

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-3689PL  
 )  
CAREN CHRISTINE OLSEN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the formal hearing was commenced by video teleconference on September 1, 2010, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings, with the parties appearing from Orlando, Florida. As set forth below, the hearing was not concluded until September 1, 2011.

APPEARANCES

For Petitioner: Todd P. Resavage, Esquire  
Brooks, LeBoeuf, Bennett,  
Foster and Gwartney, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: Richard W. Withers, Esquire  
Joseph C. Shoemaker, Esquire  
Bogin, Munns and Munns, P.A.  
628 South Fourteenth Street  
Leesburg, Florida 34748

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Caren Christine Olsen (Respondent), committed the violations alleged in an Administrative Complaint issued April 20, 2010, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On April 20, 2010, Dr. Eric J. Smith, as Commissioner of Education for the State of Florida (Petitioner), issued an Administrative Complaint against Respondent that alleged multiple counts of statutory and rule violations. All of the factual allegations related to the submission of a certificate of completion for an English for Speakers of Other Languages (ESOL) class. Petitioner alleged that Respondent had submitted the certificate even though, in fact, she had not duly completed the class. In doing so, Petitioner maintained Respondent had violated provisions of section 1012.795, Florida Statutes (2009), and rule set forth in rule 6B, Florida Administrative Code. Based upon Respondent's conduct, Petitioner alleged that the Education Practices Commission should take disciplinary measures against Respondent's teaching certificate.

Through her attorney, Respondent disputed paragraphs four and five of the Administrative Complaint and requested a formal hearing. The case was forwarded to the Division of Administrative Hearings for formal proceedings on June 24, 2010.

A Notice of Hearing was issued on July 7, 2010, and the case was scheduled for hearing. At the hearing, the parties presented testimony from Anthony Biggs, Susan Barnhill, Alfred Lopez, Harold Border, Caren Olsen, and Jason Olsen. Petitioner's Exhibits A through F were admitted into evidence. The Transcript of the proceeding conducted on September 1, 2010, was filed with the Division of Administrative Hearings on September 9, 2010.

On September 20, 2010, Respondent moved to reopen the record. Essentially, Respondent maintained that new evidence had been recovered that might convince Petitioner to reconsider the decision in this case. Petitioner did not oppose the request. Accordingly, the parties were afforded additional time so that Petitioner witness(es) could review the new material.

Eventually, the case was rescheduled to complete the taking of evidence regarding the newly discovered material on July 7, 2011. Due to a notice defect, Respondent did not appear on that date.

The hearing was next noticed to be completed on September 1, 2011. Prior to that hearing date, counsel for Respondent moved to withdraw its representation.

On September 1, 2011, Respondent did not participate in the conference call that was conducted to complete the evidence in this matter. At the scheduled time for the hearing, counsel for

Respondent, Joseph C. Shoemaker, and the undersigned participated in the telephone conference. Mr. Shoemaker renewed his Motion to Withdraw as Counsel for Respondent. Mr. Shoemaker represented that Respondent had been afforded notice of the request to withdraw, as well as the date, time, and method of the conference call to complete the hearing. After waiting not less than 15 minutes for Respondent to call in, Mr. Shoemaker's request to withdraw was granted and the record in this cause was closed. Subsequently, in accordance with the directive of the undersigned, Mr. Shoemaker filed copies of the certified receipts that referenced notice being provided to Respondent.

The parties were granted until September 12, 2011, to file proposed recommended orders. Petitioner's proposal was timely filed and has been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, as the Commissioner of the Florida Department of Education, is responsible to investigate and prosecute complaints against persons who hold a Florida Educational Certificate who are alleged to have violated the provisions of law related to the education profession in the State of Florida. See §§ 1012.79 and 1012.795, Fla. Stat.

2. At all times material to the allegations of this case, Respondent held Florida Educator's Certificate No. 999159, covering mathematics, which was valid through June 30, 2010.

3. At all times material to this case, Respondent was employed at Freedom High School in Orange County, Florida. As a secondary teacher, Respondent was required to complete ESOL training.

4. In order to meet the ESOL requirement, on or about January 14, 2008, Respondent enrolled in an ESOL class taught by Mr. Biggs. Mr. Biggs was a district compliance specialist who was fully approved to teach the ESOL class. He required that participants in the ESOL course attend all of the class sessions.

5. The ESOL class requirements were: attendance at the 14 sessions, pre- and post-curriculum tests, completion of a portfolio of the course, and completion of a final evaluation of the course.

6. Although enrolled in Mr. Biggs' class, Respondent did not attend all of the class sessions. According to Mr. Biggs, Respondent left the class after the tenth session and did not return.

7. In addition to missing the last sessions, Respondent did not turn in the portfolio or complete the evaluation of the

course. Although Respondent maintained she had completed the portfolio, Mr. Biggs did not have record of such completion.

8. In April 2009, Respondent was required to present a certificate that verified she had completed the aforementioned ESOL class. Although Respondent presented a certificate of completion for the ESOL course to school personnel, record of the credit for such completion could not be located.

9. Eventually, it was discovered that Respondent did not have credit for the class because she had not completed the class and had not been given a certificate of completion by the instructor (Mr. Biggs). Thus, the issue of how Respondent could present a certificate of completion when none had been issued was raised by Orange County School District personnel.

10. In fact, the certificate presented by Respondent lacked the Orange County Public School logo. In follow-up to this discovery, Respondent's principal initiated a formal investigation to resolve the matter. When it was determined that Respondent could not produce a valid certificate of completion for the ESOL course, Respondent's employment with the Orange County School District was terminated.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these

proceedings. §§ 120.57(1), 1012.796(6), and 1012.796(7), Fla. Stat.

12. Section 1012.796(6), provides:

\* \* \*

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

13. Section 1012.796(7), provides:

\* \* \*

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.
2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.
4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
5. Satisfactorily perform his or her assigned duties in a competent, professional manner.
6. Bear all costs of complying with the terms of a final order entered by the commission.

\* \* \*



(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

14. Section 1012.795, provides in pertinent part:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for a period of time not to exceed 5 years, 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 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 a period of time not to exceed 10 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, of any person found to have a delinquent child support obligation; or may impose any other penalty provided by law, provided it can be shown that the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(c) Has been guilty of gross immorality or an act involving moral turpitude.

(d) Has had an educator certificate sanctioned by revocation, suspension, or surrender in another state.

(e) Has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(f) Upon investigation, has been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the district school board.

(g) Has breached a contract, as provided in s. 1012.33(2).

(h) Has been the subject of a court order directing the Education Practices Commission to suspend the certificate as a result of a delinquent child support obligation.

(i) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(j) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(k) Has violated any order of the Education Practices Commission.

(l) Has been the subject of a court order or plea agreement in any jurisdiction which requires the certificate holder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

15. A teacher may be disciplined if he or she "[h]as violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules." The Principles of Professional Conduct for the Education Profession in Florida are set out in Florida Administrative Code rule 6B-1.006. That rule provides, in part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

\* \* \*

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

16. In this matter, Petitioner bears the burden of proof

to establish that Respondent engaged in the conduct complained of by the Administrative Complaint. To that end, Petitioner must establish by clear and convincing evidence the allegations against Respondent. See Dep't of Banking & Fin, Div. of Sec. & Inv. Prot. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence,' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). Evidence that is credible, denoted by precise facts and information that a witness distinctly remembers is sufficient to support the burden of clear and convincing evidence. See In re Davey, 645 So. 2d 398 (Fla. 1994), and Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983). In this matter, it is concluded that Respondent presented a false or unauthorized certificate of completion to Orange County Schools in an effort to demonstrate completion of the ESOL class when, in fact, she had not met the requirements of completion.

18. As to the specific allegations of this case, it is concluded that Respondent failed to act honestly in connection with the presentation of the false certificate of completion.

19. By virtue of a teacher's special role in mentoring and instructing students, teachers are held to a high moral

standard. See Adams v. Prof'l Prac. Cncl, 406 So. 2d 1170 (Fla. 1st DCA 1981). In this regard, it is reasonably expected that teachers demonstrate honesty in all professional dealings and not violate the requirements of employment. Respondent was required to complete the ESOL course, did not do so, submitted a false certificate of completion, and failed or otherwise refused to explain the matter. The lack of candor and submission of the false certificate when she had not completed the ESOL course demonstrate a lack of honesty. Accordingly, Petitioner has established by clear and convincing evidence that Respondent's teaching certificate should be disciplined for her conduct in this cause.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner and the Education Practices Commission enter a Final Order that suspends Respondent's teaching certificate for a period not to exceed one year.

DONE AND ENTERED this 27th day of September, 2011, in  
Tallahassee, Leon County, Florida.



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J. D. PARRISH  
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 27th day of September, 2011.

COPIES FURNISHED:

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

Todd P. Resavage, Esquire  
Brooks, LeBoeuf, Bennett,  
Foster and Gwartney, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301

Caren Christine Olsen  
2429 Shelby Circle  
Kissimmee, Florida 34743

Lois Tepper, Interim General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Marian Lambeth, Bureau Chief  
Bureau of Professional Practices  
Services  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
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.