

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 16-2266PL

LOUIS KLAPPER,

Respondent.

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RECOMMENDED ORDER

On September 30, 2016, Administrative Law Judge J. Lawrence Johnston held the final hearing in this case by video teleconference between sites in Orlando and Tallahassee.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
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For Respondent: Melissa C. Mihok, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the Education Practices Commission should revoke or otherwise discipline the Respondent's educator certificate for allegedly making disparaging or

embarrassing comments to and about students in his classroom, including calling them idiots or dumb.

PRELIMINARY STATEMENT

In October 2015, the Petitioner filed an Administrative Complaint charging the Respondent with violations of Florida Administrative Code Rules 6A-10.081(3)(a) (failure to make reasonable effort to protect students from conditions harmful to learning and/or to students' mental and/or physical health and/or safety) and (3)(e) (intentionally exposing students to unnecessary embarrassment or disparagement). The Respondent disputed the charges and asked for a hearing.

At the final hearing, Joint Exhibits 1 through 10 were received in evidence. The Petitioner called one high school administrator, five former high school students, and the mother of one of the former students. The Petitioner's Exhibit 1 also was admitted in evidence. After the Petitioner rested, the Respondent testified.

After the evidence was presented, the parties were given ten days from the filing of the Transcript of the hearing to file proposed recommended orders. The Transcript was filed on November 4, and the proposed recommended orders have been considered.

## FINDINGS OF FACT

1. The Respondent has a bachelor's degree in astrophysics and a master's degree in physics from the University of Central Florida. He has worked for Disney World's education programs and at the Orlando Science Center. When he decided to go into teaching, he got a temporary certificate in February 2013. He started teaching at East River High School in Orange County in April 2013, as an end-of-the-year replacement. When he completed his master's degree, the certificate was made permanent, and he holds Florida Educator Certificate 1191412 in the area of physics, valid through June 30, 2019. He was hired as a full-time science teacher at East River in the fall of 2013.

2. In September 2013, a student complained that the Respondent insulted the school band and some of its members. The Respondent wrote a letter in response to the charge in which he denied any knowledge of what he might have said to insult any student or disparage any extracurricular activity of any student and absolutely denied any intent to insult or disparage the band or any band member. He also made an impassioned statement of his deep concern for his students and of the many ways in which he had been supporting the extracurricular activities of his students. The only other evidence on the subject was in the form of hearsay statements written by students who did not testify. Some of the students wrote that they never heard the alleged

insults and disparagements. The evidence was insufficient to support a finding that there were any insults or disparagements.

3. The September 2013 band complaint was found by the school administration to be unconfirmed. Nonetheless, the Respondent was given a letter of guidance, also called a directive to: exercise good judgment when engaging in discussions with students; use positive, encouraging comments to motivate and inspire students; take appropriate measures in discussions with students, so as not to expose a student to unnecessary embarrassment or disparagement; and protect all students from conditions harmful to learning and mental and/or physical harm. A letter of guidance or directive is not disciplinary in nature.

4. In January 2014, a female student complained that the Respondent made her feel uncomfortable by standing close to her and by staring at her chest. The only evidence on the subject was in the form of hearsay statements written by students who did not testify. The evidence was insufficient to support a finding of fact in this case. Nonetheless, the January 2014 complaint was found by the school administration to be confirmed, and the Respondent was given another letter of guidance or directive to: consider in advance how to respond to various situations involving students and always maintain respectful distance so as not to invade personal space of individual students; and exercise

care and professional judgment when engaging with students so that others would not perceive or misinterpret his behavior as inappropriate.

5. No other incidents came to the attention of the school's administration until May 27, 2014. Meanwhile, the Respondent's performance as a teacher for 2013/2014 was evaluated by the school's administration to be highly effective.

6. On May 27, 2014, a student named Tanner Hearn complained to the school's administration that the Respondent had been unfair, mistreated him, made negative comments about him, and called him names.

7. The Tanner Hearn complaint was triggered by events beginning at the end of April or early May of 2014. Tanner wanted to raise a grade he got on one of his assignments. His mother, who is a teacher, suggested that Tanner ask the Respondent if he could redo the assignment. The Respondent refused because the assignment was 2-3 weeks late.

8. After the refusal, Tanner told his mother that the Respondent had allowed other students to redo assignments to raise their grades. Tanner's mother advised Tanner to ask again. The Respondent again refused. After the second refusal, now believing the Respondent was treating her son unfairly, Tanner's mother advised him to e-mail the Respondent, which he did three times. Each communication with the Respondent was more demanding

than the last. Finally, Tanner's mother e-mailed the Respondent to support her son and strongly suggested that the Respondent let Tanner redo the assignment rather than make them set up a parent-teacher meeting with guidance and the school's administration. The Respondent defended himself and refused to budge.

9. The Respondent testified that his policy on redoing assignments evolved during the school year. Earlier in the year, he allowed student assignments to be reopened after the due date. Later, he settled on a policy that requests to redo an assignment had to be made before the due date. He testified that Tanner knew the policy and acknowledged it during a discussion they had earlier in the school year when Tanner was considering dropping physics.

10. In late May 2014, when Tanner and his friends were at his house discussing the Respondent's perceived unfairness towards him, the discussion turned to negative comments and name-calling by the Respondent directed towards Tanner previously during the school year. Tanner's mother overheard the discussion. She thought the negative comments and name-calling were inappropriate and evidence of the Respondent's unfairness towards her son. Mrs. Hearn called East River's assistant principal, whom she knew personally, to complain and demand that something be done. This triggered an investigation by the school.

11. As part of the investigation, the school's administration interviewed numerous students to see if they ever heard the Respondent call any student derogatory names or embarrass or disparage them. Some students answered in the affirmative and reported what they remembered hearing. Others answered in the negative.

12. Rachel Johnson, one of the students who reported hearing the Respondent call Tanner names, also stated that the Respondent embarrassed her by insulting her religion in the course of a discussion about a film he showed in class. The school's administration investigated this new charge as well. Several students gave statements saying no improper commentary occurred. No other student statements corroborated the new charge.

13. In her statement to the school's administration, Rachel Johnson also complained that the Respondent gave exams early, contrary to school policy. No other student statements or testimony supported this charge.

14. The school concluded its investigations in late August 2014. The school's administration found that the Tanner Hearn and Rachel Johnson charges were confirmed by the investigation. The Respondent was given another letter of guidance or directive, this time accompanied by a reprimand, for failure to follow the approved exam schedule, improper use of video, and negative

comments made to students. The Respondent testified that he disputed the reprimand and it was withdrawn, but there was no other evidence that it was withdrawn.

15. In December 2014, Rachel Johnson gave another statement, which included a charge that the Respondent called her a dumb blonde and a stereotypical female. No witness statements corroborated this charge. Rachel Johnson testified in support of the charge. There was no other testimony or evidence in support of the charge.

16. Only a few of the students who gave written statements testified at the hearing. Several testified that on occasion the Respondent would call certain students names like idiot, jackass, and stupid. They testified that the Respondent seemed to do this mostly to the three football players in the class, especially Tanner Hearn. There also was testimony that the Respondent would sometimes ask for a volunteer to answer a question but say something like, "anyone but Tanner since he won't know the answer."

17. The context of these kinds of comments by the Respondent was not clear from the evidence. Probably, some were made out of anger or frustration after Tanner disrupted the class or acted out. Some were made jokingly as part of banter back and forth.



18. The impact of these kinds of comments by the Respondent on Tanner and the other students also was not clear from the evidence. No student complained about them at the time they were made. Often, Tanner would appear to shrug them off and say something like, "ha, ha, very funny." Tanner testified that, however he may have responded at the time, he was affected by the comments, and they made him less likely to participate in class. Some of the students testified that the comments were not made in a joking manner and that they were embarrassed for Tanner and sometimes said to him something like, "I can't believe he said that to you."

19. Rachel Johnson testified in support of her anti-religion and dumb blonde charges. There was no other testimony in support of those charges. The Respondent denied them.

20. After the investigations began in May 2014, Tanner's demeanor and attitude towards school changed markedly. Before the investigations, he was a good if not a model student. He had a positive and enthusiastic attitude about school earlier in the year, especially during football season. During the investigations, he seemed to some to be quieter and less enthusiastic. In his mother's words, the controversy of the investigations put a damper on the last few weeks of the school year.

21. The precise reason for Tanner's change of attitude towards school during the investigations is not clear. He and his mother agreed that he was not confrontational, and he did not want his mother to complain to the school. In addition, Tanner soon found himself the subject of another investigation. When the Respondent started hearing rumors that Tanner was telling other students he was going to get the Respondent fired, the Respondent told the school's administration and asked for an investigation. Tanner testified that he asked the school's administration what he should do at that point that he was advised to stop talking about the investigations. These developments may have been factors in Tanner's change of demeanor at the end of the school year.

22. The Respondent testified that he was not guilty of any of the charges. East River's assistant principal testified that the Respondent admitted to her during the investigation that he called Tanner Hearn an "idjiout" (a variation of the word idiot). The Respondent testified that he did not remember making that admission.

23. The evidence was clear and convincing that the Respondent called Tanner and other students names like idiot, jackass, or stupid on occasion during the course of the 2013/2014 school year. Sometimes this was done out of anger or frustration after Tanner disrupted the class or acted out. Sometimes the

words were spoken loud enough to be overheard. Sometimes, it was done in a joking manner, as part of banter back and forth. The evidence was not clear and convincing that the Respondent reasonably knew or should have known that the student involved would be embarrassed or humiliated.

24. None of the other charges against the Respondent were proven by clear and convincing evidence.

25. The Respondent continued teaching at East River during the 2014/2015 school year. The school's administration evaluated the Respondent's performance as a teacher for the 2014/2015 school year to be effective.

26. The Respondent did not return to teaching after the 2014/2015 school year because the investigations and their outcomes took a toll on him and he felt burnt out on teaching.

#### CONCLUSIONS OF LAW

27. Section 1012.795(1)(j), Florida Statutes (2013), provided that a certified educator can be disciplined for violating the Principles for Professional Conduct for the Education Profession set out in rules adopted by the State Board of Education.

28. Florida Administrative Code Rule 6A-10.081(3) set out Principles for Professional Conduct for the Education Profession. Paragraph (a) required that educators make a reasonable effort to protect students from conditions harmful to learning and/or to

students' mental and/or physical health and/or safety. Paragraph (e) prohibited educators from intentionally exposing students to unnecessary embarrassment or disparagement.

29. In a penal proceeding, the prosecutor must prove the allegations and charges 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).

30. 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:

[E]ntails 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.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (citing, 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 Electric Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991).

31. In this case, the Petitioner proved by clear and convincing evidence that the Respondent called Tanner Hearn and other students names like idiot, jackass, and stupid on occasion during the course of the 2013/2014 school year. It was not proven by clear and convincing evidence that, in doing so, the Respondent failed to make a reasonable effort to protect the students involved from conditions harmful to learning and/or to students' mental health and/or to students' and/or physical health and/or safety. Specifically, no conditions harmful to learning and/or to students' mental health and/or to students' and/or physical health and/or safety were proven. It was not proven by clear and convincing evidence that the Respondent intentionally exposed students to unnecessary embarrassment or disparagement.

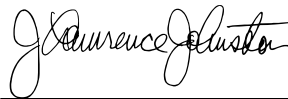
32. The Petitioner takes the position that the violations were proven and that the Respondent should be suspended from teaching for two years. Assuming violations were proven, a two-year suspension would be within the extremely wide range of suggested discipline set out in Florida Administrative Code Rule 6B-11.007(2)(i)22. (Rev. Apr. 2009)—from probation to revocation for a first-time offense, which provides virtually no guidance for a first offense. In addition, paragraph (3) of the rule allows for a deviation from the range of suggested discipline based on aggravating and mitigating factors. In any

event, even assuming the violations were proven, East River and the Orange County school district only saw fit to reprimand the Respondent. He continued to teach effectively at East River for another year. There is no valid reason for the Education Practices Commission to suspend the Respondent from teaching at all, much less for two years, or even to duplicate the reprimand he already has received from the school district.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order dismissing the Administrative Complaint.

DONE AND ENTERED this 15th day of December, 2016, in Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
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Filed with the Clerk of the  
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this 15th day of December, 2016.

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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.