

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, )  
AS COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-10515PL  
 )  
JAMES BRUNSON BROWN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On April 20, 2011, a duly-noticed hearing was held in Madison, Florida, before Lisa Shearer Nelson, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. David Holder, Esquire  
40 Grand Flora Way  
Santa Rosa Beach, Florida 32459

For Respondent: Dr. James B. Brown, pro se  
Post Office Box 584  
Madison, Florida 32341

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated section 1012.795(1)(d), (g) or (j), Florida Statutes (2009), or Florida Administrative Code Rule 6B-1.006(5)(a) or (h), as alleged in the Administrative Complaint, and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On October 18, 2010, Dr. Eric J. Smith, as Commissioner of Education (Petitioner), filed a five-count Administrative Complaint against Respondent, alleging that Respondent, James Brunson Brown (Respondent or Dr. Brown), violated section 1012.795(1)(d), (g) and (j), and Florida Administrative Code Rule 6B-1.006(5)(a) and (h). Respondent, through counsel, disputed the allegations in the Administrative Complaint and requested a hearing pursuant to section 120.57(1), Florida Statutes. On December 9, 2010, the case was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

The case was originally scheduled for hearing February 17, 2011. However, on January 27, 2011, Respondent filed an Unopposed Motion for Continuance, alleging that he had discharged his counsel; that he was representing himself in a separate proceeding scheduled for February 21-22, 2011; and that he needed additional time to prepare for hearing. Eventually the case was rescheduled for hearing April 20, 2011, and proceeded as scheduled.

Prior to hearing, however, Petitioner filed a Motion to Compel, alleging that Respondent had not filed any responses to Petitioner's outstanding discovery requests, despite the fact that Petitioner had agreed to extend the time for responding to the discovery by approximately two weeks. The motion was served

by mail on January 31, 2011. Respondent did not respond to the motion, although given ample time to do so. On March 10, 2011, an Order Granting Motion to Compel was rendered, directing Respondent to respond to Petitioner's interrogatories and requests for production no later than March 18, 2011. Respondent was advised in the Order that failure to respond to discovery in compliance with the Order would preclude the admission at hearing of any evidence that should have been identified in response to the outstanding discovery.

The parties filed a Joint Pre-Hearing Stipulation, signed by both counsel for Petitioner and by Dr. Brown, on April 11, 2011. In the Prehearing Stipulation, Respondent indicated that he might call a single witness, Julia Waldrep. He did not list any exhibits to be introduced into evidence. However, at the commencement of the hearing, there were other witnesses present who had been subpoenaed by Dr. Brown. Petitioner objected to these witnesses testifying, and Dr. Brown acknowledged that only Ms. Waldrep was listed as a possible witness for him, and that he had not provided counsel for Petitioner any discovery materials required by the Order Granting Motion to Compel. The additional witnesses were not allowed to testify, and documents that Respondent had not provided to counsel for Petitioner were not admitted into evidence.

Petitioner presented the testimony of Elizabeth Hodge, Michael Akes, and Lou Miller, and Petitioner's Exhibits 1-16 were admitted into evidence. Respondent testified on his own behalf and presented the testimony of Julia Waldrep. The Transcript of the proceedings was filed with the Division on May 5, 2011. Respondent filed a Proposed Recommended Order along with "Respondent's Proposed Exhibits" on May 2, 2011. In response, Petitioner filed a Motion to Exclude Respondent's Post-Hearing Filing of Documents, following which Respondent filed a Second Recommended Order on May 12, 2011. Both Respondent's "Proposed Exhibits" and Second Recommended Order refer to matters that were not introduced at hearing. Petitioner's Motion to Exclude is granted, and these documents have not been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent holds Florida Educator's certificate 309900, covering the area of mathematics. Respondent's certificate is valid through June 30, 2012.

2. During the 2008-2009 school year, Respondent was a teacher at the Madison County Excel School (Excel) in the Madison County School District (the District).

3. Excel is a non-traditional school, and students who attend Excel are either behind academically or have other problems that result in their removal from a traditional school setting.

4. Instruction at Excel is self-paced, using a computer program. Seventy percent of a student's grade for a class would be based upon computer-generated assignments, 20 percent would be class work from a teacher and 5 percent would be based upon participation. Once a student completed the course work, the student had to take and pass an exam. Once students finished the material for one subject, they could begin work in another subject in the same grade period. However, students needed to register for each course before they could take it.

5. There were three different computer programs used at Excel that are relevant to this case. The A+LS system was the program used for computer-based instruction. Pinnacle was the official, computer-based grade book and attendance record. MIS was used to maintain the permanent educational record for each student, including what classes a student took and what grade was assigned for each subject.

6. At the end of each semester, teachers were required to verify each grade that a student was to receive, so that no student's work would be missed. The teacher's signed verification sheets for grades were meant to ensure that all students received credit for all courses the students completed.

7. During the 2008-2009 school year, Respondent maintained a written grade book in which he maintained his grade and attendance records for students in his classes.

8. The District's policy required that teachers enter grades into the Pinnacle system regularly for each student in each course. Use of Pinnacle had been required since the 2007-2008 school year. In the fall of 2008, Respondent resisted following the policy because he felt it penalized students who were already far behind their peers.

9. On or about February 17, 2009, Excel's principal, Elizabeth Hodge, issued a reprimand to Respondent for failing to properly post grades into Pinnacle for his students. Respondent subsequently discontinued use of his handwritten grade book and presumably began using Pinnacle for the recording of his students' grades.

10. Q.F. and S.B. were Respondent's students at Excel during the 2008-2009 school year. S.B. was in Respondent's first, third, and sixth-period classes and Q.F. was in Respondent's second, fourth, and fifth-period classes. Both students enrolled at Madison County High School during the 2009-2010 year.

Student S.B.

11. During the first semester of the 2008-2009 school year, S.B. was in Respondent's class, enrolled in integrated math during the third period, and earned a semester grade of 93 for that subject. During the second semester, with Respondent as her teacher, S.B. began but did not complete Economics. No evidence was presented to demonstrate that Respondent ever completed a

grade verification sheet to indicate that S.B. completed Economics.

12. At the beginning of the 2009-2010 school year, the guidance staff at Madison County High School placed S.B. into classes that Pinnacle showed were appropriate for her. One of those classes was Economics. S.B. objected, stating that she had already completed Economics while at Excel.

13. In order to demonstrate that she had taken Economics, S.B. went to Respondent and asked that he provide to the high school confirmation that she had completed the Economics course. Respondent prepared and sent to Madison High School a letter dated November 17, 2009, in which he stated:

This is to acknowledge that I was the instructor of record for [S.B.] in the school year 2007-08 [sic]. She completed the second semester of Biology and Economics.

Our input system at Excel failed to grant these credits due to employee turnover and untimely submission of grades. At the time, we were in the process of changing principals and losing our data entry personnel.

I can assure you that [S.B.] earned in 87 in Biology and 83 in Economics. We at Excel regret any unnecessary inconvenience that [S.B.] might have suffered.

14. Madison High School officials were still unable to substantiate S.B.'s completion of Economics, and requested Respondent to provide documentation to verify his statements in his November 17, 2009, letter.

15. Respondent prepared and sent to Madison County High School officials a letter dated January 11, 2010, to which he attached a copy of a page from his grade book. The page contained names of students, with grades for the fall semester of the 2008-2009 school year. The grade book page did not contain any information regarding the 2007-2008 school year, referenced in his November 17, 2009, letter.

16. The grade book page submitted with the January 11, 2010, letter, shows a list of student names for class periods three and four. S.B.'s name is included on the list for third period. In the blank provided for listing the subject, the subjects Pre-algebra, Integrated Math 1 and 2 are written in cursive. The term "ECON" is printed in a different colored pen and is written over the word "Subject" printed on the grade book.

17. Reviewing the grade book page, standing alone, does not give any indication which students on the list are taking which courses. However, Respondent represented to officials at Madison High School that the grades listed for S.B. were for Economics.

18. Madison County School District officials pulled the computer records for all of the students listed on this page of the grade book. None of the students listed, including S.B., had grades posted for Economics for the fall term of 2008-2009.



Student Q.F.

19. During the first semester of the 2008-2009 school year, Q.F. was in Respondent's class, enrolled in Algebra 1A-B during the fourth period.

20. At the beginning of the 2009-2010 school year, the guidance staff at Madison County High School placed Q.F. into classes that Pinnacle showed were appropriate for her. One of those classes was biology. Q.F. objected, stating that she had already completed Biology while at Excel.

21. Q.F. went to see Respondent and requested that he provide a letter to the high school to show that she had taken Biology the previous year while at Excel. Respondent prepared and sent a letter dated January 13, 2010, which stated

This 2nd semester class shows (4th period) as an example that [J.B.] and [U.G.] were taking consumer math, [C.J.] was taking Geometry and [Q.F.] was taking Biology.

Ms. [F.] had an 85 average in Bilogy [sic].

22. Attached to the letter was a copy of what appears to be the same page from Respondent's grade for the first semester of the 2008-2009 year that was provided with the January 11, 2010, letter regarding S.B.

23. The grade book page shows a list of students for fourth period that includes Q.F. Next to the circled "4th," the following class subjects are listed: ALG1-A& B/ CONSUMER MATH/BIOLOGY/GEOMETRY. However, in the copy of the same page

attached to Respondent's January 11, 2010, letter, the reference to Biology is not included.

24. As with the copy provided with the January 11, 2010, letter, it is not possible to determine by reference to the grade book page alone, which students were taking which courses.

25. However, Respondent represented to officials at Madison High School that the grades listed for Q.F. were for Biology.

26. Madison County School District officials pulled the computer records for all of the students listed on this page of the grade book. None of the students listed, including Q.F., had grades posted for Biology for the fall term of 2008-2009. As with S.B., Respondent never completed a grade verification sheet indicating that Q.F. had completed Biology.

#### The Altered Grade Book

27. Dr. Michael Akes is the Director of Human Resources for the School District. In looking at the copies of the page from Respondent's grade book, he realized that there was a discrepancy with respect to the term Biology being included on one copy of the page and not on the other. He discovered that, in the original grade book, line number 19 had been cut from a blank page in the book. Names of the classes supposedly taught during fourth period were written on the strip and it was pasted in over the original line 19 containing the course listings for fourth period.

28. Respondent admitted to school officials that he had cut a strip from the back of the book, rewritten the list of courses and then photocopied the page so that it would appear that Biology had always been included in the list of courses being taught. Respondent claimed that the alteration was simply a "correction" of his grade book because he remembered Q.F. had taken Biology.

29. Inasmuch as no student was taking Biology from Respondent during fourth period that semester, Respondent's alteration of his records is not a "correction."

30. Contrary to Respondent's representations to Madison County High School officials, S.B. did not complete Economics and G.F. did not complete Biology while at Excel. Respondent denies doing anything wrong and insists that both students were working on their classes. However, there is simply no documentation to support the representation that the students completed the classes for which they were seeking credit.

31. As a result of Respondent's actions, on February 2, 2010, the Superintendent of Schools, Lou Miller, recommended that Respondent's employment with the School District be terminated.

32. Respondent requested a hearing and a section 120.57(1) hearing was held before Administrative Law Judge Suzanne Hood in DOAH Case No. 10-0998. In a Recommended Order filed July 16, 2010, Judge Hood recommended that Respondent's employment be

terminated based on findings that Respondent committed the acts described above.

33. On August 9, 2010, the Madison County School Board entered a Final Order adopting Judge Hood's Recommended Order and terminated Respondent's employment with the District.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2010).

35. This is a disciplinary action by Petitioner in which Petitioner seeks to discipline Respondent's teaching certificate. Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking and Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

36. As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

37. The Administrative Complaint charges Respondent with violations of section 1012.795(1)(d), (g) and (j), Florida Statutes. Section 1012.795 authorizes the Education Practices Commission to suspend, revoke, or otherwise penalize a teaching certificate, provided it can be shown that the holder of the certificate has committed any of the violations enumerated.

38. The specific provisions in section 1012.795(1) charged in Counts 1-3 of the Administrative Complaint allege that Respondent:

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

\* \* \*

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

\* \* \*

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

39. Count One charges a violation of section 1012.795(1)(c). The Education Practices Commission has not defined "gross immorality" or "moral turpitude" for the purposes of discipline to be imposed pursuant to section 1012.795, Florida Statutes. The Commission has, however defined "immorality" and "moral turpitude" for use by school districts in taking action against instructional personnel in Florida Administrative Code

Rule 6B-4.009. This rule, which may provide guidance in this context, provides in pertinent part:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

\* \* \*

(6) Moral turpitude is 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 fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

40. Moral turpitude has also been defined by the Supreme Court of Florida as "anything done contrary to justice, honesty, principle, or good morals, although it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660, 661 (1933).

41. Count One has been proven by clear and convincing evidence. Respondent falsified documents in order to provide demonstrate that S.B. and Q.F. completed courses that they in fact did not complete. Respondent justifies his actions by stating that a teacher of record is the "supreme power and absolute authority in the classroom." However, teachers do not

have the type of absolute authority Respondent describes. Teachers have the duty and responsibility to teach within the confines of the Educational Code of Florida, the Principles of Professional Conduct for the Education Profession prescribed by Board of Education rules and by the policies and guidelines of the school district by which they are employed. Respondent did not have the authority to fabricate records where none existed, and to do so demonstrates a violation of Count One by clear and convincing evidence.

42. Count Two alleges that Respondent engaged in conduct that seriously reduced his effectiveness as an employee of the school board, in violation of section 1012.795(1)(g). Reduced effectiveness may be inferred from the nature and seriousness of the conduct. Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2d DCA 2000); Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000).

43. There is clear and convincing evidence to support the allegation charged. Respondent altered records to substantiate the completion of courses that were not completed, not for one student but for two. By doing so, Respondent calls into question the accuracy and veracity of any records related to class achievement that he may submit. Even prior to the letters written to the high school regarding S.B. and Q.F., Respondent was reprimanded for his failure to enter grades in the computer system as required. This failure compromises the adequacy of the

records for all of his students. As stated in Gallagher v. Desjarlais, DOAH Case No. 00-2767 (DOAH Oct. 31, 2000; EPC Jan. 19, 2001), "Trust is an important component of the relationship that must exist among teachers and between administrators and a teacher. Respondent's dishonesty seriously undermines this trust." See also Crist v. Hammersley, No. 03-1601PL (DOAH Oct. 1, 2003; EPC Jan. 22, 2004).

44. Count Three charges Respondent with violating Section 1012.795(1)(j). By virtue of the violations proven with respect to Counts Four and Five, Count Three has been proven by clear and convincing evidence.

45. Counts Four and Five charge Respondent with violating several provisions within Florida Administrative Code Rule 6B-1.006, which provide in pertinent 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.

\* \* \*



(h) Shall not submit fraudulent information on any document in connection with professional activities.

46. Both violations have been proven by clear and convincing evidence. By submitting an altered page from his grade book to substantiate completion of courses that had not been completed by S.B. and Q.F., and representing that the coursework had been completed, Respondent failed to maintain honesty in all professional dealings and submitted fraudulent information on a document in connection with professional activities, in violation of rule 6B-1.006(5)(a) and (h).

47. The Education Practices Commission has adopted disciplinary guidelines to provide notice of the range of penalties to be expected for violations of section 1012.795 and rule 6B-1.006. Florida Administrative Code Rule 6B-11.007 identifies several aggravating and mitigating factors that may also be considered in determining the appropriate penalty. Dr. Brown is a knowledgeable teacher in his field. He appears to be very dedicated to his students, especially those who have struggles outside the classroom and are attempting to overcome those obstacles. On the other hand, he took no responsibility for his actions, and his actions were repetitive, knowing and intentional. The undersigned has also considered the penalty imposed in Crist v. Hammersley, supra, and considers it to be an appropriate comparator.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED that the Education Practices Commission enter a final order finding that Respondent violated section 1012.795(1)(d), (g) and (j), Florida Statutes, and Florida Administrative Code Rule 11B-1.006(5)(a) and (h). It is further recommended that the Commission 1) reprimand Respondent; 2) suspend his certificate for a period of 2 years; 3) impose a 3-year probationary period upon his return to teaching in any public or private school in Florida, upon such terms and conditions as the Commission deems appropriate; and 4) require that Respondent take and successfully complete a three-hour, college-level course on professional ethics no later than the first year of probation.

DONE AND ENTERED this 31st day of May, 2011, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
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Filed with the Clerk of the  
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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.