

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 18-3355PL

RENYA JONES,

Respondent.

_____ /

RECOMMENDED ORDER

On September 25, 2018, a duly-noticed hearing was held in Fort Pierce, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Ron Weaver, Esquire
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Ocala, Florida 34477-0088

For Respondent: Nicholas Wolfmeyer, Esquire
Egan, Lev, Lindstron & Siwica, P.A.
Post Office Box 2231
Orlando, Florida 32802

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent reported for duty while under the influence of alcohol in violation of section 1012.795(1)(j), Florida Statutes (2016), and Florida Administrative Code Rule 6A-10.081(2)(a)1.^{1/}, as alleged in the

Administrative Complaint; and, if so, what sanction is appropriate.

PRELIMINARY STATEMENT

Pam Stewart, as Commissioner of the Department of Education (Petitioner or Commissioner), filed an Administrative Complaint dated March 16, 2018, against Ms. Renya Jones (Respondent or Ms. Jones), alleging violations of section 1012.795(1)(j) and rule 6A-10.081(2)(a)1. Respondent filed an Election of Rights form on April 18, 2018, disputing allegations in the complaint and requesting a hearing. On June 29, 2018, the case was referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

The case was noticed for hearing on August 23, 2018, and after continuance, was heard on September 25, 2018. At hearing, Petitioner presented the testimony of Actavis McQueen, a teacher at Village Green Environmental Studies (Village Green); Sherri Brown, then a teacher at Village Green; Mary Bergerman, media clerk at Village Green; Cynthia Garcia, executive secretary at Village Green; Officer Kenneth Rodriguez, of the Safety and Security Department of the St. Lucie County School Board; Gina Dinello, technician at Absolute Testing/Consulting; and Aaron Clements, director of employee relations at the St. Lucie County School Board. Petitioner offered 47 exhibits: P-1 through P-12; P-14; P-16 through P-18; P-20 through P-24; P-26 through P-45;

and P-47 through P-52; all of which were admitted, with the exception of P-51. Exhibit P-51 was the deposition of Ucola A. Barrett-Baxter, then principal at Village Green, which was authorized prior to hearing to be submitted as a late-filed exhibit, but not timely filed. Exhibit P-52 was a composite exhibit consisting of the testimony of Ms. Verna Brown (Ms. Brown) as given in DOAH Case No. 17-4226, stipulated by the parties to also be her testimony in this case, as well as the deposition testimony of Ms. Brown taken on August 16, 2018. Petitioner's Exhibits P-5, P-6, P-12, P-21, P-48 and P-49 were admitted over the objection that they were irrelevant. Respondent's hearsay objections to Petitioner's Exhibits P-10, P-11, P-23, P-24, P-26, P-27, P-28, and P-29 were sustained and the exhibits were admitted with the caveat that they would be considered only as supplementing or explaining other competent evidence and could not in themselves support a finding of fact.

Respondent testified on her own behalf and offered the testimony of three employees at Village Green: Marcela Marshall Morgan, a "paid volunteer"; Julia Hughes, formerly a teacher; and Andrew Copeland, a physical education teacher. Respondent offered 8 exhibits, R-1, R-2, and R-4 through R-9, all of which were admitted into evidence. Exhibits R-2, R-4, R-6, and R-9 were admitted over Petitioner's objection that they were not relevant.

The two-volume Transcript of the proceeding was posted on the DOAH docket on October 15, 2018. The time for filing proposed recommended orders was extended until November 5, 2018, in response to a joint motion. Both parties timely filed proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Commissioner is the state officer responsible for investigating and prosecuting allegations of misconduct against individuals holding educator certificates.

2. Ms. Jones held Florida Educator's Certificate No. 866702, covering the area of Music, which was valid through June 30, 2018.

3. At all times pertinent to the Administrative Complaint, Ms. Jones was employed as a music teacher at Village Green in the St. Lucie County School District.

4. On May 8, 2017, Ms. Cynthia Garcia reported to work at Village Green around 7:30 a.m. The desk where visitors and staff members sign in is adjacent to the front office where Ms. Garcia works. Sometime between 7:30 a.m. and 7:50 a.m., Ms. Jones signed in at the desk and crossed the front office. Ms. Jones said hello to Ms. Garcia and apologized for the way that she looked. Ms. Jones had on no makeup and her hair or wig was unkempt. Ms. Garcia asked Ms. Jones if she was okay because she was acting a little giddy and didn't seem to be herself.

5. Ms. McQueen was in the hallway at Village Green going to her classroom when Ms. Jones called out to her. Ms. McQueen went over to her to see what she wanted. Ms. Jones was laughing and told Ms. McQueen that the students would not recognize her because she wasn't wearing any makeup. Ms. McQueen smelled alcohol and noticed that Ms. Jones' was inappropriately dressed and that her hair was untidy. Ms. McQueen testified that Ms. Jones was slurring her words, but she was able to understand what Ms. Jones was saying. Ms. McQueen testified that Ms. Jones did not have any coordination problems or trouble walking. Ms. McQueen told Ms. Jones to go to her office to straighten herself up. Ms. McQueen testified, "And my reason for doing that, because I wanted to get her away from the students, so that I could go to the office to get help, to tell administration." Ms. McQueen testified that while she was talking with Ms. Jones, a few students began waiting outside of the music room where they were to rehearse for a musical production.

6. Ms. McQueen saw Ms. Brown in the cafeteria. Ms. McQueen told Ms. Brown that she thought Ms. Jones was drunk, or had been drinking. Ms. Brown asked Ms. McQueen to take over her responsibility to stay with the children who were having breakfast so that Ms. Brown could go see Ms. Jones in the music room.

7. Ms. Brown testified that when she spoke to Ms. Jones:

[Y]ou could smell the alcohol, and her eyes was swollen and the whites was red. And the students kept trying to come through the back part of the -- it's like the stage, because they was practicing. They practice in the morning for a play. And I wanted to try to keep the students from seeing her, so I like get in front of her.

* * *

Because I didn't want them to see how she looked. Because her hair was kind of wild and her top was up, you can kind of see her stomach. I didn't want the students to see Ms. Jones like that.

8. Ms. Brown told Ms. Jones she needed to get herself together, and Ms. Jones responded that she would leave the school. Ms. Brown asked Ms. Jones if she wanted her to get someone to help, was told no, and she then told Ms. Jones that she would tell the school administration that they would need to get a substitute teacher for the day.

9. This credible, eyewitness testimony of Ms. Jones' colleagues that she smelled of alcohol, had swollen and bloodshot eyes, exhibited slurred speech, and was acting in an unusual, "giddy" manner is sufficient evidence to reasonably infer that Ms. Jones was under the influence of alcohol when she reported to the school for duty on the morning of May 8, 2017.

10. Ms. McQueen and Ms. Brown left campus, with Principal Barrett-Baxter's permission, to make sure that Ms. Jones had

arrived at her home. When they arrived, they saw her rental car parked there.

11. Later the same morning, Ms. Jones returned to Village Green. She went to the office area to talk to Principal Barrett-Baxter. It was not clearly shown that Ms. Jones intended to return to duty or be in contact with students when she returned.

12. Principal Barrett-Baxter said that she could smell alcohol from across the desk, and confirmed the others' earlier observations that Ms. Jones' appearance was unacceptable. Ms. Garcia also credibly testified that the smell of alcohol was so strong that it lingered in the room after she left.

13. Based on her observations and reports, Principal Barrett-Baxter directed Ms. Jones to have a reasonable suspicion drug test conducted. Officer Ken Rodriguez, who transported Ms. Jones for the testing, also testified that he smelled alcohol, that Ms. Jones was a "little foggy," and that she appeared to be under the influence of alcohol.

14. Two breathalyzer tests were conducted at Absolute Testing, indicating that Ms. Jones had blood alcohol level readings of .186 and .191.

15. The events after Ms. Jones returned to Village Green were of little value in considering the charge in the Administrative Complaint because of the interplay of two circumstances: 1) Ms. Jones spent time at home alone after her

initial presentation at Village Green and before the time the alcohol test was conducted; and 2) it was not clearly shown that Ms. Jones was reporting for duty to teach students when she returned to the school.

16. There was no evidence of any prior discipline involving the Florida Educator Certificate of Ms. Jones.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

18. Petitioner is responsible for filing complaints and prosecuting allegations of misconduct against instructional personnel. §§ 1012.795(1) and 1012.796(6), Fla. Stat. (2018).

19. Petitioner seeks to take action against Respondent's educator certificate. A proceeding to impose discipline against a professional license is penal in nature. It is Petitioner's burden to prove the allegations in the 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).

20. Clear and convincing evidence has been said to require:

[T]hat the 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)).

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

COUNT 1

22. Count 1 alleges that Respondent was in violation of section 1012.795(1)(j), in that she violated the Principles of Professional Conduct for the Education Profession. Count 2 goes on to allege the specific violation of these principles. Count 1, standing alone, does not constitute a distinct disciplinary violation.

COUNT 2

23. Count 2 alleges that Respondent violated rule 6A-10.081(2)(a)1., which at the time of the alleged offense provided that Florida educators:

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.

24. Respondent argues that because she willingly left the school when told to do so and had little contact with students, she was not in violation of the rule. This argument is rejected. Although there was clear evidence of contact with a few students, this evidence was not even required. In showing up for work, signing in, and preparing to teach and supervise the students rehearsing for the play while under the influence of alcohol, Respondent failed to make reasonable effort to protect her students from conditions harmful to student's learning and their mental health and safety. She did not, on her own, apparently even realize that she should not be at the school or be around students in her condition.

25. It was only after she signed in that co-workers took control, sent Respondent home, and arranged for another teacher to take her place. This intervention was fortunate for the students and avoided possible negative consequences. However, Respondent's violation of the rule was complete at the point that she arrived at the school to teach in her condition. It is clear from the language of the rule that actual damage resulting from her failure to take the actions reasonably required to protect her students need not be proven. The lack of evidence that any student suffered actual harm and Ms. Jones' cooperation when directed to return home are mitigating factors, but not defenses to her actions.

26. Petitioner proved by clear and convincing evidence that Respondent violated section 1012.795(1)(j) and rule 6A-10.081(2)(a)1.

Penalties

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

28. At the time of the offense, rule 6B-11.007(2)(i)16., provided that probation to revocation was the appropriate range of penalties for "failure to protect or supervise students in violation of paragraph" 6A-10.081(2)(a)1.^{2/}

29. Rule 6B-11.007(2) also provided that the disciplinary guidelines should be interpreted to include "Recovery Network Program" and "administrative fees and/or costs" with applicable terms thereof as additional penalty provisions.

30. Rule section 6B-11.007(3) provided:

(3) 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.

31. There was no evidence of actual physical or mental harm to any student resulting from Respondent's actions on May 8, 2017, though there was clear potential for harm. There was only a single offense and there is no evidence of previous discipline. While Respondent cooperated when directed to return to her home, she knew or should have known not to put her students into the situation in the first place. There was no evidence of efforts toward rehabilitation. No evidence was presented as to Respondent's present physical or mental condition connected with any continuing use of alcohol.

32. No aggravating or mitigating circumstances are present here to the extent necessary to warrant deviation from the wide range of penalties already permitted within the guidelines.

RECOMMENDATION

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

RECOMMENDED that the Education Practices Commission enter a final order finding Respondent Renya Jones in violation of section 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rule 6A-10.081(2)(a)1.; renewing her teaching certificate and placing her on probation for a period of three years; requiring her to obtain treatment through the Recovery

Network Program at a frequency and for a duration deemed appropriate by the Commission; and requiring her to pay administrative fees and costs.

DONE AND ENTERED this 15th day of November, 2018, in Tallahassee, Leon County, Florida.



F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of November, 2018.

ENDNOTES

^{1/} All references to Florida Statutes or administrative rules are to the versions in effect in May 2017, the time of the events described in the Administrative Complaint, except as otherwise indicated.

^{2/} In 2017, rule 6B-11.007 actually continued to reference rule 6B-1.006(3)(a), the prior numbering of the principle of professional conduct requiring "reasonable effort to protect the student." The disciplinary guideline rule was not amended until May 29, 2018. However, the nature of the offense is set out in full in the disciplinary guideline rule and Respondent is not prejudiced by the mislabeling.

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.