

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 15-5645PL

WILLIAM DORAN,

Respondent.

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RECOMMENDED ORDER

On April 28, 2016, a duly-noticed hearing was held in Port St. Lucie, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
Post Office Box 770088  
Ocala, Florida 34477-0088

For Respondent: Nicholas Anthony Caggia, Esquire  
Thomas L. Johnson, Esquire  
Law Office of Thomas L. Johnson, P.A.  
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STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent, Mr. William Doran, violated sections 1012.795(1)(g) or (j), Florida Statutes (2012),<sup>1/</sup> and implementing administrative rules,

as alleged in the Administrative Complaint, and, if so, what is the appropriate sanction?

PRELIMINARY STATEMENT

On May 18, 2015, Pam Stewart, as Commissioner of the Department of Education (Petitioner or Commissioner), filed an Administrative Complaint against Mr. William Doran (Respondent or Mr. Doran), alleging violations of sections 1012.795(1)(g) and (j) and implementing rules. Respondent filed an Election of Rights form on June 16, 2015, disputing allegations in the Administrative Complaint and requesting a hearing pursuant to section 120.57(1), Florida Statutes (2015). On October 8, 2015, the case was referred to DOAH for assignment of an Administrative Law Judge.

The case was noticed for hearing on December 8 and 9, 2015, but was continued twice in response to motions, and was heard on April 28, 2016. At hearing, Petitioner presented the testimony of A.L., a former student of Mr. Doran, and Mr. Doran himself. Petitioner's Exhibits P-1 through P-12 were admitted without objection. Exhibit P-13, a video recording made on a cell phone, was admitted over Respondent's objection, as further discussed below. Exhibit P-14, a transcript of testimony from an earlier DOAH case, No. 13-3849TTS, was admitted without objection, the parties stipulating that the testimony in that transcript was accepted as the testimony of all witnesses that were also listed

as witnesses in this case. As discussed at hearing, an original copy of that transcript was submitted on May 16, 2016.

Respondent testified himself and offered a composite exhibit of his teaching evaluation reports, which was admitted without objection as Exhibit R-1.

The Transcript of the proceeding was filed with DOAH on May 10, 2016. Following Respondent's unopposed motion for an extension of time, the deadline to submit proposed recommended orders was set as June 6, 2016. Both parties timely filed proposed recommended orders that were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Commissioner is responsible for investigating and prosecuting allegations of misconduct against individuals holding educator's certificates.

2. Mr. Doran holds Florida Educator's Certificate 1013018, covering the areas of general science, social science, and exceptional student education, which is valid through June 30, 2019.

3. At all times relevant to the complaint, Mr. Doran was employed as a teacher at Southport Middle School in the St. Lucie County School District.

4. On or about May 3, 2013, Mr. Doran became involved in a verbal altercation with M.M., a 13-year-old male student.

5. Student A.L. was present in the classroom on May 3, 2013. She made a video recording of a portion of the altercation between Mr. Doran and M.M. on her cell phone. Shortly after the altercation, school authorities took A.L.'s phone. Later, at hearing, A.L. viewed a video and credibly testified that it was the video recording that she had made. A.L. identified Mr. Doran and M.M. on the video. That video, offered into evidence, was the entire video that she recorded. It is clear under all of the circumstances that it fairly and accurately represented the portion of the altercation that A.L. videotaped. A.L. testified that she was aware that she violated a rule of the St. Lucie County School Board that did not allow her to use her cell phone in class.

6. A.L. did not ask Mr. Doran if she could take the video. She testified that no one knew that she was videotaping the incident. There is no evidence that Mr. Doran, occupied with the confrontation with M.M., was aware that he was being recorded.

7. However, Mr. Doran's recorded oral communications took place in a public school classroom, his place of employment. The statements were made publicly in the presence of many students other than M.M., the student he was addressing. Mr. Doran had no reasonable expectation that those comments would remain private between M.M. and himself.

8. The altercation arose as a result of students playing a slap game in which they touch hands and strike each other until one suffers enough pain to let go. As Mr. Doran described in testimony under oath in an earlier proceeding, the incident began after Mr. Doran directed M.M. and another student to stop playing the game:

Q: Did they?

A: Yes. M.M. did. Although he then told me, "Well, I like playing this game because it makes me feel good, Mr. Doran."

Q: What did you reply?

A: I said, "I don't care how much you like it. I don't care if you like jumping off a bridge, you're not going to do it in this classroom."

Q: Did Mr. M.M. respond?

A: He then - he then responded, "Oh, you want me to jump off of a bridge." And I said, "No, that isn't what I said."

\* \* \*

Well, M.M. continued to protest and I asked him to please quiet down and allow the class to continue its work and I did this a couple of times. He refused to do it and he finally said, "Get out of my face."

As Mr. Doran described, he was four to five feet away from M.M. when M.M. said this, but he then moved closer to M.M. and asked M.M., "Well, what are you going to do about it?" M.M. then

repeated "get out of my face" several times and began using obscenities in the classroom.

9. During the course of the altercation with M.M., Mr. Doran called M.M. a coward.

10. During the course of the altercation with M.M., Mr. Doran stood over M.M. and repeatedly told M.M. to "[g]o ahead and hit me."

11. During the course of the altercation with M.M., Mr. Doran told M.M., "Come on big man--what you are going to do about it, hit me?"

12. During the course of the altercation with M.M., Mr. Doran told M.M. to hit him because it would "make my day."

13. It is clear that Mr. Doran's response to M.M.'s inappropriate attitude and language did not defuse the situation, and in fact had the potential to escalate it. Mr. Doran's behavior changed the nature of the incident from one of a student defying institutional authority into a personal, potentially physical, confrontation between M.M. and Mr. Doran as an individual.

14. On or about March 7, 2014, Mr. Doran told his students that he was getting a new male student in the class, that it was more common for male students to be disabled (ESE), that the student's name indicated he was black, and that the student had a behavior plan.

15. On or about November 5, 2014, Respondent resigned from his teaching position with the St. Lucie County School District.

Prior History

16. On November 9, 2010, Mr. Doran received a Summary of Conference from his principal, Ms. Lydia Martin, for making inappropriate comments to students.

17. On May 2, 2011, Mr. Doran received a Letter of Concern from Ms. Martin for abusive or discourteous conduct toward students.

18. On February 13, 2012, Mr. Doran received a Letter of Reprimand from Ms. Martin for violating a directive by discussing a matter under investigation and taking pictures of misbehaving students.

19. On May 5, 2012, Mr. Doran received a Recommendation for Suspension from Ms. Martin for failing to comply with directives.

20. Mr. Doran received satisfactory ratings in every category on his evaluation forms for school years 2006-2007 through 2010-2011 (the years admitted into evidence). He received a few Above Expectation ratings and only one Improvement Expected rating in 2006-2007 and gradually improved through 2009-2010, when he received a majority of Above Expectation ratings, with only a few Meets Expectation ratings. In 2010-2011, he received several Above Expectation ratings, a majority of Meets Expectation ratings, and one Improvement Expected rating.

CONCLUSIONS OF LAW

21. DOAH has jurisdiction over the parties and subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

22. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional personnel. §§ 1012.795(1) and 1012.796(6), Fla. Stat.

23. Petitioner seeks to take action against Respondent's educator's certificate as provided in sections 1012.795 and 1012.796. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden 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).

24. The Florida Supreme Court has stated that the clear and convincing standard requires that:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such 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)).

25. Respondent is substantially affected by Petitioner's intended decision to discipline his Florida educator's certificate and has standing to maintain this proceeding.

Video Recording

26. Respondent cites to Hamilton County School Board v. Martha Lee, Case No. 00-2977 (Fla. DOAH Dec. 11, 2000), rejected in part, (Fla. HCSB Feb. 20, 2001), in arguing that consideration of A.L.'s video recording is prohibited by section 934.06, Florida Statutes (2015), which provides:

Prohibition of use as evidence of intercepted wire or oral communications; exception.--  
Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.

27. Section 934.02(2) defines "oral communication" to mean a communication "uttered by a person exhibiting an expectation that such communication is not subject to interception under

circumstances justifying such expectation" and does not mean "any public oral communication uttered at a public meeting."

28. As the court made clear in State v. Inciarrano, 473 So. 2d 1272, 1275 (Fla. 1985), this statute thus requires a reasonable expectation of privacy.

29. A significant factor used in determining the reasonableness of the person's expectation of privacy in a conversation is the location in which the conversation or communication occurs. Stevenson v. State, 667 So. 2d 410, 412 (Fla. 1st DCA 1996). See, e.g., Jatar v. Lamaletto, 758 So. 2d 1167, 1169 (Fla. 3d DCA 2000) (no legitimate expectation of privacy in business office of victim); Avrich v. State, 936 So. 2d 739, 742 (Fla. 3d DCA 2006) ("Florida courts have consistently held that the constitutional protections of a reasonable expectation of privacy do not extend to an individual's place of business.").

30. Even assuming, in the words of the statute, that Respondent "exhibited an expectation" that his comments were not subject to interception,<sup>2/</sup> circumstances did not justify that expectation. Respondent made his comments to M.M. in a public school classroom, his place of employment, in the presence of many students other than the one to whom he was making statements. He had no reasonable expectation that those comments would remain private between M.M. and himself. The recording is admissible.

Count 1

31. At the time of the altercation, section 1012.795(1)(g) provided that the Education Practices Commission may suspend the educator's certificate of a person found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

32. No convincing evidence was presented to demonstrate that Respondent's effectiveness as an employee was seriously reduced. The only evidence presented on this point was from Respondent, who testified that after the May 3, 2013, incident, discipline in his class actually improved. Petitioner offered no contrary evidence to meet its burden.

33. Petitioner failed to prove by clear and convincing evidence that Respondent's conduct seriously reduced his effectiveness as an employee of the district school board.

Count 2

34. Count 2 alleges that Respondent is in violation of section 1012.795(1)(j), in that he has violated the Principles of Professional Conduct for the Education Profession. Counts 3 and 4 go on to allege the specific violations of these principles. Count 2 does not constitute a distinct disciplinary violation.

Count 3

35. Count 3 alleges that Respondent violated Florida Administrative Code Rule 6A-10.081(3)(a), which at the time of the alleged offense provided that an educator:

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.

36. Respondent's personal physical challenge of M.M. was an inappropriate response to M.M.'s behavior. Respondent's actions failed to protect M.M. and the other students in the class from conditions harmful to their learning and mental health.

37. Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(a).

Count 4

38. Count 4 alleges that Respondent violated rule 6A-10.081(3)(e), providing that an individual shall not intentionally expose a student to unnecessary embarrassment or disparagement.

39. The direct physical challenge and baiting of M.M. by Respondent, as witnessed by the students in the classroom, subjected M.M. to unnecessary embarrassment and disparagement.

40. Respondent's comments about the new student subjected that student to unnecessary disparagement.

41. Petitioner proved by clear and convincing evidence that Respondent violated rule 6A-10.081(3)(e).

Penalty

42. The Education Practices Commission adopted disciplinary guidelines for the imposition of penalties authorized by section 1012.795 in Florida Administrative Code Rule 6B-11.007.

43. Rule 6B-11.007(2)(i)16. provided that probation to revocation was the appropriate range of penalty for "[f]ailure to protect or supervise students in violation of paragraph 6B-1.006(3)(a), F.A.C."<sup>3/</sup>

44. Rule 6B-11.007(2)(i)22. provided that probation to revocation was the appropriate range of penalty for other violations of the Principles of Professional Conduct and the Florida Administrative Code.

45. Rule 6B-11.007(3) provided:

(3) Based upon consideration of aggravating and mitigating factors present in an individual case, the Commission may deviate from the penalties recommended in subsection (2). The Commission may consider the following as aggravating or mitigating factors:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;

(e) The number of times the educator has been previously disciplined by the Commission;

(f) The length of time the educator has practiced and the contribution as an educator;

(g) The actual damage, physical or otherwise, caused by the violation;

(h) The deterrent effect of the penalty imposed;

(i) The effect of the penalty upon the educator's livelihood;

(j) Any effort of rehabilitation by the educator;

(k) The actual knowledge of the educator pertaining to the violation;

(l) Employment status;

(m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;

(n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;

(o) Actual negligence of the educator pertaining to any violation;

(p) Penalties imposed for related offenses under subsection (2) above;

(q) Pecuniary benefit or self-gain inuring to the educator;

(r) Degree of physical and mental harm to a student or a child;

(s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;

(t) Any other relevant mitigating or aggravating factors under the circumstances.

46. No aggravating or mitigating circumstances are present here to the extent necessary to warrant deviation from the wide range of penalties already permitted within the guidelines.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Education Practices Commission enter a final order finding Respondent, Mr. William Doran, in violation of section 1012.795(1)(j), Florida Statutes, and implementing rules. It is further RECOMMENDED that the Education Practices Commission revoke his educator's certificate for a period of two years, at the expiration of which time he may receive a new certificate by meeting all certification requirements at the time of his application, subject to terms and conditions determined by the Education Practices Commission to be reasonably necessary to ensure that there will be no threat to students and that he will be capable of resuming the responsibilities of an educator.

DONE AND ENTERED this 20th day of June, 2016, in  
Tallahassee, Leon County, Florida.

*F. Scott Boyd*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of June, 2016.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes or administrative rules are to the versions in effect in May 2013 and March 2014, the times of the alleged violations, except as otherwise indicated. There were no amendments to section 1012.795 during this time period; the rules were transferred without change.

<sup>2/</sup> There was no direct evidence on this point.

<sup>3/</sup> Florida Administrative Code Rule 6B-1.006 was transferred to rule 6A-10.081 effective January 11, 2013, but the penalties rule continues to reflect the older numbering. It should be amended. However, the nature of the offenses is set out in full in the rule, and Respondent is not prejudiced by the incorrect reference.



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.