

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 16-2492PL

DIANA CASTELLA,

Respondent.

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RECOMMENDED ORDER

A formal hearing pursuant to section 120.57(1), Florida Statutes (2016),<sup>1/</sup> was conducted by video teleconference on January 10, 2017, before Administrative Law Judge Robert L. Kilbride of the Division of Administrative Hearings ("DOAH") in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire  
Charles T. Whitelock, P.A.  
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For Respondent: Douglas Elias Ede, Esquire  
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STATEMENT OF THE ISSUES

Whether Respondent's educator's certificate should be sanctioned for an alleged violation of section 1012.795(1)(b),

Florida Statutes, in that Respondent knowingly failed to report actual or suspected child abuse as alleged in Petitioner's Amended Administrative Complaint.

Whether Respondent's educator's certificate should be sanctioned for an alleged violation of section 1012.795(1)(j), in that Respondent violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules as alleged in Petitioner's Amended Administrative Complaint.

#### PRELIMINARY STATEMENT

On March 16, 2016, Pam Stewart, Commissioner of the Department of Education ("Petitioner" or "Commissioner"), filed an Administrative Complaint against Diana Castella ("Respondent" or "Castella"), alleging a violation of section 1012.795(1)(b) and related rules.

On April 14, 2016, Respondent filed an Election of Rights form, disputing allegations in the Administrative Complaint and requesting a hearing pursuant to section 120.57(1).

On May 5, 2016, the case was referred to DOAH for assignment to an Administrative Law Judge.

The case was noticed for hearing on July 1, 2016. On September 15, 2016, Petitioner filed a Motion to Amend Administrative Complaint, adding allegations of violations of

both sections 1012.795(1)(b) and 1012.795(1)(j) and implementing rules.

On September 20, 2016, an Order granting Petitioner's Motion to Amend Administrative Complaint was filed. After two continuances were granted in response to motions from the parties, the case was heard January 10, 2017, before Administrative Law Judge Robert L. Kilbride.

Petitioner presented the testimony of Carmen Gutierrez, Ebony Dunn, and Sonya Durden. Petitioner also presented the testimony of Marilyn Philogene by way of a deposition taken on January 4, 2017, and filed on January 13, 2017. Petitioner's Exhibits 1 through 12 were admitted into evidence.

Respondent testified. Respondent's Exhibits A through C were admitted into evidence, Respondent's Exhibit A being the telephonic deposition of Shalonda Sylvester taken on December 21, 2016.

The official Transcript of the hearing was filed with DOAH on January 24, 2017. On January 30, 2017, the parties filed a joint motion to extend time to file their proposed recommended orders, requesting an extension until February 20, 2017. An Order granting the extension of time was entered on January 31, 2017.

Proposed recommended orders were timely filed by the parties and were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence presented and the record as a whole, the undersigned makes the following findings of material and relevant facts:

Parties' Statement of Agreed Facts

1. Respondent holds Florida Educator's Certificate 632878, covering the area of elementary education, which is valid through June 30, 2017.

2. At all times pertinent hereto, Respondent was employed as a part-time interventionist teacher at Brownsville Middle School ("BMS"), Miami-Dade County School District.

3. Respondent has been a certified teacher for 25 years.

4. On March 9, 2015, Respondent was informed by Y.H., a sixth-grade female student, that her stepfather comes into her room and lays on top of her with his clothes on without touching her in any inappropriate way, when her mother was not present.

5. On March 9, 2015, Y.H. also informed Respondent that her stepfather pushed her toward a wall causing her to fall into a chair and then he pulled her by the hair.

6. Respondent went to Counselor Sonya Durden's office on March 9, 2015, to discuss what she had heard from Y.H. and the other two students.

7. Respondent did not immediately report the student's accusation on March 9, 2015, to the Department of Children and Families or the Child Abuse Hotline.

#### Facts Adduced at the Hearing

8. The Commissioner is responsible for investigating and prosecuting allegations of misconduct against individuals holding educator's certificates under section 231.2615, Florida Statutes.

9. During Castella's 25 years of teaching, she testified that she had never received training concerning suspected child abuse or related reporting requirements. This testimony is rejected. The more persuasive and credible evidence revealed that all school employees at BMS, with no exceptions, received regular training at the beginning of each school year, which includes their reporting duties when child abuse is suspected.

10. The more persuasive evidence also demonstrated that various posters on child abuse reporting were posted around the school to remind teachers at BMS of their reporting requirements in cases of suspected child abuse. Respondent's Exhibits B and C are examples of those posters.

11. Respondent's Exhibit B is a colorful poster with the title Child Abuse Look for the Signs. The poster gives

information on various signs of physical and sexual abuse, as well as the procedure to follow when a child speaks of abuse. The evidence revealed that this poster was posted at the designated faculty sign-in area at BMS at all times relevant to this incident.

12. Principal Ebony Dunn testified that "all of the employees have to sign-in whether they're hourly, whether they're full-time, non-instructional." Thus, Castella would have been required to sign in at this designated area at the beginning of each day where the poster was prominently displayed. The undersigned finds that based on the more persuasive evidence, Respondent was aware of the poster's content.

13. Respondent's Exhibit C is another poster with the title Reporting Child Abuse is Everyone's Responsibility. This poster details various signs of child abuse and how someone can report an instance of child abuse. The undisputed evidence indicated that this poster was also displayed at the student services building/main learning center at all times relevant to the incident.

14. The more persuasive evidence and reasonable inferences drawn from the evidence indicate that Respondent was aware of both of these posters and knew of her duty to report suspected child abuse.

March 9, 2015, Incident

15. On March 9, 2015, Castella was approached by three girls at lunch, one of whom was Y.H., a sixth-grade female student. Castella observed that the other two girls were prodding Y.H. to speak to Castella.

16. During this encounter, Castella was informed by Y.H. that her stepfather comes into her room and lies on top of her with his clothes on without touching her in any inappropriate way, when her mother was not present.<sup>2/</sup>

17. Y.H. also informed Castella at lunch that her stepfather pushed her toward a wall causing her to fall into a chair and then he pulled her by the hair.

18. After lunch, Castella went to another teacher, Philogene, to report the incident because "she wasn't sure what to do," and she wanted to know the other teacher's thoughts on Y.H.'s statement.<sup>3/</sup>

19. Castella contends that she was not aware that what Y.H. told her amounted to child abuse. However, when asked why she told Philogene about the incident, Castella responded, "I wanted to ask Ms. Philogene what she thought because what Y.H. told me was odd, weird." The record indicates that after hearing about the incident, Philogene told Castella to report the incident to Counselor Durden.<sup>4/</sup>

20. Castella testified that on March 9, 2015, she went to Counselor Durden's office to discuss what she had heard from Y.H. and the other two female students. However, Castella asserted that despite her efforts, she was not able to report the incident to Counselor Durden because she was not in her office. Significantly, Castella left the school that day without reporting the incident to any administrator on campus.<sup>5/</sup>

21. Inexplicably, Castella did not immediately report the female student's information on March 9, 2015, to the Department of Children and Families or to the Child Abuse Hotline.

22. Respondent claims that she did not know the protocol for reporting child abuse. The undersigned rejects this claim as incredible and spurious. Rather, the credible and more persuasive evidence shows that it was common knowledge among the school staff, based on training and posted notices, that an incident of child abuse should be reported immediately.

March 10, 2015, Incident

23. The next day, Castella went to Counselor Durden's office immediately upon arriving at the school to report what Y.H. had told her the day before.

24. According to school policy, Castella was mandated to report the incident to a school administrator. Counselor Durden was not an administrator, nor was she Castella's supervisor.



25. After disclosing the nature of her visit, Counselor Durden questioned Castella about the incident and why Castella did not report the incident when she became aware of it the day before. Counselor Durden testified that, "[Ms. Castella] said a young lady, a sixth-grader, had told her during lunch that the stepfather comes into the room every night drunk and holds her down and climbs on her. So I said, 'She told you when?' And she said, 'Yesterday during lunch.' And I said, 'You didn't call it in?' And she said, 'No I didn't.' And I think she was talking about like, you know she's friendly with the kids, and she didn't want to lose her confidence, they trusted her."

26. Castella testified that she was reluctant to immediately report the incident because she did not want to violate the female students' trust.

27. Counselor Durden proceeded to call the Department of Children and Families while Castella was still in her office. Both joined in reporting to the Department of Children and Families what had occurred.

28. Later that afternoon, the Department of Children and Families held a meeting at the school with Y.H., the other two girls who were with Y.H., and Castella to gather details of the suspected child abuse and to determine how to proceed with the incident.

### Contact With News or Media Outlets

29. Castella contacted and voluntarily appeared on a number of local news broadcasts. She detailed the suspected child abuse incident and proceeded to give the name of the school.

30. Petitioner's Exhibit 8, which is a Notice of Investigation signed by Castella and delivered to her, states that a faculty member may be terminated if they speak to a number of subjects about a pending investigation. The document specifies, "You are not to discuss this matter with any witnesses, parents, staff, students, or the complaining party to avoid interference with the investigation."

31. Castella asserts that she did not violate the notice because it did not specify she could not speak to *news stations*. However, Principal Dunn testified that anyone, including the listed parties, had the ability to watch the news broadcast.

32. Therefore, the undersigned finds that her appearance on the news stations violated the spirit and intent of the notice because it could have had an indirect, adverse impact on witnesses and interfered with the internal investigation by the school district.

### CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the parties and subject matter of this case pursuant to sections 120.569 and 120.57(1).

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

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

36. Petitioner seeks to take action against Respondent's educator's certificate as provided in section 1012.795. A proceeding to impose discipline against a professional license is penal in nature, and Petitioner bears the burden to prove the allegations in the Amended 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). See also § 120.57(1)(J), Fla. Stat.

37. 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)).

38. Discipline may be imposed only on grounds specifically alleged in the Amended Administrative Complaint. See Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996); Kinney v. Dep't of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); Hunter v. Dep't Prof'l Reg., 458 So. 2d 842, 844 (Fla. 2d DCA 1984).

39. The state laws requiring a teacher and other school personnel to report suspected child abuse are clear and unambiguous. They are found in the following sections, with pertinent provisions highlighted.

40. Section 1012.795 provides:

Education Practices Commission; authority to discipline.--

(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:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

\* \* \*

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

41. Section 1006.061, Florida Statutes, provides:

Child abuse, abandonment, and neglect policy.--Each district school board, charter school, and private school that accepts scholarship students under s. 1002.39 or s. 1002.395 shall:

(1) Post in a prominent place in each school a notice that, pursuant to chapter 39, all employees and agents of the district school board, charter school, or private school have an affirmative duty to report all actual or suspected cases of child abuse, abandonment, or neglect; have immunity from liability if they report such cases in good faith; and have a duty to comply with child protective investigations and all other provisions of law relating to child abuse, abandonment, and neglect. The notice shall also include the statewide toll-free telephone number of the central abuse hotline. (emphasis added).

42. Section 39.201, Florida Statutes, provides:

Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--

(1) (a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

\* \* \*

(2) (a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. (emphasis added).

Count 1

43. Count 1 alleges that Respondent is in violation of section 1012.795(1) (b), in that Respondent knowingly failed to report actual or suspected child abuse as required in section 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of students as required in section 1012.796.

44. Count 1 was proven by Petitioner based on clear and convincing evidence.

Count 2

45. Count 2 alleges that Respondent is in violation of section 1012.795(1)(j), in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

46. Count 2 was proven by Petitioner based on clear and convincing evidence.

Count 3

47. Count 3 alleges that Respondent violated Florida Administrative Code Rule 6A-10.081(3)(a), in that Respondent failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

48. Count 3 was proven by Petitioner based on clear and convincing evidence.

Count 4

49. Count 4 alleges that Respondent violated rule 6A-10.081(3)(e), in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

50. Count 4 was not proven by Petitioner by clear and convincing evidence.

Count 5

51. Count 5 alleges that Respondent violated rule 6A-10.081(3)(f), in that Respondent intentionally violated or denied a student's legal rights.

52. Count 5 was not proven by Petitioner by clear and convincing evidence.

Penalty

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

54. Rule 6B-11.007(2)(i)16. provides that probation up to revocation is an appropriate range of penalty for "[f]ailure to protect or supervise students in violation of paragraph 6B-1.006(3)(a), F.A.C."

55. Rule 6B-11.007(2) provides that in addition to the other disciplinary guidelines set forth in the rule, each should be interpreted to include "probation," "Recovery Network Program," "letter of reprimand," "restrict scope of practice," "fine," and "administrative fees and/or costs" as additional penalty provisions.

56. Rule 6B-11.007(3) provides that:

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.

57. In this case, the physical and emotional safety and well-being of a young female student was jeopardized by Respondent's failure to *immediately* notify the appropriate authorities of what she learned on March 9, 2015.<sup>6/</sup>

58. Respondent's excuse that she did not want to violate the trust of the female student(s) is categorically rejected. This unconvincing excuse and attempt to "explain away" her conduct completely fails to recognize the central and overriding obligation she has to protect students from child abuse. This was a serious breach of her duties and evinces poor and questionable judgment on Respondent's part.

59. No compelling or persuasive aggravating or mitigating circumstances are present in this case to the extent necessary to

warrant deviation from the wide range of penalties already permitted within the guidelines.

60. To conclude, it was a serious breach of her legal, moral, and ethical duties to fail to immediately report the matter. Likewise, Respondent's delay exposed the female student to additional physical, health, and safety concerns.

61. Similarly, Respondent's revelation of the matter to the media outlet violated both the spirit and intent of the written admonition she was given. Respondent clearly knew better and jeopardized the integrity and progress of the investigation by speaking with the media. At a minimum, students or other witnesses, who viewed the news programs, could have been tainted or changed their testimony or their view of events because of what Respondent told the news.

#### 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 Diana Castella in violation of Counts 1, 2, and 3 of the Amended Administrative Complaint and placing her license on a one-year probationary status, during which time she be ordered to attend and successfully complete, at her expense, training related to her reporting obligations under section 1012.795(1)(b), Florida Statutes.

DONE AND ENTERED this 17th day of March, 2017, in  
Tallahassee, Leon County, Florida.



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ROBERT L. KILBRIDE  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of March, 2017.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes or administrative rules are to the versions in effect on the date of the alleged violations, except as otherwise indicated.

<sup>2/</sup> Significantly, Respondent elaborated and also told Counselor Durden the following day that Y.H. had told her that these encounters occurred at night when the stepfather was drunk and that he holds her down. See para. 25.

<sup>3/</sup> This disclosure to Philogene did not fulfill her requirements under the law.

<sup>4/</sup> The undersigned concludes that a reasonably educated teacher, hearing Y.H.'s reports under those circumstances, would know or should know that such conduct constitutes suspected child abuse.

<sup>5/</sup> There was no evidence presented to corroborate Castella's trip to Counselor Durden's office on March 9, 2015. Despite the serious nature of the incident, Castella did not attempt to leave any message to confirm or document her visit, such as a note or an email.

<sup>6/</sup> Fortunately, there was no proof that Y.H. suffered actual physical injury by Respondent's delayed reporting.

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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.