



Before the Education Practices Commission of the State of Florida

PAM STEWART,
Commissioner of Education,

Petitioner,

vs.

DIANA MARIA CASTELLA,

Respondent.



EPC CASE N° 16-0242-RT
DOAH CASE N° 16-2492PL
PPS N° 145-3012
CERTIFICATE N° 632878
Index N°: 17-557-FOF

Final Order

This matter was heard by a Teacher Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on October 25, 2017, in Tallahassee, Florida, for consideration of the Recommended Order entered in this case by ROBERT L. KILBRIDE, Administrative Law Judge. Respondent was present and represented by Douglas Elias Ede, Esq. Petitioner was represented by Charles T. Whitelock, Esq. Attached hereto as Exhibit A is a copy of Respondent's Exceptions. Attached as Exhibit B is Petitioner's Motion to Enhance Penalty.

Ruling on Exceptions

1. Respondent filed an exception to paragraph 9 of the Recommended Order (hereinafter "RO"). The Commission does not have substantive jurisdiction over evidentiary issues. There is competent substantial evidence to support the findings of fact in paragraph 9. The exception is rejected.

2. Respondent filed an exception to paragraph 10 of the RO. There is competent substantial evidence to support the findings of fact in paragraph 10. The exception is rejected.

3. Respondent filed an exception to paragraph 11 of the RO. There is competent substantial evidence to support the findings of fact in paragraph 11. The exception is rejected.

4. Respondent filed an exception to paragraph 12 of the RO. Inferences that can be drawn from the competent substantial evidence are the purview of the Administrative Law Judge. There is competent substantial evidence to support the finding of fact in paragraph 12. The exception is rejected.

5. Respondent filed an exception to paragraph 13 of the RO. When there is contradictory evidence, it is the duty of the Administrative Law Judge to weigh the evidence. There is competent substantial evidence to support the findings of fact in paragraph 13. The exception is rejected.

6. Respondent filed an exception to paragraph 14 of the RO. It is the duty of the Administrative Law Judge to weigh the evidence and draw inferences therefrom. There is competent substantial evidence to support the findings of fact in paragraph 14. The exception is rejected.

7. Respondent filed an exception to paragraph 21 of the RO. There is competent substantial evidence to support the findings of fact in paragraph 21. The exception is rejected.

8. Respondent filed an exception to paragraph 22 of the RO. There is competent substantial evidence to support the findings of fact in paragraph 22. The exception is rejected.

9. Respondent filed an exception to paragraph 26 of the RO. There is no evidence in the record to support the finding of fact in paragraph 26. The exception is accepted.

10. Respondent filed an exception to paragraph 29 of the RO. There is competent substantial evidence in the record to support the findings of fact in paragraph 29. The exception is rejected.

11. Respondent filed an exception to paragraph 30 of the RO. The finding that Petitioner's Exhibit 8 states that a faculty member may be terminated if they speak to specified persons about a pending investigation is not supported by the evidence. The exception to that portion of paragraph 30 is accepted and the language stricken. The remainder of the findings in paragraph 30 are supported by competent substantial evidence in the record. The remainder of the exception is rejected.

12. Respondent filed an exception to paragraph 32 of the RO. The inference drawn by the Administrative Law Judge is based on competent substantial evidence in the record. The exception is rejected.

13. Respondent filed an exception to paragraph 44 of the RO. The Commission does not have the authority to determine whether evidence is clear and convincing, only whether there is competent substantial evidence to support the findings of fact. The exception is rejected.

14. Respondent filed an exception to paragraph 46 of the RO. The Commission does not have the authority to determine whether evidence is clear and convincing, only whether there is competent substantial evidence to support the findings of fact. The exception is rejected.

15. Respondent withdrew her exception to paragraph 48 of the RO.

16. Respondent filed an exception to paragraph 57 of the RO. The inference drawn by the Administrative Law Judge supported by clear and convincing evidence. The exception is rejected.

17. Respondent filed an exception to paragraph 58 of the RO. There is competent substantial evidence to support the conclusion of law in paragraph 58. The exception is rejected.

18. Respondent filed an exception to paragraph 59 of the RO. This exception is a plea for the Commission to accept part of the evidence in mitigation and does not constitute an exception as defined in the Administrative Procedures Act. To the extent that it does meet the standard, the Administrative Law Judge did not find the evidence mitigating. The exception is rejected.

19. Respondent filed an exception to paragraph 60 of the RO. The inference drawn by the Administrative Law Judge supported by clear and convincing evidence. The exception is rejected.

20. Respondent filed an exception to paragraph 61 of the RO. There is competent substantial evidence to support the finding in paragraph 61. The exception is rejected.

21. Respondent filed exceptions to footnotes 2, 4 and 5 of the RO.

Footnotes do not constitute findings of fact. The exceptions are rejected.

22. Respondent filed exceptions to the Supplemental Order Amending Recommended Order issued on May 10, 2017. The Supplemental Order included no new findings of fact or conclusions of law. The exceptions to the Supplement Order are stricken.

Findings of Fact

1. The Panel hereby adopts the findings of fact in the Recommended Order as amended by the rulings on Respondent's exceptions. There is competent substantial evidence to support these findings of fact.

Conclusions of Law

1. The Education Practices Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 1012, Florida Statutes.

2. The Panel hereby adopts the conclusions of law in the Recommended Order.

Ruling on Petitioner's Motion to enhance Penalty

1. For the reasons stated in Petitioner's Motion, attached hereto, and argument of Petitioner's counsel, the Commission granted Petitioner's Motion to Enhance Penalty.

Penalty

Upon a complete review of the record in this case, it is therefore **ORDERED** that:

1. Respondent's Florida educator's certificate is hereby suspended for a period of 3 years from the date of this Final Order.
2. Respondent is assessed an administrative fine of \$1,000.00 to be paid within the first year of probation.
3. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on 2 employment years of probation with the conditions that during that period, (s)he shall:
 - A. 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.
 - B. Have Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
 - C. Pay to the Commission during the first 6 months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.
 - D. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
 - E. Satisfactorily perform all assigned duties in a competent, professional manner.

F. Bear all costs of complying with the terms of a final order entered by the Commission.

G. Provide a certified college transcript to verify successful (a grade of “pass” or a letter grade no lower than a “B”) completion of 3 hours of college level course-work in the area(s) of Education Ethics, which may be taken online, within the probationary period.

H. Complete in-service coursework in the area of Identifying and Reporting Child Abuse, and provide documentation verifying successful completion to the probation compliance officer within the probationary period.

This Final Order takes effect upon filing with the Clerk of the Education Practices Commission.

DONE AND ORDERED, this 1st day of December, 2017.



NICHOLAS PIETKIEWICZ, Presiding Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was furnished to DIANA MARIA CASTELLA, 2140 Southwest 3rd Avenue, Apt. 2-C, Miami, FL 33129 and Douglas Ede, Esq., 7501 W. Oakland Park Boulevard, Fort Lauderdale, FL 33319 by Certified U.S. Mail, by electronic mail to Darby Shaw, Deputy General Counsel and Charles T. Whitelock, Esq., 300 Southeast 13th Street, Suite E, Fort Lauderdale, FL 33316-1924 this 1ST day of December, 2017.



Lisa Forbess, Clerk
Education Practices Commission

COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

Superintendent of Schools
1450 NE Second Avenue #912
Miami, FL 33132

Director
Office of Professional Standards
Dade County Schools
1500 Biscayne Blvd., Suite 222
Miami, FL 33132
Lee Ann Gustafson
Senior Assistant Attorney General

ROBERT L. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Claudia Llado, Clerk
Division of Administrative Hearings

Probation Office