

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 17-4831PL

VERONICA CAMPBELL,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on April 2, 2018, via video teleconference, with sites in Tallahassee and Lauderdale Lakes, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Charles T. Whitelock, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

For Respondent: Robert F. McKee, Esquire
Robert F. McKee, P.A.
Post Office Box 75638
Tampa, Florida 33675

STATEMENT OF THE ISSUE

The issue in this case is whether just cause exists to sanction Respondent, Veronica Campbell (hereinafter

"Dr. Campbell"), for violation of Florida Statutes and Florida Administrative Code rules governing the conduct of school teachers in the State of Florida; and, if so, what sanction(s) should be imposed.

PRELIMINARY STATEMENT

An Administrative Complaint was issued by Petitioner, Pam Stewart, as Commissioner of Education (hereinafter the "Commission"), on June 14, 2017. The complaint alleges violations of specified statutory and rule provisions by Dr. Campbell relative to her status as a teacher during the 2014-2015 school year. An Amended Administrative Complaint, accepted into the record by Order dated March 22, 2018, added allegations of acts having occurred during the 2016-2017 school year. Dr. Campbell timely filed an Election of Rights in response to the complaint, indicating her desire for a formal administrative hearing.

At the final hearing, the Commission called two witnesses, Principal Angela Brown and Gretchen Adkins-Brown. The Commission's Exhibits 1 through 14 were admitted into evidence. Dr. Campbell stipulated to admission of the exhibits, subject to the hearsay contained therein. The Commission did not raise any exceptions that might apply to the hearsay statements within the exhibits when they were offered into evidence at final hearing.

Dr. Campbell testified on her own behalf. She did not call any other witnesses, nor did she offer any exhibits into evidence.

All hearsay evidence was admitted subject to corroboration by competent, non-hearsay evidence. To the extent such hearsay evidence was not corroborated or did not support other competent evidence, it will not be used as a basis for any finding herein.

The parties advised the undersigned that a transcript of the final hearing would be ordered. The parties requested and were granted 30 days from the date the transcript was filed at DOAH to submit proposed recommended orders ("PROs"). The Transcript was filed on April 27, 2018, meaning PROs were due on or before May 26, 2018, but the parties requested and were allowed to submit their PROs by June 4, 2018. Each party timely submitted a PRO and both parties' submissions were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Commission is responsible for overseeing all teachers and staff members of public schools in the State of Florida. It is the duty and responsibility of the Commission to ensure that all teachers follow the rules of professionalism and conduct set forth in Florida Statutes and the Florida Administrative Code. The Commission issues a teaching certificate to each instructor employed by a school and has

the right to sanction teachers for wrongdoing. Sanctions may include revocation of the teaching certificate.

2. Dr. Campbell has been an employee of the Broward County School District since 2005, starting as a substitute teacher before becoming a regular teacher in 2007. Her entire tenure in Broward County has been at Dillard Elementary School (the "School"). Dr. Campbell has an associate of arts degree in accounting, a bachelor's degree in management, a masters' degree in human resources, and a doctorate in public policy and administration. The latter degree was obtained in 2013. At all times relevant hereto, Dr. Campbell was teaching a kindergarten class at the School. She holds Florida Educator's Certificate No. 964933, including the areas of Elementary Education, English for Speakers of Other Languages, Reading, and Exceptional Education. The certificate is valid through June 30, 2020.

3. Following an incident in April 2015 (the facts of which are not relevant to this proceeding), Principal Brown issued a "Letter of Summary," memorializing a meeting held on April 15, 2015, with Dr. Campbell about the incident. Dr. Campbell refused to sign the letter and also refused to even accept a copy of the letter when proffered. So, Principal Brown read the letter to Dr. Campbell, which included an admonishment that Dr. Campbell not hit, push, grab, or shake any student at the School. According to Principal Brown, Dr. Campbell, as was her

usual custom, refused to even take a seat while she was in the Principal's office for the meeting. Instead, as usual, Dr. Campbell would only provide short answers to questions and it was difficult to obtain information from her. Though not inherently wrong, Dr. Campbell's behavior seems an odd way for a teacher to interact with her administrative supervisor. Dr. Campbell did not offer any explanation for her behavior.^{1/}

4. The Amended Administrative Complaint at issue in this proceeding alleges the following factual bases for imposing discipline against Dr. Campbell. Because of the "Letter of Summary" that had been previously issued, the School administrators decided that some action needed to be taken when other incidents occurred. The following allegations (set forth verbatim from the Amended Administrative Complaint) are at issue in this proceeding:

3. During the 2014/2015 school year, Respondent inappropriately disciplined students by hitting them with an open hand and/or closed fist on their heads and arms.

4. On or about April 24, 2015, Respondent failed to properly supervise her students or to protect the safety and wellbeing of her students. Respondent failed to intervene when J.S., a six year old, female student walked around the room hitting other students. Respondent further failed to act immediately, even to the extent of simply saying, "stop," when several male students responded to J.S. by attacking her physically causing scratches and bruising.

5. That on or about February 28, 2017, Respondent contacted the principal by the school's intercom system, demanding the removal of a kindergarten.

6. That upon her arrival, the principal noted a five year old male student, R.L., standing and crying at the far west side of the classroom. When asked why he was crying, R.L. blurted out, "she hit me, Dr. Campbell hit me."

7. R.L. was removed from the classroom and interviewed by the principal and assistant principal. R.L. stated that when he took another student's iPad to use, Respondent became angry, snatched the iPad away before shoving him into the white board injuring his right hand and knuckles.

5. The actual facts about the allegations are difficult to ascertain from the evidence provided at final hearing, being based almost completely on hearsay, mostly from statements made by five- and six-year-old children. Unfortunately, no adults witnessed the alleged events in their entirety. The allegations are more specifically set forth below, including the use of non-substantiated hearsay in order to more fully describe the incidents at issue.

The R.P. Incident^{2/}

6. On February 28, 2017, student R.P. was being uncooperative and disruptive in Dr. Campbell's classroom, as was his normal demeanor. Sometime after lunch on that school day, R.P. took an iPad away from another student and refused to give it back. Dr. Campbell retrieved the iPad from R.P. in some

fashion. When the iPad was taken from him, R.P. was upset and began crying. R.P. continued crying until Dr. Campbell called the School's front office and asked that R.P. be removed from her room. Mrs. Adkins-Brown, who was at that time the School principal, reported to Dr. Campbell's room to retrieve R.P. Both R.P. and Mrs. Adkins-Brown then left the classroom.

7. Mrs. Adkins-Brown's version of the story: When she arrived at Dr. Campbell's classroom, Mrs. Adkins-Brown told R.P. to get up from his desk and accompany her back to the office. R.P. did not comply. Mrs. Adkins-Brown asked him again; again he refused to move. Then Mrs. Adkins-Brown asked R.P. what was wrong and he reportedly replied, "She [Dr. Campbell] hit me." Mrs. Adkins-Brown took R.P. to the office and questioned him again about what had happened. He said that Dr. Campbell had hit him and/or pushed him against the wall to retrieve the iPad he had taken from another student.

8. After talking with R.P. in the office, Mrs. Adkins-Brown initiated a very quick investigation into the incident. She drew up a list of queries which she and other school administrators employed when questioning students from Dr. Campbell's classroom. Some of the students allegedly told Mrs. Adkins-Brown that Dr. Campbell had hit R.P.; other students purportedly said she did not. Some students also may have said that Dr. Campbell has hit other students as well. Other

students supposedly said Dr. Campbell did not hit other students. None of the students, including R.P., testified at final hearing, thus there is no corroborative evidence for the statements made by Mrs. Adkins-Brown. The hearsay statements of kindergarten students are insufficient evidence on which to make a finding of fact concerning this matter.

9. Dr. Campbell's version of the incident: R.P. took an iPad belonging to another student. At the time, Dr. Campbell was sitting at a table working with other students. When R.P. ran past the table, Dr. Campbell grabbed the iPad from him. There was no other touching. R.P. continued to act out, so Dr. Campbell called the front office to come remove R.P. from the classroom. Dr. Campbell described R.P. as a generally disruptive child, about whom she had called the front office many times to report bad behavior.

10. The incident was apparently investigated by the Broward County School District, but its conclusion was not moved into evidence.

The J.S. Incident

11. The April 24, 2015, incident (two years prior to R.P.) involved certain agreed facts, i.e., that J.S. was hitting other children until they began to hit her back. Little else is conclusively established from the facts presented. The incident occurred just days after the previously discussed "Letter of

Summary" had been issued, directing Dr. Campbell not to harm her students.

12. According to Dr. Campbell: J.S. was a notoriously aggressive child who would often become confrontational with fellow students. On the day in question, near the end of the school day, J.S. began walking around the classroom pointing at various male students, saying, "I can whoop you." She would open-hand slap each student as she addressed them. Dr. Campbell told her to return to her seat, but J.S. refused. Dr. Campbell then picked up the telephone to call J.S.'s mother, hoping the parent could make J.S. behave. The parent did not answer the call, so Dr. Campbell left a message. As she started to hang up the phone, she heard a commotion behind her. Turning around, she saw three or four boys "beating up" J.S. This frightened Dr. Campbell. Rather than walking across the classroom to break up the altercation, Dr. Campbell instead reached for the phone and called the front office, yelling, "They are fighting," or some such statement. Although Dr. Campbell was obviously in closer proximity to the altercation than anyone at the office, she said she would have had to go around desks and such to reach the children, therefore she called the office.

13. As Dr. Campbell hung up the phone, J.S. broke and ran, heading for the classroom door. As she reached the door, Principal Brown and Mrs. Adkins-Brown opened the door from the

other side. J.S. was restrained by Mrs. Adkins-Brown and taken away from the classroom. Dr. Campbell did not adequately explain why she could not immediately break up the fight between kindergarten students rather than calling for assistance from administration. Her explanation that the configuration of the desks and the size of the classroom prevented her from intervening in the fight is not persuasive. Further, calling for the Principal rather than trying to intervene because she was "frightened" and "out of my wits," is not very plausible. The children are five- to six-year-old kindergarteners.

14. According to Principal Brown: She was in the office when a telephone call came in from Dr. Campbell. She could be heard on the phone exclaiming, "the fight, the fight" or something of that nature. Principal Brown and her assistant principal, Mrs. Adkins-Brown, immediately hurried to the classroom. She opened the classroom door with her key just as J.S. ran out and was corralled by Mrs. Adkins-Brown. Alternatively, as Principal Brown wrote in an earlier statement (see Exhibit 6), J.S. was already outside the classroom, crying, when they arrived. Principal Brown saw the class in disarray, with students out of their seats and furniture askew. She saw Dr. Campbell standing at the front of her room with an iPad in her hand. Mrs. Adkins-Brown, meanwhile, took J.S. back to the office.

15. At the office, J.S. allegedly said that Dr. Campbell had told the other students to hit her or to hit her back if she hit them. J.S.'s mom was called and was told about the incident. When she arrived at the school, the mom immediately called the police to report the allegations. Neither J.S. nor her mother testified at final hearing to corroborate these assertions.

16. Mrs. Adkins-Brown confirmed her role in the incident and added that Dr. Campbell seemed to have a smile or smirk on her face when J.S. ran out of the classroom. However, Mrs. Adkins-Brown also stated earlier (Exhibit 19) that J.S. was outside the classroom when she arrived. Alternatively, Mrs. Adkins-Brown saw Dr. Campbell "smiling" and/or asked Principal Brown whether she saw Dr. Campbell laughing. Or, possibly, she did not come into the classroom at all. Mrs. Adkins-Brown noted that J.S. had bruises on her body, but she did not know their origin.

17. Following the incident, the school administrators questioned some of the students from Dr. Campbell's class. Some of the students were said to have confirmed J.S.'s perception of the matter, other students were said to disagree. None of the students testified at final hearing.

18. While conducting its investigation into this incident, the School transferred Dr. Campbell out of the classroom into

another position. She remained out of the classroom for one year.

19. Although the police were called after the J.S. incident, no further action was taken by the Police Department concerning the matter. The Florida Department of Children and Families was also notified, but that agency declined to become involved due to an insufficiency of evidence.

20. The Broward County School District Police Department did conduct an investigation of both incidents (R.P. and J.S.). Some hearsay statements made by Dr. Campbell during that investigation were introduced into evidence, but they were not competent, substantial evidence on which to make a finding of fact herein.

21. Dr. Campbell has been the recipient of several allegations similar to the facts of the instant case during the past four years. She has not received any sanction as a result of those allegations.

22. There was very little non-hearsay evidence in this case. All that can be firmly established is that at least two students in Dr. Campbell's classroom made allegations against her. None of the allegations were corroborated by persuasive non-hearsay evidence.

23. And, whether from the passage of time since the incidents occurred or faulty memories, even the hearsay evidence

was not reliable. There were multiple incidents in the record where witnesses contradicted prior recollections.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. The proceedings are governed by sections 120.57 and 120.569, Florida Statutes. Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2017 codification.

25. The Commission has the authority to investigate and prosecute alleged violations of section 1012.795(1), Florida Statutes, which states in pertinent part:

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:

* * *

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

* * *

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

26. Florida Administrative Code Rule 6A-10.081 is entitled, Principles of Professional Conduct for the Education Professional in Florida. This rule sets out various and sundry ethical principles that should be followed by all teachers. The rule states in pertinent part:

(1) Florida educators shall be guided by the following ethical principles:

(a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(b) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore

strive for professional growth and will seek to exercise the best professional judgment and integrity.

(c) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(a) Obligation to the student requires that the individual:

1. 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.

* * *

5. Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

27. The Commission is acting pursuant to its authority in seeking to terminate Dr. Campbell's teaching certificate based on alleged violations including, inter alia, exposing her students to unnecessary embarrassment or disparagement and failing to protect them from physical harm.

28. Because this case involves the potential loss of a license to engage in a business or livelihood, the Commission is

required to prove all elements of the violations charged by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. and Inv. Prot. v. Osborne Stern and Co., 670 So. 2d 932, 933 (Fla. 1966); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The clear and convincing evidence standard is succinctly described in Evans Packing Company v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116 n.5 (Fla. 1st DCA 1989) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)), as:

[C]lear 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 evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts and issues. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy as to the truth of the allegations sought to be established.

29. Section 120.57(1)(c) provides that, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." See Harris v. Game & Fresh Water Fish Comm'n, 495 So. 2d 806, 809 (Fla. 1st DCA 1986); Rivera v. Bd. of Trs. of Tampa's Gen. Emp. Ret. Fund, 189 So. 3d 207, 213 (Fla. 2d DCA 2016).

30. As set forth above, the testimony of each of the witnesses was based almost exclusively on hearsay.^{3/} None of the hearsay evidence was corroborated, so no findings can be made based on that testimony. Further, the testimony was not clear and convincing, lacking precision and explicit recall. Absent competent, substantial evidence of the facts alleged in the Amended Administrative Complaint, it is impossible to recommend any sanction against Dr. Campbell's teaching certificate.

31. Section 1012.796(7) sets forth the process for issuance of a final order after receiving the recommendation from the Administrative Law Judge. That statutory section requires "a panel of the commission" to enter the final order "either dismissing the complaint or imposing one or more . . . penalties." Id. In the instant case, no recommendation can be made as to a sanction or penalty. Thus, the only option for the panel of the commission is to dismiss the Amended Administrative Complaint in its entirety.

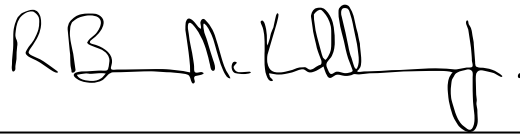
32. Dr. Campbell's demeanor at final hearing, her behavior when meeting with School administrators, and the number of claims made by her students in recent years all suggest that Dr. Campbell may not be working in the most appropriate environment for someone like her. However, a recommendation for sanction was clearly not proven by clear and convincing evidence in the present case.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Commissioner of Education dismissing the complaint against Respondent, Veronica Campbell, in its entirety.

DONE AND ENTERED this 13th day of June, 2018, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
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 13th day of June, 2018.

ENDNOTES

^{1/} In the deposition transcript admitted into evidence as Exhibit 12 in this matter, Dr. Campbell provided a bizarre and increasingly disjointed response concerning her meeting with Principal Brown about the letter. Even though there may have been some cultural and linguistic difficulty involved, the totality of her testimony seemed more intended to obfuscate than to provide a clear statement of what had transpired at the meeting.

^{2/} Although the allegations in the Amended Administrative Complaint and the Prehearing Stipulation refer to student "R.L."

throughout, the testimony and evidence at final hearing regarding this incident indicate that "R.P." is actually the student at issue.

^{3/} The Commission contends in its PRO, without any cited authority, that R.P.'s alleged statements constitute "excited utterances," which are exceptions to the hearsay rule. See § 90.803(3), Fla. Stat. That issue was not raised at final hearing and the elements of an excited utterance exception were not proven. R.P.'s statements are thus excluded from consideration in this matter.

COPIES FURNISHED:

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

Charles T. Whitelock, Esquire
Charles T. Whitelock, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316
(eServed)

Robert F. McKee, Esquire
Robert F. McKee, P.A.
Post Office Box 75638
Tampa, Florida 33675
(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)

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.