STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS COMMISSIONER OF EDUCATION, Petitioner, vs. CASEY GRIFFITH, Respondent.	)	Case No. 11-1263PL

RECOMMENDED ORDER

On April 25, 2011, a hearing was held in Ocala, Florida, pursuant to the authority set forth in sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Brent McNeal, Esquire
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For Respondent: Mark Herdman, Esquire
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STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated section 1012.795(1)(d) and (f), Florida Statutes (2008), as alleged in the Administrative Complaint, and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On December 15, 2009, Petitioner, Dr. Eric Smith, as Commissioner of Education (Petitioner), filed a two-count Administrative Complaint charging Respondent, Casey Griffith (Respondent or Mr. Griffith) with violating section 1012.795(1)(d) and (f). Respondent executed an Election of Rights form on January 8, 2010, disputing the allegations in the Administrative Complaint and requesting an administrative hearing pursuant to section 120.57(1), Florida Statutes. On March 11, 2011, Petitioner referred the case to the Division of Administrative Hearings for assignment of an administrative law judge.

On March 18, 2011, a Notice of Hearing was issued scheduling the case to be heard April 25, 2011, and the case proceeded as scheduled. The parties filed a Joint Pre-Hearing Stipulation in which they stipulated to the majority of the facts in the Administrative Complaint and, where relevant, those stipulated facts have been included below. The parties stipulated that Respondent violated section 1012.795(1)(f), in that he was adjudicated guilty of a criminal charge other than a minor traffic violation. What remained in dispute is whether Respondent committed gross immorality by his actions leading to his arrest and adjudication of guilt.

Petitioner presented the testimony of Officer Carla Whitley, and Petitioner's Exhibits 1-7 were admitted into evidence.

Respondent presented the testimony of Susan Martelli, Kevin Helms, Jarrod Hickman, and Eula Walker, and testified on his own behalf. Respondent's Exhibit number 1 was admitted into evidence, and Respondent was allowed to late-file Respondent's Exhibit 2, and did so.

The Transcript of the hearing was filed May 9, 2011. Petitioner filed its Proposed Recommended Order on May 19, 2011, and Respondent filed his Proposed Recommended Order on May 20, 2011. Both submissions have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to the allegations in the Administrative Complaint, Respondent has been a licensed teacher in the State of Florida, having been issued Florida Educator's Certificate 1021431. His certificate covers the area of social science, and expires on June 30, 2011.

2. During the 2008-2009 school year, Respondent was a teacher and coach at Florida State University School in Tallahassee, Florida.

3. While attending college, Respondent played football for the University of Florida. During his football career, Respondent suffered several injuries, including five concussions and injuries to his shoulder, hand, knee and ankle. Several of these injuries required surgery, and as a result, Respondent was prescribed a series of pain medications and developed a tolerance

for them. Respondent continues to have surgeries related to his football injuries and continues to take pain medication.

4. On January 17, 2009, Respondent went on a lunch date. During the date, he consumed some alcoholic drinks. At the time of the lunch date, Respondent was also taking pain killers and did not think that these medications impaired his ability to function. However, as a result of the drinks at lunch and/or drinks consumed the night before, coupled with the use of painkillers, Respondent was impaired.

5. Respondent does not remember the incident described below, before waking up in the Leon County Jail medical ward.

6. As acknowledged by Respondent, the ultimate facts of the incident giving rise to his arrest are not in dispute. Respondent was intoxicated or otherwise impaired when he became involved in a verbal confrontation with his neighbor, Jordan Thompson, while the neighbor and his uncle, Gene Thompson, were attempting to secure a cable to the side of the neighbor's residence. Respondent was upset about the amount of noise he perceived the neighbor to be making.

7. Respondent knew most of his neighbors and felt he had a good relationship with them, but did not know this particular neighbor.

8. Respondent threatened his neighbor, shouting profanities at him, and the threats by Respondent caused Thompson and his uncle to go inside his home. Respondent returned to his own

home, came back outside with a shotgun, approached the neighbor's house and continued to threaten Jordan and his uncle with shotgun in hand.

9. Jordan Thompson's aunt, Kathleen, was inside the home and called 911. Respondent was arrested and charged with one count of aggravated assault with deadly weapon without intent to kill, a felony. All three of the Thompsons were very frightened by the incident.

10. After his arrest, at some time over the weekend, Respondent notified administrative authorities at the school where he worked of the incident, and he was placed on administrative leave. At the end of the school semester, he was notified that, along with 47 other teachers, his contract would not be renewed.

11. The incident was reported in the local newspaper and the website of a local television station. At least one witness who testified at hearing read about the arrest in the newspaper. Respondent acknowledged that his call to the school was motivated in part so that the school could "distance" itself from the event.

12. On or about April 2, 2009, the charges against Respondent were amended to misdemeanor charges for trespass; improper exhibition of a dangerous weapon; and using a firearm while under the influence.

13. On or about June 10, 2009, Respondent pled nolo contendere to the charges and the court adjudicated him guilty on all counts. Respondent was sentenced to 30 days in jail, 12 months of probation, substance abuse counseling and any recommended counseling or aftercare, random drug and alcohol screenings, 60 days in jail work camp and payment of applicable fines and fees. Respondent was also ordered to have no contact with the victims and to change his address by August 2009.

14. By all accounts, Respondent is a gifted teacher. He is currently studying at Florida State University working on his doctorate in education.

15. Respondent is embarrassed by his actions January 17, 2009, and regrets having acted as he did. However, he stopped short of acknowledging that he should not mix drugs and alcohol, especially at the doses to which he had become accustomed, and seems to think that he could tolerate mixing the two.

16. Colleagues with whom Respondent worked testified at hearing on his behalf. Of particular interest was the testimony of Eula Walker, a support assistant at Florida High whose daughter had been one of Respondent's students. She, along with other staff members who testified, believed that Respondent could continue to be an effective teacher. She also had no hesitation regarding his continuing to teach her daughter following the January 17, 2009, incident.

CONCLUSIONS OF LAW

17. 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).

18. 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).

19. 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).

20. The Administrative Complaint charges Respondent with violations of section 1012.795(1)(d) and (f). 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.

21. The parties have stipulated that Respondent violated section 1012.795(1)(f), as charged in Count Two of the Administrative Complaint, which makes it a disciplinary violation when a certificateholder 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." The remaining determination is whether Respondent is guilty of the violation charged in Count One. Count One of the Administrative Complaint charges Respondent with "gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education," in violation of section 1012.795(1)(d).

22. 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. 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.
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> * * *
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> (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.

23. 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).

24. It is clear that Respondent's conduct in this instance was inconsistent with the standards of public conscience and good morals. Given Respondent's own reaction to his behavior, and the reports in the media, his conduct meets the definition of immorality.

25. To constitute a violation of section 1012.795(1)(d), however, the conduct must go a step further. It must involve an act of misconduct that is serious, and which demonstrates a flagrant disregard of proper moral standards. Brogan v. Mansfield, No. 96-0286 (DOAH Aug. 1, 1996; EPC Oct. 18, 1996).

26. The conduct at issue here meets this higher standard,

and it is found both as the ultimate finding of fact and recommended conclusion of law that Respondent has committed gross immorality as contemplated by section 1012.795. Respondent voluntarily mixed alcohol and pain medication, and was admittedly impaired at the time of the accident. Brandishing a gun at one's neighbors and shouting threats and profanities at them while brandishing that gun is horrific behavior, impaired or not. Moreover, the impairment in this case only adds to the seriousness of Respondent's behavior given that Respondent created the impairment by mixing drugs and alcohol.

27. Most troubling was Respondent's failure to recognize that, regardless of the tolerance built to the pain medications he had been taking, mixing alcohol with narcotics is a dangerous practice. Until such time as Respondent recognizes that the two substances should not be mixed together, regardless of his belief regarding his ability to tolerate the combination, there can be no assurance that the factors giving rise to this incident could not recur.

28. By the same token, Respondent has significant support in the educational community. Former colleagues and instructors testified and/or wrote letters of support on his behalf. Respondent truly wants to make a contribution to the education of young people in his community.

29. The Education Practices Commission is issued disciplinary guidelines for violations of section 1012.795, and

has identified mitigating and aggravating factors to be considered in determining the appropriate penalty. Fla. Admin. Code R. 6B-11.007. A penalty within the guideline ranges for the violations found is appropriate.

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 is found guilty of section 1012.795(1)(d) and (f) as charged in Counts One and Two of the Administrative Complaint; that his license be suspended for a period of two years; that he be required to submit to an evaluation by a qualified provider approved by the Florida Recovery Network Program within 60 days of the entry of the Commission's final order, and follow any recommended course of treatment or counseling; that he be placed on probation for a period of two employment years; and that he pay a fine of $500 to the Commission.

DONE AND ENTERED this 10th day of June, 2011, in Tallahassee, Leon County, Florida.

LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of June, 2011.

COPIES FURNISHED:

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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.