

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 14-4055PL

THERESA CATHERINE ACKERMAN,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On November 6, 2014, Administrative Law Judge Lisa Shearer Nelson conducted a duly-noticed hearing by means of video teleconference with sites in Tallahassee and Jacksonville, Florida.

APPEARANCES

For Petitioner: J. David Holder, Esquire  
J. David Holder, P.A.  
387 Lakeside Drive  
Defuniak Springs, Florida 32435

For Respondent: Theresa Ackerman, pro se  
4722 Leah Creek Drive  
Jacksonville, Florida 32257

STATEMENT OF THE ISSUE

The issue to be addressed is whether Respondent violated section 1012.795(1)(d) and (j), Florida Statutes (2011), and/or Florida Administrative Code Rule 6A-10.081(5)(a), and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 18, 2013, Pam Stewart, as Commissioner of Education (Petitioner), filed an Administrative Complaint against Respondent, Theresa Ackerman (Respondent or Ms. Ackerman), charging her with violating section 1012.795(1)(d). Initially, Respondent filed a request for a hearing pursuant to section 120.57(2), Florida Statutes, and a hearing before a Teacher Hearing Panel of the Education Practices Commission was convened on July 31, 2014. However, during the course of the hearing it became apparent that there were disputes of material fact. As a result, on August 28, 2014, the case was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

On September 11, 2014, the case was scheduled for hearing to take place on November 6, 2014. On October 8, 2014, Petitioner moved for leave to amend the Administrative Complaint, which was granted by Order dated October 20, 2014. The Amended Administrative Complaint was filed October 20, 2014, adding charges for allegedly violating section 1012.795(1)(j) and rule 6A-10.081(5)(a).

The hearing proceeded and concluded as scheduled, on November 6, 2014. Petitioner presented the testimony of Corporal Michael Abate, Lieutenant Edward Johnson, and Respondent, and Petitioner's Exhibits 1-12 were admitted into evidence, including

the deposition testimony of Respondent and of Charles Beall. Respondent did not present any witnesses and did not submit any exhibits.

The Transcript of the proceedings was filed with the Division of Administrative Hearings on November 24, 2014. Respondent and Petitioner filed their Proposed Recommended Orders on December 1 and December 3, respectively. Petitioner moved to strike Respondent's Proposed Recommended Order on December 1, 2014, and after consideration of the motion and the document, the motion is denied. However, the information contained in the final paragraph of Respondent's Proposed Recommended Order contains information not presented at hearing, and that information has not been considered in the preparation of this Recommended Order.

All statutory references are to the 2011 codification unless specifically indicated. Based on the testimony and demeanor of the witnesses, and the documentary evidence received, the following findings of fact are made.

#### FINDINGS OF FACT

1. Respondent holds Florida Educator Certificate number 972355, covering the area of elementary education. Respondent's certificate was issued on July 1, 2008, renewed on March 5, 2013, and is valid through June 30, 2018.

2. Respondent moved to the State of Florida in approximately March of 2011, from the State of Maine. She, her husband, and two small children moved into an apartment in Ocean Park Apartments at 801 First Street South, Jacksonville, Florida. Respondent's apartment faced the beach and was within 100-200 yards from the beach. Shortly after moving there, Respondent obtained renters' insurance through Geico. The renters' insurance was issued on approximately March 23, 2011.

3. On March 26, 2011, Respondent called the Jacksonville Beach Police Department to report a burglary at her residence. Respondent reported that she and her husband had taken their children to the beach for the day, and upon their return that afternoon, she and her husband placed the stroller, containing a beach bag and various other belongings they took to the beach, inside the front door to the apartment. Respondent and her husband then went upstairs to put the children down for a nap. When they returned downstairs approximately an hour later, the stroller and its contents were missing.

4. Officer Michael Abate of the Jacksonville Beach Police Department responded to Respondent's call. He found no signs of forced entry or any other indications that there had been an intruder. However, the home was apparently unlocked at the time of the reported incident, which would negate the need of forced entry. Assuming for the sake of this Recommended Order that the

burglary occurred,<sup>1/</sup> it appears that the theft was a crime of opportunity, given the apartment's proximity to the beach and the number of people in the area on a spring weekend.

5. Respondent furnished to Officer Abate a list of approximately twelve items she claimed were stolen: the baby stroller; a beach bag; a canon digital camera; an Apple iPad; sunglasses; flip flops; a Coach® wallet; a Maine Driver's License; a Bank of America credit card; \$100 in cash; children's shoes; and towels.

6. On May 5, 2011, Respondent went to the police department and provided a more extensive list (supplemental list) of items she claimed were stolen. This list contained 47 items as opposed to the 12 originally described for Office Abate.

7. In addition to the number of items described, there were a number of discrepancies between the first and second lists. For example, the original list identified \$100 in cash. The supplemental list reported \$160 in cash. The Coach® wallet was originally valued at \$200, while the supplemental list valued the wallet at \$248. The value of a pair of sunglasses changed from \$150 to \$199, and the digital camera's value was amended from \$799 to approximately \$1,200. Other items added to the claim in the supplemental list included an iPhone 4, Otterbox Defender case, and Invisible SHIELD screen protector; an iPad case; a Kobo E-reader; make-up and name-brand cosmetics; monogrammed beach

wraps; and a pair of Lacoste sunglasses in addition to the pair of sunglasses previously listed.

8. On April 1, 2011, Respondent filed a written claim with Assurant Insurance Company, which provided her renter's policy. The value of the claim submitted was \$6,024.56. With the exception of her wallet and driver's license, Respondent claimed that all of the missing items were purchased within a year of the alleged theft. No depreciation was acknowledged for any item.

9. Assurant referred the claim to its special investigations unit for further review, which was conducted by Special Investigator Charles Beall. Mr. Beall interviewed Respondent by telephone on May 17, June 21, and August 3, 2011. During his investigation, Mr. Beall had discovered that some photographs submitted by Respondent of items supposedly taken in the burglary were actually taken two to three weeks after the burglary had been reported. Moreover, the photographs were taken with the camera that was listed as stolen. When Mr. Beall confronted Respondent in the telephone conference on June 21, with the times the pictures were taken, she could not provide an explanation.

10. Respondent was hired at a Duval Charter School at Baymeadows on June 21, 2011. She continues to teach there.

11. Mr. Beall also discovered during his investigation that a receipt from Amazon.com submitted by Respondent for the camera

equipment was altered to reflect a higher purchase price by \$639. The original receipt indicated that a single item, the camera, was purchased for \$599. The receipt was altered to show the purchase of two items (a more expensive camera and a separately purchased lens) for \$1198.95. When asked to confirm the information on the invoice she had provided to Assurant, Respondent initially confirmed the information as accurate. When confronted with the information received from Amazon regarding the purchase, Respondent admitted to altering the Amazon.com invoice in order to make up the monetary difference in her claims deductible.

12. It is found that neither the camera, nor the items photographed with the camera after the date the theft was reported to the Jacksonville Beach Police Department, was actually stolen.

13. Based upon its investigation, Assurant denied Respondent's claim in full and notified Respondent of the denial by certified mail dated August 1, 2011. It also referred the case to the National Insurance Crime Bureau and to the Florida Department of Financial Services, Division of Insurance Fraud. Investigator Ed Johnson (now Lieutenant) from the Division of Insurance Fraud was assigned to the case, and during his investigation interviewed Respondent. During the interview, Respondent provided a sworn statement, which reads in part:

In March of 2011 my family moved to the above listed address. Within two weeks of our arrival, we were the victims of a theft. I then filed a police report with the Jacksonville Beach Police Department, and filed a claim with my insurance company. While filing a report and claim, I purposely [sic] and untruthfully stated that a Canon T2i camera was stolen. Through the investigation of Mr. Charles Beall at Assurant Insurance it was determined that my claim for the camera was false, and my claim was denied. I falsified the camera being stolen in order to make up for the deductible on my claim.

I also claimed that my ME (Maine) license was stolen. It has been determined that my ME license was actually used to acquire a Florida Drivers License on April 11, 2011.<sup>[2/1]</sup>

14. Lt. Johnson prepared and submitted an arrest warrant for Respondent's arrest on September 29, 2011, and a warrant was issued that same day. Respondent was charged with filing false insurance claims, a third-degree felony. Respondent was arrested the following day.

15. On December 14, 2011, Respondent entered a pre-trial intervention program. On October 2, 2012, based upon her completion of the program, the State Attorney's Office declined to prosecute the charges.

16. On April 29, 2013, Respondent submitted a letter to Pam Stewart as Commissioner of Education, in response to the



preliminary investigation by DOE. The letter stated in pertinent part:

In April, 2011, my home was robbed, while myself and my husband were settling our two young children upstairs for a nap. Our stroller was taken, along with all of the contents. The contents totaled less than \$5,000, however the emotional toll was far more extensive. In the aftermath of such an event, our emotions were heightened, and we were in dismal spirits. Although we had renter's insurance, we knew that we would struggle financially to replace all of the items that were stolen. At that time, I made a foolish decision to add an extra item to my insurance claim to make up for our deductible, so that we wouldn't end up losing money.

\* \* \*

They reported the case to local law enforcement, and I met with a Detective to explain how a law-abiding, well-respected community leader such as myself,<sup>[3/]</sup> had made such a decision. The Attorney General decided to pursue the case, and charge me of [sic] Insurance Fraud in the 3rd degree. I fully cooperated with law enforcement officers, and drove myself [to] the jail to accept my consequence.

I bonded out of jail, hired a lawyer, and enrolled in a "Pre-Trial Diversion" program. . . . I completed several hours of community service, and paid a hefty fine during my "Pre-Trial Diversion" program. After a year, upon successful completion of the program, the charges were dropped, and I am left with an arrest record. I feel like I have paid the price for what I did, and learned several valuable lessons during the recovery process.

My family has moved on financially from this crisis, but the emotional scars will remain. Educating children is my truest love. Giving back to my community and country by educating our future leaders, and enhancing the lives of people around me is really who I am. This situation has encouraged me to reflect deeply upon my character, and what I am passionate about.

I appreciate your time and careful consideration regarding this situation. I made a poor decision, for which I have suffered immensely for [sic].

17. In both the letter submitted to the Commissioner of Education and during her appearance before a panel of the Education Practices Commission, Respondent consistently maintained that the residence was in fact robbed. Respondent's admission that she inflated the amount of her insurance claim in order to cover the amount of her deductible is consistent with a burglary occurring. The fact that there was no evidence of forced entry into an unlocked home near the beach is not clear and convincing evidence that the theft did not occur.<sup>4/</sup> Petitioner's claim that Respondent was lying when she made statements that there was in fact a theft at her home is rejected.

#### CONCLUSIONS OF LAW

18. 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.

19. This is a proceeding to discipline Respondent's educator certificate. Because disciplinary proceedings are considered penal in nature, Petitioner is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. 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). As stated by the Florida Supreme Court, the standard includes both qualitative and quantitative components:

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 Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005).

"Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous."

Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

21. Petitioner alleged that Respondent violated section 1012.795(1)(d) and (j), Florida Statutes, and Florida Administrative Code Rule 6A-10.081(5)(a). Section 1012.795 provides in relevant part:

(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 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 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 an 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 rule of the State Board of Education.

\* \* \*

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

22. At the time of the events alleged in the Administrative Complaint, the Principles of Professional Conduct for the Education Profession in Florida were contained in Florida Administrative Code Rule 6B-1.006. The rule was transferred to the current rule, rule 6A-10.081. The relevant text, however, is the same. Rule 6A-10.081 provides 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 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.

23. Section 1012.796(7) provides, in pertinent part:

1012.796 Complaints against teachers and administrators; procedure:

\* \* \*

(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 \$2000 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 termination of employment in the state in any

public or private position requiring an 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.

24. Section 1012.795 is considered a penal statute and as such, it must be strictly construed, with any ambiguity construed against the agency. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988). Disciplinary statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden their application. Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997); see also Beckett v. Dep't of Fin. Svcs., 982 So. 2d 94, 100 (Fla. 1st DCA 2008); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

25. Count 1 of the Amended Administrative Complaint alleges that Respondent violated section 1012.795(1)(d), "in that Respondent has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education." Petitioner indicates in its Proposed Recommended Order that it is not relying on the authority to discipline for gross immorality, but rather, is relying on the part of section 1012.795(1)(d) authorizing discipline for acts of moral turpitude.

26. The term "moral turpitude" is defined in rule 6A-4.009, which has been transferred to rule 6A-5.056. All of the acts



upon which this proceeding is based occurred prior to a substantial rewording of rule 6A-5.056 on July 8, 2012. Thus, whether such acts constituted ones involving moral turpitude must be gauged against the standard in effect at the time the acts giving rise to this proceeding occurred, i.e., that version of the rule as it existed prior to its 2012 amendment. Childers v. Dep't of Env'tl. Prot., 696 So. 2d 962, 964 (Fla. 1st DCA 1997) ("The version of a statute in effect at the time grounds for disciplinary action arise controls.").

27. Prior to its 2012 amendment, rule 6A-5.056(6) defined "moral turpitude" 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 fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude." Moral turpitude also has been defined by the Supreme Court as:

involv[ing] the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society . . . . It has also been defined as anything done contrary to justice, honesty, principle or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated. (citations omitted).

State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 611 (1933).

28. "By virtue of their leadership capacity, teachers are traditionally held to a high moral standard in a community."

Adams v. Fla. Prof'l Practices Council, 406 So. 2d 1170, 1172

(Fla. 1st DCA 1981). As a group of professionals placed in the position of safeguarding and teaching children, educators are in a position of the highest trust. It is unnecessary for

Respondent to have been convicted of a crime in order to be disciplined for conduct reflecting moral turpitude. It is enough for her to have committed the acts forming the basis for such a crime. Walton v. Turlington, 444 So. 2d 1082 (Fla. 1st DCA 1984).

29. Petitioner has proven the charge in Count I by clear and convincing evidence. Respondent chose to engage in a series of false statements for the purpose of financial benefit at the expense of the insurance company. She chose an insurance policy with a deductible, which she then attempted to thwart by claiming the loss of items that were not stolen from her, and inflating the value of other items. Despite her effort to cast herself as a victim and describe her conduct as "a foolish decision," in fact she made a series of decisions and engaged in a course of conduct calculated for personal gain. The course of action Respondent chose and the steps she took to defraud the insurance

company are irreconcilable to the standards she is pledged to uphold and to instill in those entrusted to her care.

30. Count 2 of the Administrative Complaint charges Respondent with violating the Principles of Professional Conduct for the Education Profession as described by the State Board of Education rules. Because the evidence does not support a violation of rule 6A-10.081 as explained below, Count 2 has not been established by clear and convincing evidence.

31. Finally, Count 3 alleges a violation of rule 6A-10.081(5)(a), which requires a teacher to maintain honesty in all professional dealings. The Department has not established this violation by clear and convincing evidence. As noted in the findings of fact, Respondent was not employed as a teacher when the theft was reported. She did not make any false statements related to her teaching duties. Moreover, as found in paragraph 17, Petitioner did not prove that the theft at Respondent's residence did not occur. Accordingly, Petitioner did not establish that Respondent lied to the EPC panel when she maintained that there was a burglary at her home.

32. The Education Practices Commission has adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.796 for violations of section 1012.795 and the Principles of Professional Conduct for the Education Profession. For a violation of section 1012.795(1)(d), rule 6B-

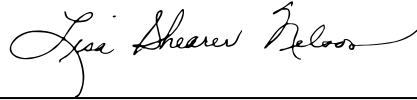
11.007(2)(c) provides that the guideline penalty is probation to revocation of her teaching certificate. Needless to say, this is a wide range of penalties. If Respondent had been convicted of a felony pursuant to section 1012.795(1)(e), as opposed to entering the pre-trial diversion program, the guideline penalty would have been suspension to revocation.

33. The undersigned has given careful consideration to the violation proven, including the circumstances leading to Respondent's decision to engage in fraudulent conduct and her responses to both the criminal charges and to the Commission. Also taken into account is the fact that Petitioner has proven one, as opposed to three, violations charged.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a Final Order finding Respondent has violated section 1012.795(1)(d), Florida Statutes. It is further recommended that the Commission suspend her teaching certificate for a period of two years, followed by a period of probation for three years, and impose a fine of \$1,000, payable within one year of the entry of the Final Order.

DONE AND ENTERED this 22nd day of December, 2014, in  
Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of December, 2014.

ENDNOTES

<sup>1/</sup> Petitioner contends that the burglary never occurred, while Respondent has repeatedly disputed this assertion. Taking the evidence as a whole, it is more likely than not that the burglary occurred. In any event, Petitioner did not establish by clear and convincing evidence that it did not occur.

<sup>2/</sup> At hearing, Ms. Ackerman claimed that the Maine license was in fact stolen, and that she had a duplicate of the license that was used to obtain her Florida license. Her testimony to that effect was not credible.

<sup>3/</sup> Respondent does not explain how she could be viewed as a "well respected community leader" when she had just moved to the state weeks before.

<sup>4/</sup> In order to establish this count, Petitioner is placed in the position of having to prove a negative, which is a very high burden to meet.

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.