



Before the Education Practices Commission of the State of Florida



RICHARD CORCORAN,
Commissioner of Education,

Petitioner,

vs.

JAVIER CUENCA

Respondent.

EPC CASE: 19-0043-RT
DOAH CASE: 19-1125PL
PPS: 134-3176
CERTIFICATE: 958539
Index N^o: 20-046-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 January 16, 2020, in West Palm Beach, Florida, for consideration of the Recommended Order ("RO") entered in this case by JOHN G. VAN LANINGHAM, Administrative Law Judge ("ALJ"). The Recommended Order is attached hereto and incorporated herein as Attachment A. Respondent was not present and was represented by legal counsel, James C. Casey, Esq., who was also not present. Petitioner was represented by Charles T. Whitelock, Esq. Respondent filed Exceptions to the Recommended Order, which are attached

hereto and incorporated herein as Attachment B. Petitioner did not file exceptions, but filed a Response to Respondent's Exceptions, which is attached hereto and incorporated herein as Attachment C.

Ruling on Respondent's Exceptions

Exception No. 1: Respondent filed an exception to paragraph 3 of the RO regarding the finding that ■■■ was a student athlete whom Cuenca coached. For the reasons stated in Respondent's exception, the exception is accepted, and the finding of fact contained in paragraph 3 is revised to delete the finding that ■■■ was another student athlete whom Cuenca had coached."

Exception No. 2: Respondent filed an exception to paragraphs 6, 7, 8, and 9 of the RO regarding inappropriate touching of ■■■ by Respondent. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 3: Respondent filed an exception to paragraph 10 of the RO regarding whether ■■■ was one of Respondent's basketball players. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 4: Respondent filed an exception to paragraph 11 regarding Respondent's use of abstinence as a pretext for touching students. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 5. Respondent filed an exception to paragraph 11 regarding the ALJ's use of the term "mumbo-jumbo." For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 6. Respondent filed an exception to paragraphs 13 and 14, regarding the allegations made by witnesses [REDACTED] and [REDACTED]. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 7. Respondent filed an exception to paragraph 12 and the 5th endnote, regarding steroids. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 8. Respondent filed an exception to paragraphs 13, 14, and 15, regarding the allegations made by witnesses [REDACTED] and [REDACTED]. For the reasons stated by counsel for Petitioner and contained in Petitioner's Response, the exception is rejected.

Exception No. 9. Respondent filed an exception to paragraphs 28 and 29, regarding whether Respondent violated section 1012.795(1)(d), F.S. by committing an act of gross immorality. Because the exception does not contain citations to the record by page and line number, pursuant to Rule 28-106.217(1), F.A.C., the Panel declines to rule on the exception.

Exception No. 10. Respondent filed an exception to paragraphs 33 and 34, regarding whether Respondent obtained a personal gain from the encounters with [REDACTED], [REDACTED]. Because the exception does not contain citations to the record by page and line number, pursuant to Rule 28-106.217(1), F.A.C., the Panel declines to rule on the exception.

Exception No. 11. Respondent filed an exception to paragraph 37, regarding the recommended penalty. Because the exception fails to identify the exact reason why the ALJ's recommended penalty should be rejected, stating the legal basis therefor, the exception is rejected.

Findings of Fact

1. The Panel hereby adopts the findings of fact in the Recommended Order, as modified by the Panel's ruling regarding Respondent's Exception No. 1, which deletes any references in the Order to ■■■ being "another student athlete whom Cuenca had coached."

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.

Penalty

Upon a complete review of the record in this case, the Commission determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. It is therefore ORDERED that:

Respondent's educator's certificate No. 958539 is hereby PERMANANTLY REVOKED and Respondent is PERMANANTLY BARRED from applying for another Florida educator's certificate.

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

DONE AND ORDERED, this 28th day of January, 2020.




ANA ARMBRISTER BLAND, 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 Javier Cuenca, [REDACTED]; James C. Casey, Esq., Slesnick & Casey, LLP, 2701 Ponce de Leon Boulevard, Suite 200, Coral Gables, FL 33134; and Charles T. Whitelock, Esq., Charles T. Whitelock, P.A., 300 Southeast 13th Street, Suite E, Ft. Lauderdale, FL 33316-1924 by Certified U.S. Mail, and by electronic mail to Bonnie Wilmot, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 this 28th day of January, 2020.



Lisa Forbess, Clerk
Education Practices Commission

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