez '[h]as been guilty of gross immorality or an act involving moral turpitude.' "

The Panel finds that a teacher accessing pornographic materials and sexually explicit emails with his classroom computer while students are present is conduct that involves moral turpitude or gross immorality. Exhibits 13, a disc containing over one thousand (1,000) pages of sexually explicit images of a pornographic nature including girls implying by the titles of some of the cites that they are teenagers, is not an isolated or mistaken encounter. There were also images of sexual activity with animals.

Gross immorality is simply conduct that constitutes a flagrant disregard of proper moral standards. Turlington v. Knox, 3 FLAR 1373(a), 1374(a) (EPC 1981); Brogan v. Rito, 1995 WL 1053 (Fla Div. Admin. Hearings 1985) at p. 4. By virtue of the leadership

capacity and influence that educators have by example upon school children, teachers are held to a higher moral standard than other regulated professionals. Adams & Ward v. Professional Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981); Brogan v. Knight, 1995 Fla. Div. Admin. Hearings, Lexis 664.

2) In paragraph 70, the Administrative Law Judge states, "Sanchez' abuse of his computer was deplorable, but it is not clear that his activities demonstrated gross immorality or moral turpitude as those terms are defined above and/or construed by Florida decisional law."

According to the decisions cited above in paragraph 1 of this order, the Panel disagrees with that conclusion of law. It substitutes the following, " Sanchez' abuse of his computer demonstrates gross immorality or moral turpitude as those terms are defined above and/or construed by Florida Decisional Law."

3) The Panel moved to delete the Conclusion of Law in paragraph 76 for the citations listed in paragraph 1 of this order. Instead the paragraph shall read, " The educator's certificate of Mark Sanchez is permanently revoked and he shall be permanently barred from seeking another educator's certificate in this state."

4) Accordingly the Panel rejects the Recommendation that Respondent is not guilty of violating Subsection 1012.795(1)(c), Florida Statutes, and concludes that Respondent is guilty of violating Subsection 101.795(1)(c), Florida Statutes. Further the Panel reiterates that "The educator's certificate of Mark Sanchez is permanently revoked and he shall be permanently barred from seeking another educator's certificate in this

state. " The Panel accepts the finding that Respondent is "guilty of violating Subsections 1012.795(1)(f) and (i), Florida Statutes."

It is therefore Ordered that Mark Sanchez is in violation of Sections 1012.795(1)(c),(f) and (i), Florida Statutes.

It is further Ordered that Mr. Sanchez' certificate shall be permanently revoked and he shall be permanently barred from reapplying for a Florida educator's certificate.

This Order becomes effective upon filing.

DONE AND ORDERED, this 18th day of May, 2005.


DEBORAH SHEPARD, Presiding Officer

COPIES FURNISHED TO:

Bureau of Professional Practices

Bureau of Teacher Certification

Florida Administrative Law Reports

Superintendent
Pinellas County Schools
301 4th St. S.W.
Largo, FL 33770-3536

Administrator
Office of Professional Standards
Pinellas County Schools
301 4th St. S.W.
Largo, FL 33770-3536

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Robert Sickles, Broad & Cassel,
Attorney at Law

Florence Snyder Rivas
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Ann Cole, Clerk
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order in the matter of HORNE v. SANCHEZ was furnished to Joan Stewart, FEA, 118 N. Monroe St., Tallahassee, Florida 32399 by U.S. Mail this 2 day of June, 2005.


KATHLEEN RICHARDS
Executive Director