

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CORINNE HOUSLEY,)
)
 Petitioner,)
)
 vs.) Case No. 08-0714
)
 DR. ERIC J. SMITH, AS)
 COMMISSIONER OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on June 12, 2008, by video teleconference with sites in Jacksonville and in Tallahassee, Florida.

APPEARANCES

For Petitioner: Thomas A. Delegal, III, Esquire
Delegal Law Offices, P.A.
424 East Monroe Street
Jacksonville, Florida 32202

For Respondent: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner's application for a Florida educator's certificate should be granted.

PRELIMINARY STATEMENT

On September 5, 2007, the Commissioner of Education issued a Notice of Reasons denying Petitioner's application for a Florida educator's certificate, and Petitioner requested an administrative hearing regarding that denial. On February 12, 2008, the Education Practices Commission transferred this case to the Division of Administrative Hearings to conduct the evidentiary proceeding.

At the commencement of the final hearing, Respondent's motion to amend the style of this cause to reflect that Dr. Eric J. Smith is now the Commissioner of Education was granted.

Petitioner testified on her own behalf. Respondent presented the testimony of Jo Kathryn Crawford, Jeffrey W. Lavenau, William D. Zeleski, and Thomas F. Crumley. Additionally, Petitioner's Exhibits numbered 1-8 were admitted in evidence.

The transcript of the final hearing was filed on July 8, 2008, and the parties' proposed recommended orders were filed on July 23, 2008.

FINDINGS OF FACT

1. Petitioner is an applicant for a Florida educator's certificate from the Florida Department of Education.
2. On May 19, 1997, Petitioner was adjudicated guilty of driving under the influence of alcohol. She was sentenced to

six months' probation. She was also required to perform 50 hours of community service and to pay \$1,245 in fines and court costs. Her driver's license was revoked, and she was required to attend DUI school.

3. Petitioner is the mother of two sons. On July 31, 2000, William was eight years of age and Jeffrey was 12 1/2.

4. William and Jeffrey had lived primarily with Jo Kathryn Crawford, Petitioner's mother and their grandmother, since the middle of 1998.

5. During the weekend prior to Monday, July 31, 2000, Petitioner had called her mother's home a number of times during which she was drunk and belligerent. Even so, arrangements were made for Petitioner to pick up William Monday morning to take him to a doctor's appointment after which she would take both William and Jeffrey to her "new" home.

6. Her new home was a home which Jacksonville Habitat had built for her and had deeded to her in October 1999. She did not move into the home at that time but had continued to live in a trailer park. She wanted to spend her first night with William and Jeffrey in the home and wanted them to help her with the moving-in chores.

7. On Monday, July 31, 2000, she picked up William and took him to his medical appointment. When she brought William back to his grandmother's home, William was hungry, and his

grandmother insisted on fixing lunch for him. Petitioner was annoyed at having to wait, but she did. She then left with William and Jeffrey, saying that she would return them the next morning, Tuesday.

8. While Petitioner and her sons were eating dinner that evening at her new home, Petitioner became angry because William crawled under the table and was shaking it. When William got out from under the table to go to the bedroom he would be sharing with Jeffrey, he knocked over a pile of clothes.

9. Petitioner became highly irritated and then enraged, yelling and chasing William down the hallway. She caught up with him at the doorway to the bedroom, grabbed a belt, and started swinging it indiscriminately at William with the buckle end toward the child. William was crying and begging her to stop. He was also trying to get away from her.

10. Petitioner was using severe blows with the full range of motion of her arm, and the belt buckle hit William multiple times. The belt was moving fast, and Petitioner was inflicting severe blows, while still screaming at William. Jeffrey, who was also in the bedroom, could even hear the belt hitting William but felt powerless to do anything to help his brother. During this episode Petitioner remained enraged and lacked any self-control.

11. When the beating was over, Petitioner did not attend to William. Jeffrey was the one who rendered comfort to his brother and put a Band-Aid on his brother's finger, where the stem of the belt buckle had pierced or cut it.

12. Petitioner did not return the boys to their grandmother's home until Wednesday. The grandmother asked William about the Band-Aid on his finger. William did not want to tell her what happened to his finger, but over the course of the afternoon he told his grandmother what had happened at Petitioner's home. Jeffrey confirmed what William told his grandmother.

13. The grandmother raised William's shirt. He had marks and bruises on his back and front. There were long, red welts on his back and on his side. Some marks were large, some were small, some were round, and some were distinctively the shape of a belt buckle. There were dark blue and purple bruises on his lower buttocks on both sides and on his elbow. There was a round mark like a pencil eraser above his right knee. There were longer bruises in his front groin area. On his upper leg were round, large, black and red bruises.

14. The grandmother took pictures of the marks on William's body. The next day, August 3, 2000, she consulted an attorney to find out what she should do. She then went to the Jacksonville Beach Police Department, where she spoke with

Detective Tommy Crumley and showed him the pictures. Crumley contacted the abuse hotline. He then went to the grandmother's home, looked at William's bruises, took pictures, and talked to both boys separately. At final hearing, he described the bruises, categorized them as severe, and thought they appeared to be painful.

15. Prior to July 31, 2000, Petitioner beat William when he made her mad. Although William was unable to quantify the number of times, he described the number as being "a lot." He did not tell his grandmother about the source of the bruises he had from those occasions.

16. Prior to July 31, 2000, and as far back as Jeffrey can remember, Petitioner also beat Jeffrey. She beat him twice on some days and not at all on other days. It depended upon her mood and her temper. When beating him, Petitioner used her hands, a belt, or a wooden spoon.

17. Prior to July 31, 2000, Petitioner beat her sons whenever they did something that made her angry, even for spilling a drink. The beatings were severe, and she did not care where her blows landed. Although the beatings left bruises, the children told no one for fear of being hit even more.

18. On August 4, 2000, Petitioner was arrested and charged with aggravated child abuse, a felony. She was also later

charged with contributing to the delinquency of a minor, a misdemeanor.

19. Pursuant to a plea agreement, on August 14, 2001, the charge of aggravated child abuse was dismissed, and Petitioner pled guilty to contributing to the delinquency of a minor. She was placed on probation with special conditions for a period of 12 months. Petitioner completed her probation early.

20. Both of Petitioner's sons were in psychological therapy throughout high school.

21. Until they saw each other at the final hearing in this cause, Petitioner had not seen either of her sons since she returned them to the grandmother's house on August 3, 2000.

22. The grandmother has had legal custody of Petitioner's sons since August 7, 2000. They continue to live with their grandmother. Jeffrey, who is now 20, is a junior in college, majoring in chemistry. He also works at Marsh Landing Country Club. William, who is now 16, was, at the time of the final hearing, temporarily residing at Impact House, a juvenile detention facility, where he had been for 10 days for violation of probation.

23. Even though Petitioner does not possess a teaching certificate, she has been employed as an ESE teacher by the Duval County Public Schools in Jacksonville since March 2007.

She is assigned to middle-school exceptional student education classes. She has been re-appointed for the coming school year.

24. Petitioner explains the marks she made on William's body by suggesting that maybe he got the bruises from playing or roughhousing with his brother or maybe his grandmother hit him with a wooden spoon. She explains the cut on William's finger by saying the belt slipped out of her hand while she was "swatting" him and fell, hitting him on the finger. It is clear that, even after eight years, Petitioner does not understand the shocking and inappropriate nature of her behavior. Further, she has still not accepted responsibility for her actions.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

26. The Notice of Reasons for the denial of Petitioner's application for licensure contains six counts and alleges that she lacks good moral character and that she has committed acts or that a situation exists which would be grounds for revocation of her license if she had one.

27. Petitioner, as an applicant for licensure, has the burden of proving by a preponderance of the evidence that she satisfies the statutory requirements for a teaching certificate.

Dept. of Banking & Finance, Div. of Securities and Investor

Protection v. Osborne Stern, 670 So. 2d 932 (Fla. 1996). One of those requirements is that Petitioner be of good moral character. § 1012.56(2)(e), Fla. Stat.

28. In Zemour, Inc. v. State Div. of Beverage, 347 So. 2d 1102 (Fla. 1st DCA 1977), the Court defined "moral character" in connection with an application for licensure as follows:

Moral character . . . 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 right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence.

Id. at 1105.

29. Petitioner has failed to prove by a preponderance of the evidence that she has good moral character; rather, Respondent has clearly proven that she does not. Her malicious and indiscriminate beating of her son William on July 31, 2000, is shocking. Beating him in a rage with the buckle end of a belt is unacceptable under any circumstances. That Petitioner would beat her sons on a regular basis because they did something that made her angry is beyond understanding. That she still, 8 years later, does not recognize that beating and injuring her sons is wrong constitutes convincing evidence that she does not have good moral character, as alleged in Count 1.

30. Counts 2 through 6 allege that Petitioner is guilty of conduct for which her teaching certificate, if she had one, could be revoked. The burden of proving those allegations is, therefore, on the Respondent. Dept. of Banking & Finance, Div. of Securities and Investor Protection v. Osborne Stern, supra. The factual basis for these counts is her criminal history: both her conviction for driving under the influence and her conviction for contributing to the delinquency of a minor relating to her beating her son on July 31, 2000.

31. While the burden of producing evidence may shift between the parties during an application dispute proceeding, the burden of persuasion remains on the applicant to prove entitlement to the license she is seeking. Unlike the facts in the Osborne Stern decision where the administrative agency sought to impose administrative fines as a penalty for the applicant's statutory violations, in this case Respondent does not seek to take disciplinary action for Petitioner's statutory violations but only makes those allegations as additional reasons for denying Petitioner's application for licensure. Therefore, Respondent does not have to prove its allegations by clear and convincing evidence. Further, mitigating evidence offered to impact a specific disciplinary penalty to be imposed is irrelevant.

32. Count 2 of the Notice of Reasons alleges that Petitioner has violated Section 1012.56(11)(a), Florida Statutes, by committing an act or that a situation exists for which her license could be revoked, if she were licensed. Count 2 is not an independent allegation because it relies upon proving any of the counts which follow it. The specific prohibited acts or situation charged are found in the charges contained in Counts 3 through 6.

33. Count 3 alleges that Petitioner has violated Section 1012.795(1)(c), Florida Statutes, in that she is guilty of gross immorality or an act involving moral turpitude. Count 4 alleges that Petitioner has violated Section 1012.795(1)(e) in that she has been convicted of a misdemeanor, felony, or other criminal charge, other than a minor traffic violation. Count 5 alleges that Petitioner has violated Section 1012.795(1)(f) by being guilty of personal conduct which seriously reduces her effectiveness as an employee of the district school board. Lastly, Count 6 alleges that she has violated Section 1012.795(2), Florida Statutes, which provides that a plea of guilty in any court or the decision of guilty by any court is prima facie proof of grounds for revocation.

34. Respondent has failed to prove, as alleged in Count 5, that Petitioner's personal conduct has seriously reduced her effectiveness as an employee of the district school board.

Respondent offered no evidence as to that allegation. On the other hand, Petitioner's Exhibits 1 and 3-5, admitted in evidence without objection, suggest that her performance with the Duval County Public Schools has been satisfactory.

35. Respondent has proven, however, the allegations in Counts 3, 4, and 6 by Petitioner's two convictions and by Petitioner's vile and depraved treatment of her own children.

36. In her proposed recommended order, Petitioner alleges that the undersigned committed a material error in procedure by not allowing Petitioner's witnesses to testify in this proceeding. The discussion regarding these witnesses appears on pages 107 and 108 of the Transcript. After Petitioner had testified, Petitioner's attorney announced that he had discovered during a break in the proceeding that three witnesses had voluntarily appeared at the hearing asking if they could testify on Petitioner's behalf. Petitioner's attorney represented that their testimony would be "in the nature of mitigation." Petitioner's attorney further explained that since the undersigned had previously ruled that although mitigation evidence was relevant in a disciplinary proceeding in determining, after a finding of guilt, what penalty should be imposed, it was not relevant in a licensure proceeding. The Petitioner's attorney announced that since they would only be offering mitigation evidence, he would not offer their

testimony. The witnesses were not identified at that time and were not disclosed in the Joint Pre-Hearing Stipulation.

37. The referred-to prior ruling regarding mitigation is found on pages 101 through 106 of the Transcript at which point Respondent objected to the relevancy of Petitioner's attorney asking her questions about the types of disabilities that the exceptional education students she teaches have. Petitioner's attorney's response was, essentially, that he was presenting mitigation testimony. Although there was one mention of the phrase "moral character" during Petitioner's attorney's extended argument on the objection, the objection that Petitioner's students' characteristics were not relevant to the issue of her entitlement to licensure was sustained.

38. Section 1012.796(7), Florida Statutes, provides that a denial of an application for an educator's certificate may provide that the applicant may not re-apply for certification and that the Department of Education may refuse to consider an application from that applicant for a specified period of time or permanently. Petitioner's repeated abusive treatment of her own children, her continued failure to understand her morally-wrong behavior, and her failure to acknowledge her responsibility for her conduct must be considered. Her testimony attempting to put responsibility on her mother for her own conduct coupled with her testimony that the belt-buckle

marks were the result of the belt slipping out of her hand and falling on her son must also be considered. It is clear that placing children within Petitioner's control may well constitute a dangerous situation for those children should one of them do something which may cause Petitioner to become angry. Not only should Petitioner's application for a teaching certificate be denied, she should be permanently barred from re-applying.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered denying Petitioner's application for a Florida educator's certificate, permanently barring her from re-applying in the future, and providing that the Department may refuse to consider a subsequent application from her.

DONE AND ENTERED this 11th day of August, 2008, in Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
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 11th day of August, 2008.

COPIES FURNISHED:

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

Deborah K. Kearney, General Counsel
Department of Education
325 West Gaines Street, Room 224-E
Tallahassee, Florida 32399-0400

Marian Lambeth, Bureau Chief
Bureau of Professional Practices Services
Department of Education
325 West Gaines Street, Room 224-E
Tallahassee, Florida 32399-0400

Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012

Thomas A. Delegal, III, Esquire
Delegal Law Offices, P.A.
424 East Monroe Street
Jacksonville, Florida 32202

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.