



Before the Education Practices Commission of the State of Florida

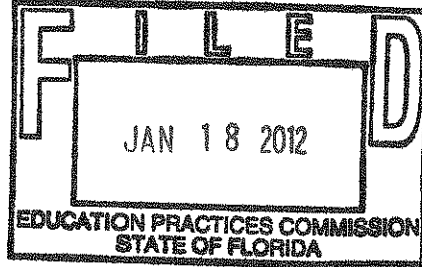
DR. ERIC J. SMITH as the
Commissioner of Education,

Petitioner,

vs.

DANIEL PRESMY,

Respondent.



EPC CASE N^o: 09-0585-RT
Index N^o 12-007-AS
PPS N^o 089-0426

Final Order

Respondent, Daniel Presmy, holds Florida educator's certificate no. 850876. Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the certificate. A Final Order was entered in the case and then reversed by the District Court of Appeal.

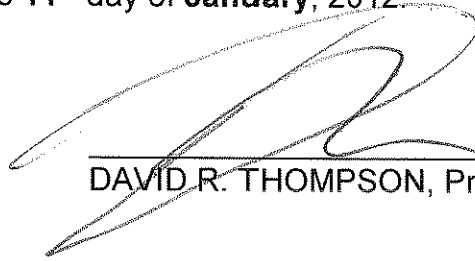
Petitioner and Respondent have entered into a Settlement Agreement for resolution of this cause. The Settlement Agreement and the Administrative Complaint are attached to and made a part of this Final Order.

A Teacher Panel of the Education Practices Commission met on December 8, 2011, in Tallahassee, Florida, pursuant to the Mandate from the District Court of Appeal. The Commission hereby VACATES the previous Final Order and accepts the Settlement Agreement as the appropriate resolution of this cause.

It is therefore ORDERED that the Settlement Agreement is hereby ACCEPTED and Respondent shall comply with its terms and conditions.

This Order becomes effective upon filing.

DONE AND ORDERED, this 11th day of **January**, 2012



DAVID R. THOMPSON, Presiding Officer

COPIES FURNISHED TO:

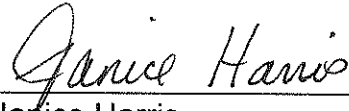
Bureau of Professional Practices
Bureau of Teacher Certification
Florida Administrative Law Reports
Superintendent
Palm Beach County Schools
3300 Forest Hill Blvd., Room C316
West Palm Beach, FL 33406-5869
Chief Personnel Officer
Palm Beach County Schools
3300 Forest Hill Boulevard,
Room A-152
West Palm Beach, FL 33406-5870
Probation Office
Daniel Biggins
Assistant Attorney General

NOTICE OF RIGHT TO JUDICIAL REVIEW

UNLESS WAIVED, 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was sent by Certified U.S. Mail to Daniel Presmy, 2162 Southwest Pruitt Street, Port St. Lucie, Florida 34953; and Thomas L. Johnson, Esquire, 510 Vonderburg, Drive, Suite 3059 and by electronic mail to Margaret O'Sullivan Parker, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 and to Charles Whitelock, Esquire, 300 SE 13th Street, Fort Lauderdale, Florida 33316 this 18th day of **January**, 2012.



Janice Harris,
Education Practices Commission

M A N D A T E

From

**DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT**

To Brian T. Donovan, Education Practices Commission

WHEREAS, in the certain cause filed in this Court styled:

DANIEL PRESMY

Case No : 1D10-5291

v.

Lower Tribunal Case No : 09-0585-RT

DR. ERIC SMITH, COMMISSION OF EDUCATION

The attached opinion was issued on September 16, 2011.

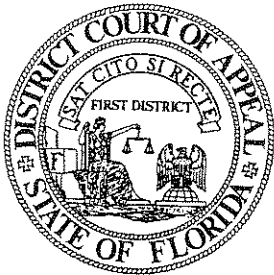
YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable Robert T. Benton, II, Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahassee, Florida,

on this 4th day of October 2011.



Jon S. Wheeler

JON S. WHEELER, Clerk

District Court of Appeal of Florida, First District

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DANIEL PRESMY,

Appellant,

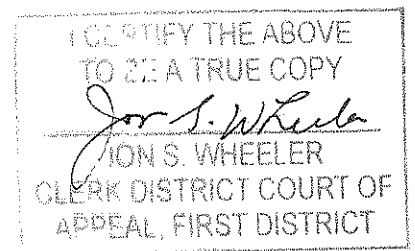
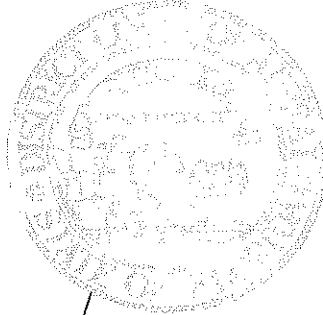
NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D10-5291

DR. ERIC SMITH,
COMMISSION OF
EDUCATION,

Appellee.



Opinion filed September 16, 2011.

An appeal from the Education Practices Commission of the State of Florida.

Thomas L. Johnson and Jeffrey Scott Sirmons of Johnson & Haynes, P.A.,
Brandon, for Appellant.

Charles T. Whitelock of Whitelock & Associates, P.A., Fort Lauderdale, for
Appellee.

HAWKES, J.

This is an appeal from an Education Practices Commission decision that upheld the retroactive application of section 1012.795(1)(n), Florida Statutes (2008). We reverse the Commission's decision, finding: (1) the Legislature did not intend that the statute apply retroactively; and (2) a retroactive application of the statute violates constitutional principles.

Facts

Daniel Presmy, a certified teacher, began teaching elementary education in the West Palm Beach County School District (the School District) in 2002. In 2006, Mr. Presmy was involved in an incident in which he ended a disruption by using his finger tips to push a third-grade student out of his classroom doorway. In a resulting criminal proceeding, Mr. Presmy pled guilty to misdemeanor battery on a minor. Shortly thereafter, the West Palm Beach County School Board (the School Board) voted to suspend Mr. Presmy and initiated dismissal proceedings. Mr. Presmy challenged the School Board's decision before the Commission. In its Final Order, the Commission adopted a Recommended Order issued by an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) and found as follows:

The evidence is insufficient to persuade the undersigned that Presmy's conduct, pushing the disruptive student victim's head out of the classroom with his fingertips, was intended, or reasonably would be expected to cause harm. . . . There is no evidence that Presmy's physical contact with the student in any way impaired his effectiveness in the school system. Further, no evidence was provided that Presmy embarrassed or disparaged the student. Therefore, the greater weight of the evidence fails to establish Presmy violated either the Code of Ethics or Principle of Professional Conduct.

School Board of Palm Beach County, Florida v. Daniel Presmy, DOAH Case No. 07-5125 (August 11, 2008) (hereinafter "the 2008 Decision").

In accord with the 2008 decision, the School Board reinstated Mr. Presmy to his position with the School District.

In 2008, the Legislature amended section 1012.795(1)(n), Florida Statutes, mandating that the Commission permanently revoke the educator certificate of any teacher convicted of misdemeanor battery on a minor. Pursuant to the amended statute, the Commission initiated proceedings to permanently revoke Mr. Presmy's educator certificate, based on his aforementioned battery conviction. After a second hearing regarding the same factual circumstances relied on in the 2008 Decision, the Commission entered a Final Order adopting an ALJ's recommendation that Mr. Presmy's prior conviction warranted permanent revocation of his educator certificate. Mr. Presmy now appeals the Commission's decision. We write only to address the constitutionality of the statute as applied to educators who have had their certificates revoked based on conduct that occurred prior to the 2008 amendments to section 1012.795(1)(n).

Analysis

Whether a statute applies retroactively or prospectively is a pure question of law to be reviewed *de novo*. See D'Angelo v. Fitzmaurice, 863 So. 2d 311, 314 (Fla. 2003).

Section 1012.795(1)(n) (2008) provides:

(1) The Education Practices Commission . . . **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 . . . **provided it can be shown that the person:**

(n) Has been disqualified from educator certification under § 1012.315 [Fla. Stat. (2008)]. (emphasis added).

Section 1012.315(2)(a) (2008) provides:

A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in §1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under §1012.01, §1002.39 or §1002.395, if the person, instructional personnel, or school administrator has been convicted of:

(2) Any misdemeanor offense prohibited under any of the following statutes:

(a) §784.03, relating to battery, if the victim of the offense was a minor.

According to the Commission, section 1012.795(1)(n), mandates it permanently revoke the educator certificate of any teacher convicted of a criminal offense listed in section 1012.315. The Commission has ruled the Legislature intended for 1012.795(1)(n) to apply retroactively, disqualifying certificate holders who were convicted of a section 1012.315 offense prior to the statute's enactment from teaching in Florida Schools. We disagree, finding: (1) the Legislature did not intend that the statute apply retroactively; and (2) a retroactive application of the

statute violates constitutional principles.

It is undisputed that the Legislature amended section 1012.795(1)(n) after the Commission issued Mr. Presmy an educator certificate and after he plead guilty to misdemeanor battery. Thus, the operative inquiry is whether section 1012.795(1)(n) should apply retroactively. The Florida Supreme Court has adopted a two-pronged test for determining whether a statute may apply retroactively: a reviewing court must ascertain (1) whether the Legislature clearly expressed its intent that the statute have retroactive application; and if so, (2) whether retroactive application would violate any constitutional principles. See Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One, 986 So. 2d 1279, 1284 (Fla. 2008) (quoting Metro. Dade County v. Chase Fed. Hous. Corp., 737 So. 2d 494, 499 (Fla. 1999)); see also Menendez v. Progressive Express Insurance Co., 35 So. 3d 873, 877 (Fla. 2010).

With respect to the first prong, the Legislature did not clearly express an intent that section 1012.795(1)(n) apply retroactively. Substantive statutes are presumed to apply prospectively, absent a demonstrated legislative intent to the contrary. See Metro. Dade County, 737 So. 2d at 499 (holding “[t]he general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively.”); see also Hassen v. State Farm Mut. Auto. Ins. Co., 674 So. 2d 106, 108 (Fla. 1996). In

determining whether the Legislature intended that a statutory provision be applied retroactively, courts examine both the statute's plain language and the Legislature's purpose for enacting it. See Fla. Hosp. Waterman, Inc. v. Buster, 984 So.2d 478, 488 (Fla. 2008) (quoting Metro. Dade County, 737 So. 2d at 500).

In the instant case, there is nothing indicating the Legislature intended the 2008 amendment to section 1012.795(1)(n) be applied retroactively. Indeed, the statute's express language (and the provision of section 1012.315 it references) does not directly or indirectly address retroactivity. To the contrary, the disputed statutory provisions enumerate a list of specific offenses that make a person "ineligible for educator certification." It is axiomatic that a statute that expressly operates only to set forth the offenses that bar an individual from gaining educator certification cannot be relied on as the means by which the Commission retroactively strips educators who have already achieved certification of their certificates.

Additionally, there is no language in the staff analysis and enacting reports for sections 1012.795 and 1012.315 that can be construed as indicating the Legislature intended either statute apply retroactively. See House of Representative Staff Analysis, Bill #CS /CS /CS /SB 1712, p.7. Although the Legislature made clear its intent to take away the Commission's discretion in offering certification to individuals who had previously violated section 1012.315, there is nothing

demonstrating an intent to retroactively strip teachers of their certification for having previously committed and disclosed violations of section 1012.315. Id.

With respect to the second prong, the Commission's retroactive application of section 1012.795(1)(n) is unconstitutional. Even where the Legislature has expressly stated that a statute will apply retroactively, reviewing courts must reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty. See State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So. 2d 55, 61 (Fla. 1995); see also Metro. Dade County, 737 So. 2d at 499 (quoting Landgraf v. USI Film Prods., 511 U.S. 244, 270 (1994)) (holding the central focus of an inquiry into the retroactive application of the statute is whether doing so "attaches new legal consequences to events completed before its enactment.>").

Here, it is undisputed that, at the time Mr. Presmy pled guilty to misdemeanor battery, section 1012.795(1)(n) had not yet been amended. Thus, although Mr. Presmy's conduct may have placed his certificate in jeopardy under other statutory and Code of Ethics or Principle of Professional Conduct provisions, there was no law enacted that specifically mandated that the Commission revoke his certificate for committing misdemeanor battery. In short, Mr. Presmy had a vested property interest¹ in his educator certification¹, and the Commission's

¹ A professional has a property interest in his license to practice his profession protected by the due process clauses of the state and federal constitutions. See Robinson v. Fla. Board of Dentistry, 447 So. 2d 930 (Fla. 3d DCA 1984). Due

retroactive application of section 1012.795(1)(n) impaired that interest by attaching new legal consequences to events that occurred before its enactment.

Accordingly, because: (1) the Legislature did not intend for section 1012.795 to apply retroactively; and (2) the Commission's interpretation and application of sections 1012.795(1)(n) and 1012.315 violates constitutional provisions, we reverse the Commission's ruling.

REVERSED.

VAN NORTWICK and PADOVANO, JJ., CONCUR.

process includes a prohibition against ex post facto laws which deprive a citizen of life, liberty or property based on conduct occurring before the effective date of the prohibition. Art. I, § 9, Fla. Const.; see also Rose v. State, 507 So. 2d 630 (Fla. 5th DCA 1987);

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

DR. ERIC J. SMITH, as
Commissioner of Education

Petitioner,

vs.

CASE NO. 089-0426

DANIEL PRESMY,

Respondent.

SETTLEMENT AGREEMENT

Petitioner and Respondent hereby stipulate and agree as follows:

1. **Certification.** Respondent holds Florida Educator's Certificate Number 850876 issued by the Department of Education covering the area of Elementary Education, which was valid through June 30, 2008. *2013 DP*

2. **Employment.** At all times pertinent hereto, Respondent was employed as a Third Grade Teacher at Roosevelt Elementary School in the Palm Beach County School District.

3. **Allegations.** Respondent neither admits nor denies, but elects not to contest the allegations set forth in Petitioner's Administrative Complaint, which are incorporated herein by reference.

4. **Letter of Reprimand.** Respondent agrees to accept a letter of reprimand, a copy of which shall be placed in his certification file with the Department of Education and a copy of which shall be placed in his personnel file with the employing school district.

5. **Fine.** Respondent agrees to pay a fine in the amount of \$500.00 to the EPC within one (1) year of the date of the Final Order accepting this Settlement Agreement.

6. **Violation.** In the event Respondent fails to comply with each condition set forth herein, he agrees that the Petitioner shall be authorized to file an Administrative Complaint or a Notice of Violation with the EPC seeking sanctions against his Florida educator's certificate up to and including permanent revocation of his Florida educator's certificate and a permanent bar from re-application for a Florida educator's certificate, based upon the violation of the terms of this Settlement Agreement.

7. **Costs and Fees.** Respondent agrees that any costs associated with the fulfillment of the terms of this Settlement Agreement shall be his sole responsibility. These costs include, but are not limited to, those associated with the Recovery Network Program (RNP) and Probation, if applicable. The probation monitoring fee shall be held in abeyance if Respondent is not employed as an educator pursuant to the terms of the Probation.

8. **Force and Effect.** This Settlement Agreement constitutes an offer of settlement of disputed issues of material fact until accepted and executed by all parties. The Settlement Agreement is void and has no force or effect unless executed by all parties and accepted by the EPC. If the Settlement Agreement is not accepted and executed by all parties, the terms herein shall be inadmissible in any subsequent formal or informal administrative hearing or in any other legal action between the parties.

9. **Notice of "Three Strikes" Provision.** Respondent is hereby put on notice that Section 1012.795(6)(b), Florida Statutes (2004), provides for permanent revocation of an educator's certificate under certain circumstances when the educator's certificate has been sanctioned by the Education Practices Commission on two (2) previous occasions.

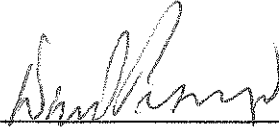
10. **Waiver of Rights.** Respondent understands provisions of this Settlement Agreement, their legal effect, and his rights under Florida law to a formal hearing before a duly designated administrative law judge of the Division of Administrative Hearings (DOAH) or an informal hearing before the EPC. Respondent specifically waives his right to both a formal and an informal hearing, except he may appear before the EPC in order to urge the adoption of this Settlement Agreement. Respondent further acknowledges that he is under no duress, coercion or undue influence to execute this Settlement Agreement and that he has had the opportunity to receive the advice of legal counsel prior to signing this Settlement Agreement.

11. **Approval.** When fully executed, this Settlement Agreement shall be submitted to the EPC with the joint request by the parties that the EPC accept and adopt the terms of this Settlement Agreement as the basis for its Final Order in this proceeding. The parties understand that the EPC has the discretion to reject this Settlement Agreement and order a full evidentiary hearing on the allegations of the Administrative Complaint if, in the exercise of its discretion, it deems such action to be appropriate.

12. **Notice.** Respondent waives all statutory and regulatory provisions concerning notice of hearing and agrees that this Settlement Agreement may be presented to the EPC for consideration at its next available scheduled meeting, provided that Respondent is given reasonable advanced notice of time, place and date of said meeting.

(SIGNATURE AND NOTARIZATION ON FOLLOWING PAGE)



IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on this
15TH day of DECEMBER, 20 11.

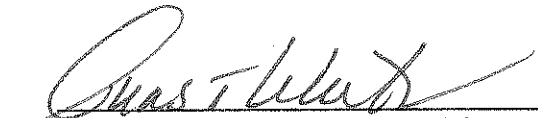


DANIEL PRESMY

STATE OF FLORIDA
COUNTY OF PALM BEACH

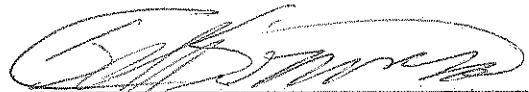
The foregoing instrument was acknowledged before me this 15TH day of
December, 20 11, by DANIEL PRESMY
who is _____ personally known or produced FL-DRIVER'S LIC # PG25-16087-249-0
as identification [type of identification produced].


NOTARY PUBLIC
My commission expires: *  *
TERRIE TYUS ALLEN
MY COMMISSION # DD 935948
EXPIRES: November 9, 2013
Bonded Thru Budget Notary Services



CHARLES WHITELOCK, ESQUIRE
Charles T. Whitelock, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316
Telephone (954) 463-2001
Facsimile (954) 463-0410

ATTORNEY FOR PETITIONER



JEFFREY SIRMONS, ESQUIRE
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510 Vonderburg Dr., Suite 3059
Bradenton, Florida 33511
Telephone (813) 654-7272
Facsimile (813) 662-7444

ATTORNEY FOR RESPONDENT

**STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION**

**DR. ERIC J. SMITH, as
Commissioner of Education,**

Petitioner,

vs.

CASE NO. 089-0426

DANIEL PRESMY,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, Dr. Eric J. Smith, as Commissioner of Education, files this Administrative Complaint against DANIEL PRESMY. The Petitioner seeks the appropriate disciplinary sanction of the Respondent's educator's certificate pursuant to Sections 1012.315, 1012.795, and 1012.796, Florida Statutes, and pursuant to Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Profession in Florida, said sanctions specifically set forth in Sections 1012.795(1) and 1012.796(7), Florida Statutes.

The Petitioner alleges:

JURISDICTION

1. The Respondent holds Florida Educator's Certificate 850876, covering the area of Elementary Education, which was valid through June 30, 2008.
2. At all times pertinent hereto, the Respondent was employed as a Third Grade Teacher at Roosevelt Elementary School in the Palm Beach County School District.

MATERIAL ALLEGATIONS

3. On or about December 11, 2006, Respondent struck D.H., a twelve-year-old, male student, against the will of D.H. On or about July 30, 2007, Respondent pled and the court adjudicated him guilty of one count of Battery in violation of Florida Statutes Section 784.03.
4. Conviction of Battery in violation of Florida Statutes Section 784.03 when the victim is a minor now disqualifies an individual from holding an Educator's Certificate under Section 1012.315 of the Florida Statutes.

The Petitioner charges:

STATUTE VIOLATIONS

COUNT 1: The Respondent is in violation of Section 1012.795(1)(f), Florida Statutes, in that Respondent has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

COUNT 2: The Respondent is in violation of Section 1012.795(1)(g), Florida Statutes, in that Respondent has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

COUNT 3: The Respondent is in violation of Section 1012.795(1)(j), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

COUNT 4: The Respondent is subject to Section 1012.795(1)(n), Florida Statutes, in that Respondent has been disqualified from educator certification under 1012.315, Florida Statutes.

RULE VIOLATIONS

COUNT 5: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), Florida Administrative Code, in that Respondent has failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

(SIGNATURE ON FOLLOWING PAGE)

WHEREFORE, based on the reasons set forth herein and in accordance with the Explanation of Rights and Election of Rights forms attached to and made a part of this Administrative Complaint, Petitioner respectfully recommends that the Education Practices Commission impose an appropriate sanction against the Respondent's educator's certificate pursuant to the authority provided in Sections 1012.795(1) and 1012.796(7), Florida Statutes. The sanctions imposed by the Education Practices Commission may include, but are not limited to, any one or a combination of the following: issuing the Respondent a written reprimand; placing the Respondent on probation for any period of time; restricting the Respondent's authorized scope of practice; assessing the Respondent an administrative fine; directing the Respondent to enroll in the Recovery Network Program; suspending the Respondent's educator's certificate for a period of time not to exceed five years; revoking the Respondent's educator's certificate for a period of time up to 10 years or permanently; determining the Respondent to be ineligible for certification; or barring the Respondent from reapplying for an educator's certificate for a period of time up to 10 years or permanently.

EXECUTED on this 30th day of March, 2009.



DR. ERIC J. SMITH, as
Commissioner of Education
State of Florida



EDUCATION PRACTICES COMMISSION
STATE OF FLORIDA

KATHLEEN RICHARDS
Executive Director

MARK STRAUSS
Chairperson

DANIEL BIGGINS
Counsel

DAVID THOMPSON
Co-Chairperson

January 11, 2012

Daniel Presmy
2162 Southwest Pruitt Street
Port St. Lucie, Florida 34953

Re: Dr. Eric J. Smith vs. Daniel Presmy
EPC No.: 09-0585-RT; DOE No.: 850876

Dear Mr. Presmy:

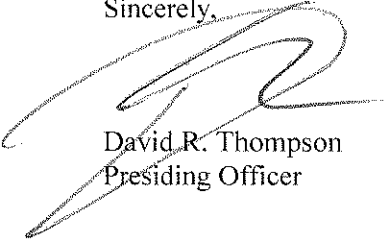
As you know, the teacher panel of the Education Practices Commission reviewed the matter pending against you. Based upon the panel's consideration of this matter and upon the panel's acceptance of your Settlement Agreement, you are hereby reprimanded.

This panel, composed of your peers, believes that, as a teacher, you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession. The profession cannot condone your actions, nor can the public who employ us.

The Education Practices Commission sincerely hopes it is your intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibilities as an educator. To violate the standards of the profession will surely result in further action being taken against you.

This letter of reprimand is being placed in your state certification file, and a copy is being sent to the Palm Beach County School Board for placement in your personnel file.

Sincerely,


David R. Thompson
Presiding Officer