

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS  
COMMISSIONER OF EDUCATION,

Petitioner,

vs.

Case No. 19-2299PL

OLIVE ANDERSON,

Respondent.

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RECOMMENDED ORDER

On October 4, 2019, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Miami and Tallahassee, Florida.

APPEARANCES

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

For Respondent: Branden Vicari, Esquire  
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STATEMENT OF THE ISSUES

The issues are whether Respondent verbally disparaged students or grabbed their clothing and, in one case, stepped on a student's foot, so as to fail to protect students from

conditions harmful to learning, in violation of Florida Administrative Code rule 6A-10.081(2)(a)1., or to intentionally expose students to unnecessary embarrassment or disparagement, in violation of rule 6A-10.081(2)(a)5., and thus violate section 1012.795(1)(j), Florida Statutes; if so, an additional issue is what penalty should be imposed, pursuant to section 1012.795(1).

PRELIMINARY STATEMENT

By Administrative Complaint signed March 16, 2018, Petitioner alleged that Respondent disparaged her students by calling them "pig," "dumbass," "stupid," "ugly" and "fat," placing a mirror in front of one student and saying, "look at your ugly face," grabbing students by their shirt collars, and grabbing one student by his shirt collar and stepping on his foot. The Administrative Complaint alleges that Respondent failed to make reasonable effort to protect students from conditions harmful to learning and/or to the student's mental health and/or physical health or safety, in violation of rule 6A-10.081(2)(a)1., and intentionally exposed a student to unnecessary embarrassment or disparagement, in violation of rule 6A-10.081(2)(a)5. The Administrative Complaint alleges that the violations of these rules, as part of the Principles of Professional Conduct for the Education Profession, thus constitute violations of section 1012.795(1)(j).

Respondent requested a formal hearing by filing an Election of Rights on May 13, 2018.

On May 1, 2019, the Education Practices Commission transmitted the file to DOAH. The hearing was set for June 26, 2019, but was continued to October 4 at the request of both parties.

On September 10, 2019, Petitioner filed a Motion to Amend Administrative Complaint. Without objection, the administrative law judge granted the motion by Order issued on October 3, 2019. The amended allegations remove redactions from the Administrative Complaint and add some detail to the original allegations, including the initials of students and incident dates. In particular, the alleged collar-grabbing and foot-stomping occurred on April 6, 2017, and the other alleged matters occurred on October 11, 2016.

At the hearing, Petitioner called three witnesses and offered into evidence 15 exhibits: Petitioner Exhibits 1 through 8, and 10 through 16. Respondent called one witness and offered into evidence nine exhibits: Respondent Exhibits 1, 3 through 8, 10, and 11. All exhibits were admitted for all purposes and in their entirety except Petitioner Exhibits 3 (only last three paragraphs on page 13 admitted), 5, 6 (admitted, but not for truth), 11, and 12 (admitted, but not for truth).

The court reporter filed the transcript on October 31, 2019. The parties timely filed proposed recommended orders by December 6, 2019.

FINDINGS OF FACT

1. At all material times, Respondent has held educator certificate 989254. For over 13 years, she has been employed as a teacher by the Miami-Dade County School District.

2. During the 2016-17 school year, Respondent was teaching fifth grade at a Miami-Dade County elementary school. Approximately 28 students were assigned to her class.

3. On October 11, 2016, Respondent walked her students from the basketball court to her classroom in preparation for the start of instruction at 8:35 a.m. One or more of a small group of students sitting with S.L., also a student, complained to Respondent that S. L. was bothering other students. Directing herself to the class in general, Respondent told the students to stop disrupting and settle down for class. She warned the class that, if she received one more complaint, the misbehaving student would have to change seats.

4. After receiving this warning, another student complained about S.L., so Respondent directed him to take a seat at an empty table. S.L. initially refused to move, but eventually did so. However, he continued to disrupt other students by calling them names, exhibiting aggressive body

language, and even getting out of his seat, as though to charge a student.

5. Respondent directed S.L. to stop misbehaving. He retorted, "you're not smart, and the kids are dumb." Trying to restore order, Respondent approached S.L.'s table with a mirror used for science class. Placing it within his reach and extending his comment that his classmates were "not smart," Respondent said words to the effect, "if you could see your behavior, you'd know it's not smart." By using "not smart," rather than a negative term, such as "stupid," to describe misbehavior, Respondent attempted to convey a positive message while trying to reshape S.L.'s behavior.

6. Without permission, S.L. got up from his desk; walked to the door; announced that he was going to the principal's office to complain that Respondent had disparaged him, adding that the principal had told him to come anytime, so she could fire Respondent; defiantly stuck out his buttocks toward the class; and left the classroom. By the time that Respondent was able to call the office to advise that S.L. was headed their way, the principal's secretary advised that he was already there.

7. Having lodged his complaint with the principal, S.L. returned to class, resumed his seat, and, using a sharp object, carved onto the desktop, "Stupid Anderson popo." "Popo" is

slang for "police," although Respondent thought that it meant something about shooting.

8. Respondent never abused the children with demeaning terms, such as "pig," "dumbass," "fat," or "ugly," although S.L. used some of these terms when verbally assaulting his classmates.

9. The facts set forth in the preceding six paragraphs track Respondent's testimony, which has been credited. In opposition to this version of events, Petitioner called a single eyewitness, T.F., who was a student in the classroom during the incident in question. By the time of the hearing, T.F. was attending a Miami-Dade middle school, and S.L.'s school assignment was not disclosed in the record.

10. T.F. gave two statements. The first statement, which was typewritten by a Department of Education investigator, was given on October 28, 2016. The second statement, which is in T.F.'s handwriting, was given on October 14, 2016, and the purpose for which this statement was made is undisclosed in the record.

11. The typewritten statement consists of questions and answers. In this statement, with the questions and one irrelevant answer omitted, T.F. asserts:

[Respondent] is always calling [S.L.] names. She calls him fatty and ugly. She even put a mirror in front of his face and said,

"Look at your ugly face." She did this in front of all of us and I felt really bad for him. She also calls us names. She calls us dumb, stupid and ugly. She even called me dumb and stupid. I went to the bathroom to cry. She made me feel bad. She also calls the boys pigs.

\* \* \*

. . . she curses at us when she is mad and says we are doing crap, screams and yells a lot, and she told [S.L. and another student identified only as H.] to shut up their fat lips. She also hit [J.F.] and [M.B.] all the time. She grabbed [J.F.] hard by the arm and squeezed his arm and she also hit [M.B.] hard on the head with a closed fist.

\* \* \*

When she is really mad at us she screams, yells, calls us names, and hits the students. She hits the boys on the head and the arm.

\* \* \*

. . . I am afraid of her, and she makes me feel bad when she calls me stupid and dumb. I cry all the time. We are all happy in the class when she does not come to school. [S.L.] was the one she mistreated the most. When [S.L.] was in a fight and bleeding, she was laughing because he was hurt.

12. The handwritten statement states in its entirety:

The Class/P.E. Court  
in the class [S.L.] came out of nowhere and start crusing [cursing] my mom my family and puting his body in my face and saying kiss his body and lick his private part. Saying nasty stuff in creol calling me pig stink bug [doudon?] head hiting me. In P.e. he got a stick and treating [threatening] that he is going to cut my neck of [off] and pock

[poke] my eyes. when I don't give him something he get's mad and say lick his boody [body? booty?] and he Hit me with a basketball. when I wrote the bully fomr [form] he got mad and took the form and rip it and he spit in my face whenever I talk to [S., another student] or other people some time he makes me cry.

13. T.F.'s direct testimony consisted entirely of her agreeing with everything in the typewritten statement, although it was unclear, during her testimony, if she independently recalled the comments and actions described in the statement. Also, most of the questions posed to T.F. on direct were leading.

14. On cross examination, T.F. identified her signature on the handwritten statement and recalled some, but not all, of its contents. Specifically, she admitted that S.L. had bullied her and made her cry. Initially, T.F. denied that S.L. had spit in her face, but then recalled that he had done so by accident. She testified that she could not recall that S.L. had threatened to cut her neck with a stick, even though such an action would typically be memorable to the victim. The reference in the handwritten statement to a bully form is a form that T.F. and a few other students submitted, at the urging of Respondent, a few days after the October 11 incident, but the record does not disclose what action, if any, the school or district



administrators took in response to these complaints about S.L.'s bullying.

15. In testifying, T.F. withdrew her typewritten statement about Respondent's calling her dumb and stupid and instead stated that she liked Respondent as a teacher. Also, T.F. testified that S.L. had called the entire class dumb, as Respondent testified.

16. On redirect, T.F. admitted, evidently as to the handwritten statement, "most of this stuff I don't remember." As noted above, the hearing took place three years after the earlier of the two alleged incidents, and it is obvious that the 2016-17 school year had presented some challenges for T.F.

17. T.F. impressed the administrative law judge as a child who was trying to tell the truth, but was under considerable pressure in October 2016 and continuing pressure, even through the time of the hearing. When T.F. testified that she had cried, not from Respondent's actions, but from the bullying of S.L., her father interjected by asking his daughter why she had not told him about this, and she replied that "you wouldn't care." T.F.'s father was not a witness, and his statement is not noted to support a finding that T.F. did not tell him about the bullying; however, his interjection and T.F.'s response depicted some of the stress to which T.F. has been subjected over the matters described above.

18. In general, the typewritten statement lacks the spontaneity and inattention to grammar and diction that characterize the handwritten statement. It is questionable whether one word in the typewritten statement--"mistreated"--would be a word chosen by T.F. It is not so much that the word requires an advanced vocabulary, but the word requires a level of abstraction that is not evidenced in the handwritten statement, which is graphically episodic. It is impossible to find by clear and convincing evidence that the typewritten statement records the words of T.F., free of substantial editing by the investigator.

19. Additionally, the handwritten statement effectively impeaches the typewritten statement. S.L. bullied T.F. to the point of making her cry at school. The handwritten statement suggests the possibility that S.L. forcefully tried to intimidate T.F. in her effort to report his bullying. Significantly, S.L. still had daily access to T.F. when she gave the typewritten statement.

20. Lastly, T.F.'s testimony was unpersuasive. She did not appear to recall independently what she testified to on direct. It did not appear that she was even willing to read aloud her typewritten statement, as she was willing only to agree to it in response to a series of leading questions.

21. For reasons undisclosed in the record, Respondent, who was represented by a union representative, agreed to a suspension of 25 workdays without pay for the October 11 events. Respondent did not try to explain her choice not to contest the charges, nor is it necessary to infer one, because any weight that could be assigned to such a choice, on these facts, does not establish or help to establish clear and convincing evidence of wrongdoing. This suspension seems to have followed an earlier job action removing her from student contact for 90 days, based on a verified finding of mental injury to S.L. by a protective investigator employed by the Department of Children and Families (DCF)--an administrative action that is entitled to no weight for the reasons set forth in the Conclusions of Law.

22. Petitioner has failed to prove by clear and convincing evidence any of the allegations arising out of the October 11, 2016, incident.

23. Respondent testified that she did not grab students by their collars or step on their feet. The only evidence to the contrary is the discredited evidence provided by T.F. As was the case with the October 11 incident, Petitioner did not call as witnesses the alleged victims in this April 6, 2017, incident. The Miami-Dade County School District issued a reprimand for the alleged April 6 incident. Nothing in the record suggests that Respondent had a right to contest this

charge, and, given the mildness of the punishment, it is impossible to infer that she did; but, again, a choice not to contest this charge would not support an inference of guilt by clear and convincing evidence.

24. Petitioner has failed to prove by clear and convincing evidence any of the allegations involving grabbing students by their collars or stepping on the foot of a student.

#### CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 1012.796(6).

26. Petitioner must prove the material allegations by clear and convincing evidence. § 120.57(1)(j); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Clear and convincing evidence is evidence that is "'precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.'" Robles-Martinez v. Diaz, Reus & Targ, LLP, 88 So. 3d 177, 179 n.3 (Fla. 3d DCA 2011) (citing Fla. Std. Jury Instr. (Civ.) 405.4).

27. As part of the Principles for Professional Conduct for the Education Profession, rule 6A-10.081 provides:

(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.

28. Section 1012.795(1)(j) authorizes the Education Practices Commission to impose a wide range of discipline for a violation any of the Principles of Professional Conduct for the Education of Profession.

29. A DCF determination of verified abuse of a child is made without regard to any standard of proof and without affording the alleged perpetrator an opportunity to request a hearing. § 415.104, Florida Statutes (2017); former § 415.1075(1)(d) (1999) (right to a hearing and determination of maltreatment must be by preponderance of the evidence); The Florida Senate, Committee on Children, Families, and Elder Affairs, "Review of State Child Abuse Registries," Issue Brief 2011-205 (October 2010), <https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-205cf.pdf>. No weight thus attaches to DCF's determination of mental injury.

30. The determination of a violation of either of these rules is a fact question to be made by the administrative law judge. Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995). As noted in the Findings of Fact, Petitioner failed to prove a violation of either of these rules.

RECOMMENDATION

It is

RECOMMENDED THAT the Education Practices Commission enter a final order finding Respondent not guilty of the allegations set forth in the Administrative Complaint, as amended.

DONE AND ENTERED this 10th day of December, 2019, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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this 10th day of December, 2019.

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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.