

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 14-4458PL

SAMUEL VINSON,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in St. Petersburg, Florida, on December 2, 2014, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Bruce P. Taylor, Esquire
Suite 190
204 37th Avenue, North
St. Petersburg, Florida 33704

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent, Samuel Vinson, has violated sections 1012.795(1)(d), (f), (g), and (j), Florida Statutes (2013), and Florida Administrative Code Rule 6A-10.081(3)(a), (e), and (h), and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 20, 2014, Pam Stewart, as Commissioner of Education, filed a seven-count Second Amended Administrative Complaint (Complaint) against Respondent alleging that he had violated the statute and rule provisions identified above. The factual basis for seeking discipline against Respondent's license was: Respondent made inappropriate, profanity-laced comments to his seventh-grade students; Respondent engaged in inappropriate conduct with a female student, including kissing her hand, kissing her cheek, calling her cell phone, and making suggestive comments about her body; Respondent was arrested for driving under the influence; and pled nolo contendere to a reduced charge of disorderly conduct.

Respondent disputed the allegations in the Complaint and requested a hearing. On September 22, 2014, the case was referred to the Division for the assignment of an administrative law judge.

By notice issued September 30, 2014, the case was scheduled for December 2 and 3, and completed on December 2. Prior to the hearing, Petitioner's counsel filed a request for judicial notice; that request was granted.

At hearing, Petitioner presented the testimony of M.M., B.M.,^{1/} Raven Gilbert,^{2/} Beth Gilbert, Ruth Ellen Riel, Melissa Porter, Rebecca Sampson Carey, Derek Gregory, Dianne Holston,

Phil Wirth, Thomas Brittain, and Valencia Walker. Petitioner's Exhibits 1 through 17 were admitted into evidence. Respondent did not appear, nor was he represented by counsel.

At the conclusion of the hearing, it was announced that any proposed recommended orders (PROs) were to be filed within 10 days of the filing of the transcript. The one-volume Transcript was filed on January 7, 2015. Petitioner filed a PRO on January 16.^{3/} Respondent did not file a PRO.

Unless otherwise noted, all references are to Florida Statutes (2014).

FINDINGS OF FACT

1. Respondent is a licensed educator in the State of Florida, holding certificate number 735373. His certificate covers health, general science, and physical education, and is valid through June 2017.

2. At all times relevant, Respondent was employed by the Pinellas County School District (District) as a physical education teacher at Dunedin High School (Dunedin) or as a science teacher at Clearwater Intermediate School (Clearwater).^{4/}

3. Between February and April 2008, when Ms. Gilbert was a senior at Dunedin, Respondent engaged in inappropriate behavior towards her. One day, when Ms. Gilbert received a hall pass from Respondent, Respondent kissed her on her hand. Another day, Respondent kissed Ms. Gilbert on the cheek. On yet another day,

Respondent made a suggestive and inappropriate comment to Ms. Gilbert about her clothing.^{5/} And on another day, Respondent insinuated that Ms. Gilbert was staying late at her employment because she was sleeping with her boss. Respondent's actions and comments made Ms. Gilbert uncomfortable. Ms. Gilbert's testimony is credible.

4. Ms. Gilbert was uncomfortable and upset as a result of Respondent's conduct. Ms. Gilbert went to talk with the assistant principal at Dunedin, Ms. Riel. According to Ms. Riel, Ms. Gilbert was visibly upset as she described Respondent's actions. Ms. Gilbert left Dunedin and did not experience her senior graduation exercises because she was so distraught, and fearful of seeing or being around Respondent. Ms. Riel immediately contacted the school resource officer, Deputy Gregory.

5. Both the Pinellas County Sheriff's office and the District conducted independent investigations of Ms. Gilbert's allegations. Respondent was removed from the classroom during the criminal investigation, and directed to work at the school board's "warehouse," away from students.

6. Respondent was initially charged with criminal battery; however, in August 2011, he pled nolo contendere to a reduced charge of disorderly conduct with respect to his behavior towards Ms. Gilbert. The criminal court withheld adjudication on this

charge and ordered Respondent to pay court costs and the cost of prosecution.

7. In March 2009, Respondent operated a motor vehicle while under the influence of alcohol and was involved in a traffic accident. Respondent was arrested and charged with driving under the influence. Respondent pled guilty and was adjudicated guilty.

8. In November 2011, Respondent was in his seventh-grade class. For some inexplicable reason, Respondent "lost it" and yelled obscenities at his students. Although the sequence of words used is uncertain, there is no doubt that Respondent called the students "little bastards," and used the "F" word. As his outburst was on-going, one student went to an adjoining classroom and asked Ms. Holston to help. Ms. Holston was able to effectively remove Respondent from his classroom for the students' safety. Respondent admitted that he "blew up," and that he used "a few obscenities" with his students.

9. Respondent resigned his position with the District, effective January 10, 2012.

CONCLUSIONS OF LAW

10. 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).

11. The Florida Education Practices Commission is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012, Florida Statutes.

12. This is a proceeding in which Petitioner seeks to discipline Respondent's educator certificate. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the 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).

13. 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:

entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy. 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 Elect. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991).

14. Section 1012.795(1) provides in pertinent part:

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.

* * *

(f) 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.

(g) Upon investigation, has been found guilty of personal conduct that 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.

15. Florida Administrative Code Rule 6A-10.081 provides, in pertinent part, the following:

(3) Obligation to the student requires that the individual:

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

* * *

(h) Shall not exploit a relationship with a student for personal gain or advantage.

16. Further, Section 1012.796 describes the disciplinary process for educators, and provides in pertinent part:

(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.

(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.

17. The Complaint asserts the following allegations in support of imposing discipline against Respondent:

3. Between February and April of 2008, the respondent engaged in inappropriate behavior towards R.G., a female student. Specifically:

(a) the Respondent kissed R.G.'s hand;

(b) the Respondent lifted his shirt, showed R.G. his hernia scar and placed R.G.'s hand on his stomach;

(c) the Respondent kissed R.G. on the cheek on two occasions;

(d) the Respondent obtained R.G.'s cell phone number and called R.G. on one occasion during the school day;^{6/} and

(e) the Respondent made suggestive comments to R.G. such as asking her whether she was excited to see him or was cold, and commenting on R.G.'s physical appearance.

4. The Respondent's conduct towards R.G. as alleged in Paragraph 3 herein caused R.G. to feel uncomfortable and embarrassed. R.G. attempted to avoid being alone with the Respondent.

5. As a result of the Respondent's conduct towards R.G., on or about July 24, 2008, the Respondent was arrested and charged with Battery. On or about August 26, 2011, the Respondent pled nolo contendere to the reduced charge of Disorderly Conduct. The court withheld adjudication.

6. On or about March 14, 2009, in Pinellas County, Florida, the Respondent operated a motor vehicle while under the influence of alcohol and was involved in a traffic accident. The Respondent was arrested and charged with Driving Under the Influence. On or about May 28, 2009, the Respondent pled guilty and was adjudicated guilty of the charge.

7. On or about November 29, 2011, the Respondent used inappropriate language in front of his seventh-grade students. Specifically, the Respondent told the class that it was his "ass on the line to feed and clothe my children and not theirs"; "they didn't give a shit about me or learning"; called the class little bastards or words to that affect, and stated, I hope they fire my ass or words to that affect.

8. On or about December 6, 2011, the Respondent submitted his resignation to the Pinellas County School District, to be effective January 10, 2012.

18. Petitioner demonstrated by clear and convincing evidence that Respondent kissed Ms. Gilbert's hand; kissed Ms. Gilbert on the cheek; made a suggestive comment to Ms. Gilbert; pled nolo contendere to a disorderly conduct charge; pled guilty to a DUI charge; and used inappropriate, profanity-laced language in front of his seventh-grade students. Because

Respondent did not make an appearance, there is no evidence to the contrary.

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 that Respondent has violated sections 1012.795(1)(d), (f), (g), and (j), Florida Statutes (2013), and Florida Administrative Code Rule 6A-10.081(3)(a), (e), and (h), and revoking his teaching certificate.

DONE AND ENTERED this 29th day of January, 2015, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of January, 2015.

ENDNOTES

^{1/} In order to protect the identity of the student, the student's mother's name is also indicated by initials.

^{2/} Ms. Gilbert was a minor at the time these incidents took place; she is now 24 years of age.

^{3/} According to Florida Administrative Code Rule 28-106.103, when the last day of the period is a Saturday, Sunday or legal holiday, the party is allowed to file on the next business day that is not a Saturday, Sunday or legal holiday. January 17, 2015, was a Saturday, and Monday, January 19 was a legal holiday.

^{4/} Clearwater is a drop-out prevention school. There are fewer students attending the school, and there are additional support staff present to assist the students and faculty.

^{5/} Ms. Gilbert was wearing a white t-shirt and Respondent inquired if she were excited to see him or just cold.

^{6/} Although Mrs. Gilbert testified that Respondent identified himself as the caller, her testimony, that Respondent identified himself, was uncorroborated hearsay and cannot form the basis for a finding of fact.

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.