

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-5392PL
)
TINA ADAMS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 3, 2009, in New Port Richey, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward T. Bauer, Esquire
Brooks, LeBoeuf, Bennett,
Foster & Gwartney, P.A.
909 East Park Avenue
Tallahassee, Florida 32301

For Respondent: Joseph J. Registrato, Esquire
2607 North 15th Street
Tampa, Florida 33605

STATEMENT OF THE ISSUE

Whether it is appropriate for Petitioner to discipline Respondent's Florida educator's certificate for acts alleged in Petitioner's Administrative Complaint dated May 28, 2009.

PRELIMINARY STATEMENT

On May 28, 2009, Petitioner, Dr. Eric J. Smith, Commissioner of Education, filed an Administrative Complaint that contained allegations alleging violation of Subsections 1012.795(1)(d) and 1012.795(1)(f), Florida Statutes (2008), advising Respondent, Tina Ramette Adams, that he was seeking disciplinary sanctions against her Florida educator's certificate.

On July 13, 2009, Respondent requested an administrative hearing. On September 15, 2009, Petitioner forwarded the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

On October 5, 2009, an Initial Order was sent to both parties requesting, inter alia, mutually convenient dates for the final hearing. Based on the response of the parties on October 13, 2009, the case was scheduled for final hearing on December 3, 2009, in New Port Richey, Florida.

The hearing took place as scheduled on December 3, 2009. Petitioner presented two witnesses: Deputies Matthew Kadel and David Riffe. Petitioner submitted two exhibits that were received into evidence and marked Petitioner's Exhibits 1 and 2. At the hearing, Respondent testified in her own behalf. Respondent did not offer any exhibits.

The Transcript of Proceedings was filed on December 11, 2009. Both parties timely submitted Proposed Recommended Orders.

All statutory references are to Florida Statutes (2008), unless otherwise noted.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following Findings of Fact are made:

1. Respondent holds Florida Professional Educator's Certificate No. 999830, covering the area of elementary education, which is valid through June 30, 2010.

2. Petitioner is the head of the state agency responsible for certifying and regulating public school teachers in Florida.

3. On August 1, 2008, Respondent was operating a motor vehicle in which her three children were passengers in Pasco County, Florida, in an erratic manner, causing law enforcement officers to stop the vehicle.

4. Upon stopping Respondent's vehicle, the law enforcement officers observed Respondent exhibiting multiple indicators of impairment.

5. Respondent advised the law enforcement officers that she was taking five prescription medications: Soma, Clonazepam, Oxycondone, Prozac, and Fentanyl.

6. Respondent was arrested for driving under the influence and taken to a local hospital for medical clearance. She was subsequently booked at the Land O'Lakes Detention Center.

7. On November 20, 2008, Respondent entered a plea of no contest to an amended charge of reckless driving.

8. The law enforcement officers presented clear and convincing evidence that Respondent operated a motor vehicle while impaired by prescription medications.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57, Fla. Stat. (2009); Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

10. Section 1012.795, Florida Statutes, reads, in pertinent part, as follows:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or a public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with

students for up to ten years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

* * *

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by the State Board of Education.

* * *

(f) Has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, or any other criminal charge, other than a minor traffic violation.

11. Because Respondent's Florida educator's certificate is at risk of being sanctioned, Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The definition of clear and convincing evidence is found in the case of Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

12. Because the statute and rules providing grounds for disciplining Respondent's Florida educator's certificate are penal in nature, they must be construed in favor of Respondent.

Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977).

13. The Administrative Complaint in this case charged violations of Subsection 1012.795, Florida Statutes, as follows:

On or about August 1, 2008, Respondent was driving erratically while impaired by medication. She failed to maintain a single lane and failed to stop for more than one mile after a law enforcement vehicle attempted to stop her by signaling with lights and sirens. When she exited the vehicle, Respondent fell to the ground. Three children were in the vehicle at the time. Respondent was arrested and charged with: Count 1, Driving Under the Influence, and Count 2, Child Neglect/Endangerment. On or about September 9, 2008, the state attorney's office filed no information as to Count 2. On or about November 20, 2008, the court adjudicated Respondent guilty of Reckless Driving, a lesser included offense, as to Count 1.

14. Based on the allegations above, the Administrative Complaint alleged that Respondent was guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

15. Florida Administrative Code Rule 6B-4.009(2)¹ defines "immorality" as:

[C]onduct that is inconsistent with 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.

16. "Moral turpitude" is defined at Florida Administrative Code Rule 6B-4.009(6)² 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 fellowman or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

17. When measured against these definitions, Respondent's conduct, while dangerous and inappropriate, does not reach the level of gross immorality or an act of moral turpitude.

Cisneros v. School Board of Miami-Dade County, Florida, 990 So. 2d 1179 (Fla. 3d DCA 2008); Clark v. School Board of Lake County, Florida, 596 So. 2d 735 (Fla. 5th DCA 1990).

18. Subsection 1012.795(1)(f), Florida Statutes, referenced in paragraph 10, states, in pertinent part,

Has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, or any other criminal charge, other than a minor traffic violation.

19. Subsection 1012.795(2), Florida Statutes, states, in pertinent part:

[T]he decision of guilty by any court . . . shall be prima facie proof of grounds for revocation of the certificate

20. A plea of nolo contendere is not conclusive grounds for dismissal. Kinney v. Department of State, Division of Licensing, 501 So. 2d 129 (Fla. 5th DCA 1987); Ayala v. Department of Professional Regulation, 478 So. 2d 1116 (Fla. 1st DCA 1985).

21. An examination of the factual circumstances in the instant case when measured by the Cisneros and Clark cases, supra, leads the undersigned to conclude that Respondent's reckless driving charge is a "minor traffic offense."

22. Petitioner has failed to prove clearly and convincingly that Respondent violated Subsections 1012.795(1)(d) and (f), Florida Statutes.

RECOMMENDATION

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

RECOMMENDED that Respondent, Tina Ramette Adams, be found not guilty of violating Subsections 1012.795(1)(d) and (f), Florida Statutes, and that no disciplinary action be taken.

DONE AND ENTERED this 18th day of February, 2010, in
Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of February, 2010.

ENDNOTES

^{1/} This definition is in the context of disciplinary action by a school district, but is instructive in defining the term as used in Section 1012.795, Florida Statutes.

^{2/} See Endnote 1.

COPIES FURNISHED:

Deborah Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Kathleen M. Richards, Executive Director
Education Practice Commission
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400

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

Edward T. Bauer, Esquire
Brooks, LeBoeuf, Bennett,
Foster & Gwartney, P.A.
909 East Park Avenue
Tallahassee, Florida 32301

Joseph J. Registrato, Esquire
2607 North 15th Street
Tampa, Florida 33605

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.