

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER
OF EDUCATION,

Petitioner,

vs.

Case No. 15-1191PL

IRWIN KELLEN,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter came before Administrative Law Judge J. Bruce Culpepper of the Division of Administrative Hearings on July 14, 2015, in Fort Myers, Florida.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012

For Respondent: Irwin Kellen
Post Office Box 2682
Bonita Springs, Florida 34133-2682

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent violated section 1012.795(1)(j), Florida Statutes (2015),^{1/} and Florida Administrative Code Rules 6A-10.081(5)(a), (h), and (i); and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On October 14, 2014, Petitioner, Pam Stewart, as Commissioner of Education ("Petitioner"), filed a four-count Administrative Complaint charging Respondent, Irwin Kellen, with violations of section 1012.795(1)(j), and Florida Administrative Code Rules 6A-10.081(5)(a), (h), and (i). In the Administrative Complaint, Petitioner charged Mr. Kellen with presenting a fraudulent letter of recommendation with his application for employment as a teacher within the Lee County School District (the "School District").

Mr. Kellen disputed the allegations in the Administrative Complaint and timely requested an administrative hearing pursuant to section 120.57(1), Florida Statutes. On March 6, 2015, the matter was referred to the Division of Administrative Hearings ("DOAH") for assignment of an Administrative Law Judge. The case was noticed for final hearing to be held on May 12, 2015. After two continuances, the case was heard on July 14, 2015.

At the final hearing, Petitioner presented the testimony of Mr. Kellen, Alice Barfield, Brad Buckowich, and Georgianna McDaniel. Petitioner's Exhibits numbered 1 through 12 were admitted into evidence. Mr. Kellen testified on his own behalf. Mr. Kellen did not call any other witnesses or offer an exhibit that was admitted into evidence.

The hearing Transcript was filed with DOAH on July 31, 2015. Petitioner timely filed its Proposed Recommended Order, which was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is responsible for investigating and prosecuting allegations of misconduct against individuals holding educator certificates.

2. Mr. Kellen is currently licensed as a teacher in Florida and has been issued Florida educator certificate 1007357. Mr. Kellen's certificate covers the areas of Educational Leadership, English, Pre-Kindergarten/Primary Education, Reading, and Exceptional Student Education. Mr. Kellen's certificate expires on June 30, 2020.

3. Prior to obtaining his Florida educator certificate, Mr. Kellen was employed as a teacher in the State of Indiana from 1997 to 2005. In 2006, Mr. Kellen moved to Florida and became a reading teacher in Collier County from 2006 to 2007. From 2007 to 2008, he was a middle school teacher at Six Mile Charter Academy with Charter School USA. From 2009 to 2011, Mr. Kellen was employed as a substitute teacher in Lee County, Florida. From January through March 2012, Mr. Kellen was a paraprofessional in Monroe County, Florida.

4. In August 2012, Mr. Kellen was employed as a teacher at Knox Academy in Lee County, Florida. Three months later, in

November 2012, Knox Academy terminated his employment. Brad Buckowich was the principal at Knox Academy. Mr. Buckowich both hired and fired Mr. Kellen.

5. In July 2013, Mr. Kellen applied for a teaching position at James Stevens International Academy ("James Stevens Academy"), a school within the School District. Alice Barfield, principal at James Stevens Academy, interviewed Mr. Kellen for a reading teacher position. Shortly, thereafter, she offered him the position.

6. As part of the hiring process, the School District required Mr. Kellen to submit references from previous employers. On July 31, 2013, Mr. Kellen met with Georgianna McDaniel, the Executive Director of Personnel Services for the School District, to discuss the School District hiring procedures. Ms. McDaniel explained to Mr. Kellen that School District policy required the hiring school to contact the candidate's previous employer before the School District would hire him.

7. Following the July 31 meeting, Mr. Kellen brought to Ms. Barfield at James Stevens Academy a recommendation letter from Knox Academy dated July 8, 2013, and signed by Brad Buckowich. The recommendation letter was a photocopy. However, Mr. Kellen represented throughout the hiring process (and maintained during the final hearing) that Mr. Buckowich prepared and signed the original recommendation letter on behalf of Knox

Academy.^{2/} The photocopied recommendation letter which Mr. Kellen provided to Ms. Barfield included a Knox Academy letterhead. The letter also bore the signature of Brad Buckowich at the bottom. Upon review of the recommendation letter, however, Ms. Barfield noticed that the signature seemed odd. The top of the letter "B" in the name "Brad" and "Buckowich" was cut off. The signature was also slightly slanted.

8. Thereafter, Ms. Barfield contacted Mr. Buckowich to personally inquire about Mr. Kellen's employment with Knox Academy, obtain his verbal recommendation as Mr. Kellen's last employer, and discuss the recommendation letter. When Ms. Barfield's secretary reached Mr. Buckowich by phone, however, he declined to recommend Mr. Kellen for the position. Furthermore, he denied that he had ever written a recommendation letter for Mr. Kellen. Ms. Barfield then faxed the recommendation letter to Mr. Buckowich. After reviewing the letter, Mr. Buckowich repeated to Ms. Barfield that he did not draft or sign the letter.

9. Ms. Barfield faxed a copy of the recommendation letter to Ms. McDaniel at the School District office on August 2, 2013.

10. On August 5, 2013, Mr. Kellen visited James Stevens Academy. He was told there was a problem with his reference letter. Later that morning, Mr. Kellen met again with Ms. McDaniel at the School District office. Ms. McDaniel

informed Mr. Kellen that Mr. Buckowich said he did not prepare or sign the recommendation letter. Mr. Kellen disclosed that he had actually prepared the letter for Mr. Buckowich's signature. However, Mr. Kellen insisted that Mr. Buckowich signed the letter he submitted.

11. In the afternoon of August 5, 2013, Mr. Kellen wrote an e-mail addressed to Mr. Buckowich. In the e-mail, Mr. Kellen asked Mr. Buckowich to "please fill out this form as you promised in March, that you would give me a good recommendation based on my working as Asst. Principal/Instructor." Mr. Kellen added, "[t]o avoid any mis-communication, email the form signed to me at this email and to Mrs[.] McDaniel in HR."

12. On August 9, 2013, Mr. Buckowich met with Ms. McDaniel to discuss and review the recommendation letter. Mr. Buckowich observed that the signature on the photocopied letter was, in fact, a copy of his signature. However, Mr. Buckowich reiterated that he did not draft or sign the recommendation letter.

13. Further, Mr. Buckowich produced for Ms. McDaniel another document he signed in October 2012, which he believed was the source of the signature that was "cut and pasted" onto the recommendation letter Mr. Kellen presented to Ms. Barfield. Mr. Buckowich had provided this document to Knox Academy employees, including Mr. Kellen. Mr. Buckowich surmised that Mr. Kellen, likely by using a computer Word or PDF program, cut

his signature from the October 2012 document and pasted it onto the recommendation letter.

14. Based on her meeting with Mr. Buckowich, Ms. McDaniel concluded that the recommendation letter Mr. Kellen submitted to support his application for the teaching position was fraudulent. Ms. McDaniel determined that the School District would not hire Mr. Kellen.

15. At the final hearing, Mr. Buckowich expanded on why the recommendation letter should not be considered genuine. Mr. Buckowich stated that the recommendation letter had several formatting and style errors that he would not have used or made. These mistakes included: he would have adjusted the date to the right margin, not centered it under the Knox Academy seal; he would have placed the subject line flush with the left margin, not indented it; and he would not have capitalized every word of the addressee line. As far as the letter's content, Mr. Buckowich stated that he would not have used the words or phrases written in the letter. He would not have identified Mr. Kellen as the "Assistant Principal/Instructional Leader." Neither would he have used the term "RTI strategies."

16. Finally, regarding the signature, other than not actually signing the recommendation letter, Mr. Buckowich commented that the signature looked as if it had been cut and pasted, as if from another PDF or scanned document, onto this

letter. Aside from this fact, Mr. Buckowich testified that his actual signature block reads "Brad J. Buckowich, Principal/Director, Knox Academy," not "Mr. Brad Buckowich, Founder/Principal, Knox Academy," as written on the letter. To conclude, Mr. Buckowich commented that if he would have actually drafted a recommendation letter for Mr. Kellen, he would have sent an original letter with a Knox Academy color logo and an original signature, not a photocopy.

17. At the final hearing, Mr. Kellen adamantly asserted that the recommendation letter with Mr. Buckowich's signature was genuine. Mr. Kellen stated that he obtained the letter from his former attorney. His attorney had received it from Mr. Buckowich and then forwarded it to Mr. Kellen.

18. The Florida Education Practices Commission is the state agency charged with the certification and regulation of Florida educators. See Chapter 1012, Fla. Stat. Prior to this current matter, the Education Practices Commission entered two, separate final orders against Mr. Kellen sanctioning his educator certificate for misconduct, one dated December 4, 2006, and one dated October 23, 2008.

19. Based on the evidence and testimony presented during the final hearing, Petitioner demonstrated, by clear and convincing evidence, that Mr. Kellen submitted a fraudulent

recommendation letter to the School District as part of his application for employment in a teaching position.

CONCLUSIONS OF LAW

20. 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.

21. This is a disciplinary action by Petitioner in which Petitioner seeks to permanently revoke Mr. Kellen's teaching certificate. Reflecting the penal nature of revoking a person's ability to teach in Florida, 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).

22. 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 the Florida Supreme Court stated:

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). "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. 1991).

23. 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.

24. The material allegations in the Administrative Complaint state that "[o]n or about August 2, 2013, [Mr. Kellen] submitted a fraudulent letter of recommendation, with his application of employment, to the principal of James Stevens International Academy, in Lee County, Florida, and to the Lee County School District." In Count I, the Administrative Complaint alleges Mr. Kellen violated section 1012.795(1)(j), which is applicable when a teacher:

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

25. Counts 2, 3, and 4 of the Administrative Complaint charge Mr. Kellen with violating three provisions within rule 6A-10.081(5). Rule 6A-10.081(5) provides, in pertinent part:

(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.

* * *

(i) Shall not make any fraudulent statement or fail to disclose a material fact in one's own or another's application for a professional position.

26. As stated above, based on the evidence and testimony presented at the final hearing, Petitioner demonstrated by clear and convincing evidence that Mr. Kellen submitted a fraudulent document with his application for a teaching position with Lee County. This conclusion is readily reached based on the testimony of Mr. Buckowich, who emphatically declared that he did not draft or sign the recommendation letter. Further, as Mr. Buckowich detailed while examining the recommendation letter, numerous aspects of the letter's formatting, style, and word choice, as well as the highly dubious signature block, easily cause one to deduce that the letter was not what Mr. Kellen

represented it to be. Accordingly, the fact that Mr. Kellen presented the letter to both James Stevens Academy, as well as the School District, demonstrates that Mr. Kellen was acting in a deceptive and dishonest manner. Therefore, Petitioner has proven, by clear and convincing evidence, that Mr. Kellen violated section 1012.795(1)(j) and rules 6A-10.081(5)(a), (h), and (i).

27. The Education Practices Commission has adopted disciplinary guidelines for the imposition of penalties authorized for violations of section 1012.795 and/or rule 6A-10.081. See Fla. Admin. Code R. 6B-11.007(2). The undersigned has considered the range of penalties for each of the violations Petitioner has proven and the factors listed in the guidelines that may be considered in mitigation or aggravation of a penalty. Further, section 1012.795(6)(b) instructs that the Education Practices Commission shall adopt rules requiring the issuance of a final order permanently revoking an individual's Florida educator certificate, if the individual has been the subject of sanctions by the Education Practices Commission on two previous occasions.

28. In light of the facts alleged and proven in this case, as well as Mr. Kellen's prior disciplinary record with the Education Practices Commission, revocation of Mr. Kellen's educator certificate is appropriate.

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, Irwin Kellen, in violation of section 1012.795(1)(j) and rules 6A-10.081(5)(a), (h), and (i). It is further RECOMMENDED that Petitioner revoke Respondent's certificate for a period of time deemed appropriate by the Education Practices Commission.

DONE AND ENTERED this 27th day of August, 2015, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
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 August, 2015.

ENDNOTES

^{1/} All references to Florida Statutes will be to the 2015 version.

^{2/} The original recommendation letter was not produced at the final hearing. No evidence was presented as to the whereabouts of the original letter.

COPIES FURNISHED:

Gretchen K. Brantley, Executive Director
Education Practices Commission
Department of Education
325 West Gaines Street, Suite 316
Tallahassee, Florida 32399-0400
(eServed)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Marian Lambeth, Bureau Chief
Bureau of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154-0012
(eServed)

Irwin Kellen
Post Office Box 2682
Bonita Springs, Florida 34133-2682

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.