

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 17-5375PL

VADIS PARSON,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a disputed fact hearing in this cause was held by video teleconference between sites in Fort Myers and Tallahassee, Florida, on November 13, 2017, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
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For Respondent: Robert J. Coleman, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent committed the violations alleged in the Administrative Complaint, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On or about November 29, 2016, Petitioner, Pam Stewart, in her capacity as Commissioner of Education (Petitioner), filed an Administrative Complaint against Respondent, Vadis Parson (Respondent). Respondent timely filed her request for administrative hearing, and on September 26, 2017, the matter was referred to the Division of Administrative Hearings (DOAH) for a disputed fact hearing.

During the disputed fact hearing, Petitioner offered the testimony of Neketa Watson, Adrienne McDowell, Joseph Restino, Andrew Brown, and Jevon Matthews. Respondent testified on her own behalf and called no other witnesses to testify on her behalf. Petitioner's Exhibits 1 through 3 and 7 through 10 were admitted into evidence. Respondent's Exhibits 1 through 10 were also admitted into evidence.

A Transcript of the proceeding was filed with DOAH on December 11, 2017. Respondent filed a Proposed Recommended Order on December 20, 2017, and Petitioner did the same on January 2, 2018. The proposed recommended orders submitted by the parties have been considered by the undersigned.

FINDINGS OF FACT

1. During all times relevant hereto, Petitioner served as head of the Florida Department of Education, the state agency charged with the responsibility of investigating and prosecuting complaints of violations of section 1012.795, Florida Statutes (2015),^{1/} against teachers holding Florida educator certificates.

2. Respondent holds Florida Educator Certificate 725789, covering the areas of middle school integrated curriculum and physical education, which is valid through June 30, 2020.

3. During all times relevant hereto, Respondent was employed as a physical education teacher at Lehigh Acres Middle School in the Lee County School District. Respondent has been a Florida educator for 24 years, all with the Lee County School District.

4. The Administrative Complaint, as to the material allegations, contends that “[o]n or about February 18, 2016, Respondent engaged in a physical altercation with 13-year-old, female student, A.O., when A.O. refused to give Respondent A.O.’s cellphone [and that] Respondent held A.O. to the ground during the altercation.”

A. The Video

5. The altercation in question took place in the school gymnasium (gym). Activities in the gym are monitored by at least a single video surveillance camera. The images captured by the

video camera are somewhat grainy, but it is possible to glean from the images the general nature of the interaction between Respondent and the student in question; there is, however, no audio associated with the surveillance video.

6. Respondent is seen on the surveillance video walking around the gym while students (approximately 40) are positioned on the floor throughout the gym. The video shows student A.O. sitting on the gym floor with her back against the bleachers. It appears from the surveillance video that the nearest student to A.O. is approximately eight to ten feet away. The video also shows that Respondent appears to weigh at least twice as much as A.O. and stand at least four inches taller.

7. It is undisputed that Respondent, while moving about the gym, observed A.O. using her cellphone.

8. The video shows Respondent moving towards A.O. When she is approximately three feet from A.O., Respondent communicates in some way to A.O. that she needs to give Respondent her cellphone. The student, while continuing to sit on the floor, is then seen either placing or attempting to place the cellphone in the right-rear pocket of her pants. Respondent, without pausing, then positions herself over the student and attempts to remove the cellphone from either the student's pocket or hand. The student then rolls onto her right side and positions herself so that her right rear pocket is pressed against the gym floor. At this

time, the student is in a near fetal position. Respondent, while continuing to stand over the student, then tussles with the student for about 10 seconds while attempting to take the cellphone.

9. The student then extricates herself from Respondent's grasp, and while rising from the floor is then pushed in the back by Respondent, which then creates about an arms-length distance between Respondent and the student. The student, while standing, then turns towards Respondent and appears to swing at Respondent with her left hand. Respondent knocks away the student's extended left arm and then pushes the student onto the lower bench portion of the bleachers. The student lands on her butt and then immediately rises and moves towards Respondent.

10. Respondent and the student's arms then become entangled. While their arms are entangled, Respondent pushes the student back several steps, forces the student into a seated position on the bleacher bench, and then pushes the student to the gym floor. Respondent then positions herself on top of the student and subdues her by pinning her to the gym floor with her right leg over the student's left leg and her left leg across the student's upper back and shoulder area. Respondent released the student after approximately 40 seconds.

11. Before releasing A.O., the video shows that many of the students in class rushed to the area of the gym where the

altercation occurred, formed a semi-circle around Respondent and A.O., and recorded the incident on their cellphones. A cellphone video capturing portions of the incident was admitted into evidence, and on this video, a student is heard suggesting to another student that the recording of the altercation should be posted to YouTube.

B. Student A.O.

12. A.O. was in the eighth grade when the incident with Respondent occurred. A.O. did not testify at the disputed fact hearing, but she did submit written statements to school officials following the altercation with Respondent.^{2/}

13. On February 22, 2016, A.O. provided the following written statement:

I was sitting down on my phone like some other kids were doing to, not knowing I wasn't allowed to use it because it's my first day in gym. So Ms. Parsons said give me the phone so I said no, I'm sorry Miss, and when I went to reach for my pocket to put it in and she reached down and pushed her elbow and arm up against my neck and chest so I was on the ground flat by that time and we ended up both getting up and trying to get the phone and she ended up pushing me and then somehow she ended up holding me down by holding my arms and sitting on top of me. After she had pushed me on the bleachers she had lightly hit my leg so I hit her in her head.

14. On August 17, 2016, A.O. provided an additional written statement, which reads as follows:

I would like to add, that when she was above me after she put her forearm on me I did not feel safe so I stood up. Also when she had pushed me on the bleachers and kept wrestling with me I had been kicking her so she could leave me alone. After I was escorted to ISS, then Mr. Restino's office, I was brought to the clinic after he had seen the video and Ms. Garcia took pictures of all my red marks and some scratches, they weren't deep though.

C. Respondent's Version of Events

15. On February 18, 2016, the date of the altercation in question, Respondent prepared the following written statement:

This afternoon as I was walking around the classroom monitoring the students, I was checking to make sure that the students were working on their projects. I saw that the young lady in question was on her phone. I asked her to give me her phone and I reached my hand out for the phone. She snatched it away and I continued to ask her for the phone. I took the phone and she said I wasn't getting her phone and struggled with me. I got the phone and she stood up and punched me in my right ear. I pushed her back and she came at me again so I pushed her back again. She kicked me in the stomach. I grabbed one of her arms and her leg as she went to kick me again and I brought her down to the floor. I put my knee on her back as I held her arm and leg. I told her that I could not believe that she would do this over a phone [and] that I probably would have given it back to her at the end of the class period since it was near the end of the day. She said that she didn't know that because she was new. I told her even if she was new that you don't hit a grown-up or a teacher like that.

I told her that I was going to let her up. She said okay. By that time coach McDowell came over and said th[at] coach Steidl had called for assistance. Deputy Matthews came in and I explained what happened. He talked with her for a few seconds. I asked him if I should give him the phone or give it back to her. He said to give it to her so I did and they left. Later, I noticed that I had some scratches and blood on my arm and I went to the clinic to get my arm treated.

16. On June 30, 2016, Respondent sent an email to the human resources department for the School Board of Lee County. In this missive Respondent notes, in support of her belief that she did nothing wrong in this situation, that during the fracas with A.O. "students were cheering" for Respondent and that throughout the incident she was merely "responding to [A.O.'s] inappropriate and disrespectful behavior."

17. Respondent testified during the final hearing and her testimony was in material part consistent with her written statements.

D. Cellphone Policy

18. Ms. Neketa Watson was the principal of Lehigh Acres Middle School during the 2015-2016 school year. According to Ms. Watson, the Student Code of Conduct in effect at the time of the incident in question provides as follows:

Students may possess cell phones and other personal electronic devices while on school grounds during regular school

hours, however they must be turned off at all times unless utilized for an approved activity. Cell phone usage is allowed during non-instructional time or for an approved activity. Possession of all personal electronic devices, including cell phones, is done at the student's own risk and the school assumes no responsibility, legal or otherwise, with regard to these items.

19. During the 2015-2016 school year, Ms. Watson sent weekly emails to all school personnel reminding them about school policy and procedures. The weekly reminders would often include reference to the school's cellphone policy, which provides that "if we see it, we hear it, we take the phone." The cellphone policy reminders sent out by Ms. Watson also explained to school personnel that they should not use physical force when attempting to secure a cellphone from a student and that if a student refused to turn over a phone when requested, then personnel should "call for an administrative administrator who removes the student" and then processes the student for suspension.

20. Ms. Watson explained that she did not include the reminder about the cellphone policy in each of her weekly emails to personnel, but she specifically recalled having done so the week of the incident in question. Ms. Watson testified that the reminder was sent on Sunday night (February 14, 2016).

21. On February 18, 2016, Adrienne McDowell was employed by the School Board of Lee County as an educational paraprofessional

for physical education and was assigned to Lehigh Acres Middle School. In explaining her understanding of the cellphone policy, Ms. McDowell testified as follows:

A: What we were told via email a couple weeks prior to this event that Ms. Watson sent out, when a student has a cellphone out, if you see it or hear it, you need to ask for it. If they don't place that phone in your hands willingly, then you call for a specialist to come and deal with that student. It is not our job to take a cellphone away from a student, we just call for a specialist.

Q: By specialist, what do you mean?

A: Security, administration, someone in the specialist team, guidance counselor, you know. There are different, -- like I said, a specialist is a security guard, administration or guidance counselor; anybody more equipped to handle the situation than we are.

22. Respondent testified that she was unaware of Ms. Watson's emails to personnel regarding the proper protocol for confiscating cellphones from non-compliant students. On June 17, 2016, Respondent, as part of the investigation conducted herein, sent an email to school board officials and stated therein that it was her belief that "[i]f I had not taken her phone, that the students would have disrespected and challenged me from that day forward." In the same missive, Respondent, in an attempt to discredit one of the students who witnessed her altercation with A.O., noted that she disciplined the student

witness "for his misbehavior by writing him a referral and having him escorted out of [her] classroom." Given Respondent's admitted general awareness of the school's policy of referring misbehaving students to an appropriate administrator for disciplinary action, and her concerns about being challenged and disrespected, Respondent's testimony that she was unaware of Ms. Watson's directive regarding students who refuse to hand over their cell phones is not credible.

E. Student Detention, Search and Seizure

23. Lee County School Board Policy 4.03 sets forth procedures related to searching a student's person and property. Numbered paragraph (3) of the policy provides in part that "[a]n administrative staff member or an instructional staff member designated by an administrator may search a student's person [and] personal belongings . . . if there is reasonable suspicion to believe the search will result in evidence the student has violated Florida Statute or School Board Rule or if the student consents to such search." Respondent was neither an administrative staff member nor an instructional staff member with authorization to conduct student searches, and therefore her actions of physically searching A.O. and taking her cellphone violated Lee County School Board Policy 4.03.

F. Aggressor or Victim

24. Respondent challenges the instant proceeding in part on the theory that the facts demonstrate that she was the victim and merely acted in self-defense against the actions of a combative student. Contrary to Respondent's contention, the credible evidence, as captured by the surveillance video, establishes that Respondent committed the initial act of aggression when she, without hesitation, lorded over A.O. and physically grabbed the student in an unauthorized effort to confiscate A.O.'s cellphone. While it is true that the student, after initially being pinned to the gym floor by Respondent, eventually freed herself from Respondent's grip and in her agitated state committed reflexive acts of aggression towards Respondent, the credible evidence establishes that these events would not have occurred but for Respondent's initial use of unauthorized and unreasonable force. Respondent, without question, had the right to protect herself against the aggressive countermeasures initiated by the student. However, it is also the case that under the facts of this case the student equally had the right to protect herself against Respondent's initial acts of aggression.^{3/}

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

26. Petitioner seeks disciplinary action against the Florida educator certificate held by Respondent. Petitioner, therefore, has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

27. Count I of the Administrative Complaint alleges that Respondent violated section 1012.795(1)(j). Section 1012.795(1) provides, in relevant part, as follows:

(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:

* * *

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

28. Counts II and III of the Administrative Complaint allege that Respondent violated the Principles of Professional Conduct for the Education Profession in Florida, as set forth in Florida Administrative Code Rule 6A-10.081(2)(a)1. and 5.^{4/}

29. Rule 6A-10.081(2) provides, in part, as follows:

(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.

30. As to Count II, Respondent's physical mistreatment of A.O., as demonstrated most vividly by the video evidence, clearly and convincingly proves that Respondent subjected A.O. to a physical attack, which compromised A.O.'s physical health and safety. Respondent's conduct violates rule 6A-10.081(2)(a)1., as alleged in the Administrative Complaint.

31. As to Count III, rule 6A-10.081(2)(a)5. prohibits a Florida educator from intentionally exposing a student to unnecessary embarrassment or disparagement.

32. The clear and convincing evidence demonstrates that Respondent, by resorting to physical force to extricate the cell phone from A.O.'s possession, was motivated by her belief that A.O. had disrespected and challenged her authority, and that if she did not immediately respond to A.O.'s challenge then the other students "would have disrespected and challenged [her] from that day forward." This evidence demonstrates that Respondent acted intentionally with respect to her interaction with A.O.

33. The clear and convincing evidence also demonstrates that several students recorded the incident on their respective

cellphones, that at least one student suggested posting video of the incident to YouTube, and that students were cheering for Respondent while she pinned A.O. to the gym floor. From these facts, it is reasonable to infer that A.O. was exposed to unnecessary embarrassment or disparagement.

34. The clear and convincing evidence demonstrates that Respondent violated rule 6A-10.081(2)(a)5., as alleged in Count III of the Administrative Complaint.

35. Count I of the Administrative Complaint charges Respondent with violating the Principles of Professional Conduct for the Education Profession. Because the evidence clearly and convincingly establishes that Respondent violated the Principles of Professional Conduct for the Education Profession, as demonstrated above with respect to Counts II and III, it is therefore determined that Respondent also violated section 1012.795(1)(j) as charged.

36. Petitioner recommends that Respondent's educator certificate be suspended for a period of three years. Given the circumstances present in the instant matter, which are mitigated by Respondent's length of time as an educator and the fact that A.O. received only minor physical injuries, it is reasonable that Respondent's educator certificate be suspended for a period of two years, followed by one year of probation.^{5/} Petitioner's recommendation of three years seems excessive. The Education

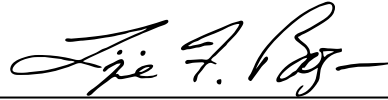
Practices Commission shall establish the terms and conditions for both the suspension and probation. In making this recommendation, the undersigned considered the Disciplinary Guidelines set forth in Florida Administrative Code Rule 6B-11.007.

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 Respondent guilty of the violations alleged in counts one through three of the Administrative Complaint.

It is further RECOMMENDED that the final order suspend Respondent's Florida Educator Certificate 725789 for a period of two years, to be followed by a one-year period of probation. The terms and conditions of Respondent's suspension and probation shall be established by the Education Practices Commission.

DONE AND ENTERED this this 16th day of January, 2018, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of January, 2018.

ENDNOTES

1/ All subsequent references to Florida Statutes will be to 2015, unless otherwise indicated.

2/ Section 120.57(1)(c), Florida Statutes, provides, in part, that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence.” Since A.O.’s statements supplement and help to explain what is depicted on the surveillance video, appropriate consideration has been given to the statements by the undersigned.

3/ “It can hardly be argued that either students or teachers shed their constitutional rights . . . at the schoolhouse gate.” Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1968).

4/ Rule 6A-10.081 was amended on March 23, 2016. The altercation occurred on February 18, 2016. Regarding the instant allegations, the substance of the rule was unaffected by the amendments. For purposes of consistency between the Administrative Complaint and this Recommended Order, reference to rule 6A-10.081(2)(a)1. and 5. is used. However, based on the

date of the altercation, the correct rule citation is 6A-10.081(3) (a) and (e).

^{5/} If Respondent has reached the point in her career where she lacks the ability to control her emotions and appropriately absorb, process and respond to disrespectful acts by students which challenge her perceived or actual authority, then for the safety of herself and her students, Respondent should consider an alternative form of employment.

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.