

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

vs.

Case No. 19-5639PL

EMILY SONES,

Respondent.

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RECOMMENDED ORDER

A hearing was held in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020),¹ before Administrative Law Judge ("ALJ") Cathy M. Sellers of the Division of Administrative Hearings ("DOAH") on January 15, 2021, by Zoom Conference.

APPEARANCES

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

For Respondent: Peter Caldwell, Esquire
Florida Education Association
1516 Hillcrest Street, Suite 109
Orlando, Florida 32803

STATEMENT OF THE ISSUE

Whether Respondent engaged in conduct that violated section 1012.795(1)(j), Florida Statutes, and/or Florida Administrative Code

¹ All references to chapter 120, Florida Statutes, are to the 2020 codification.

Rule 6A-10.081(2)(a)1., and if so, what is the appropriate penalty to be imposed against her Florida Educator's Certificate.

PRELIMINARY STATEMENT

On April 18, 2019, Petitioner, Richard Corcoran, as Commissioner of Education, filed an Administrative Complaint against Respondent, Emily Sones. Respondent disputed the material facts alleged in the Complaint and timely filed an Election of Rights form, requesting an administrative hearing. On October 21, 2019, the case was referred to DOAH for assignment of an ALJ to conduct a hearing pursuant to sections 120.569 and 120.57(1).

The final hearing was initially scheduled to be held on January 7, 2020. Pursuant to motions to continue the final hearing dated December 5, 2019; March 17, 2020; and November 9, 2020, the final hearing was continued three times for good cause shown, and ultimately rescheduled for January 15, 2021.

The final hearing was held on January 15, 2021. Petitioner presented the testimony of Ana Sanchez and students H.B., A.A., and J.R. Petitioner's Exhibit Nos. 1, 3, 4, 6, 7, 10, 11, and 13 were admitted into evidence without objection, and Petitioner's Exhibit Nos. 2, 5, 8, and 9 were admitted over objection. Respondent testified on her own behalf and presented the testimony of Jeanette Sierra-Funcia and Salvatore Schiavone. Respondent's Exhibit Nos. 1 through 10 were admitted into evidence without objection.²

² Respondent's Exhibit Nos. 1 and 6 are Miami-Dade County School Board Policies, of which official recognition also has been taken.

The one-volume Transcript of the final hearing was filed at DOAH on February 2, 2021. The deadline for filing proposed recommended orders was extended twice, to April 19, 2021. The parties timely filed their Proposed Recommended Orders ("PROs") on April 19, 2021, and both PROs have been duly considered in preparing this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner, the Commissioner of Education, is responsible for determining whether there is probable cause to warrant disciplinary action against an educator's certificate, and, if probable cause is found, for filing and prosecuting an administrative complaint pursuant to chapter 120.

2. Respondent holds Florida Educator Certificate No. 717826, which is valid through June 30, 2025, and covers the area of physical education (PE").

3. As of February 28, 2018, the date on which the conduct giving rise to this proceeding occurred, Respondent was employed by Petitioner in a partial assignment as a PE teacher at Coral Gables Preparatory Academy ("CGPA"), formerly known as Coral Gables Elementary School, within the Miami-Dade County School District ("District"). Respondent was simultaneously employed in a partial teaching assignment at a different school in the District.

The Administrative Complaint

4. The Administrative Complaint charges Respondent with having engaged in inappropriate conduct on February 28, 2018, consisting of throwing students' book bags, resulting in damage to electronic devices that were in the book bags. The Administrative Complaint alleges that the damage to the electronic devices was over \$2,000.00.

5. Count 1 of the Administrative Complaint charges Respondent with having violated section 1012.795(1)(j)³ by having violated the Principles of Professional Conduct for the Education Profession adopted by the State Board of Education.

6. Count 2 of the Administrative Complaint charges Respondent with having violated rule 6A-10.081(2)(a)1,⁴ by having failed to 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.

Evidence Adduced at the Hearing

7. As noted above, the incident giving rise to this proceeding occurred on February 28, 2018, at CGPA.

8. At the time of the incident, some students were on their way out to the athletic field outside of the school for PE class, while others were on their way out to the field for recess.

9. An indeterminate number of students left their bookbags in the walkway near the exit door to the field, despite previously having been told by Respondent to place their bookbags against a wall adjacent to the walkway in order to ensure that no one tripped over bookbags.

10. Respondent moved the bookbags out of the walkway by "tossing" or "throwing" them.⁵ There is conflicting evidence regarding the force with which Respondent moved the bookbags.

³ All references to chapter 1012, Florida Statutes, are to the 2017 codification, which was in effect at the time of the alleged conduct giving rise to this proceeding. *See Orasan v. Ag. for Health Care Admin.*, 668 So. 2d 1062, 1063 (Fla. 1st DCA 1996)(law in effect at time of alleged violations applies in disciplinary proceedings).

⁴ The version of rule 6A-10.081 that was adopted by the State Board of Education on March 23, 2016, was in effect at the time of the conduct giving rise to this proceeding, and, therefore, applies to this proceeding. *See Orasan*, 668 So. 2d at 1063.

⁵ A key issue disputed by the parties is whether Respondent "tossed" or "threw" the bookbags. This dispute appears to center around Respondent's culpability because, presumably, if she "threw" them, she did so in anger, without regard to whether the contents would be damaged, thereby warranting a more severe penalty than if she had merely

11. Student J.R. credibly testified that he saw Respondent "furiously" throwing the bookbags, including his bookbag. He testified that as a result of Respondent's actions, his iPhone, which was in the bookbag, was broken and had to be replaced. A photograph that was admitted as part of Petitioner's Exhibit No. 8 depicts J.R.'s iPhone with the glass having been shattered. J.R.'s signature and "3/14/18," the date on which he was interviewed as part of the District's investigation of the incident, are written below the photograph. J.R. also testified that his glasses, which were in his bookbag, also were damaged as a result of Respondent's conduct.⁶

12. Another student, H.B., testified, credibly, that she witnessed Respondent throwing the bookbags "really hard." She testified that as a result, her iPad and her brother's iPad, both of which were in her bookbag, were broken. Two photographs that were admitted as part of Petitioner's Exhibit No. 8 depict the damaged iPads. H.B.'s signature and the date of March 14, 2018, the date on which she was interviewed as part of the District's investigation of the incident, are written below the photographs.

13. A.A. also testified that she saw Respondent throwing the bookbags, and that Respondent threw her bookbag with such force that it broke her water bottle, which was inside the bookbag. A.A. testified that this upset her, because the water bottle was her favorite one.⁷

14. Salvatore Schiavone, the former principal of Southside Elementary School ("SES"), testified on behalf of Respondent. Respondent is assigned to

"tossed" them, and the damage to the electronics was accidental. The undersigned does not find this label dispositive of the penalty imposed in this proceeding.

⁶ Because the Administrative Complaint does not charge Respondent with having damaged students' property other than electronic devices, damage to J.R.'s glasses cannot form the basis of discipline in this proceeding. However, the fact that J.R.'s glasses were damaged is probative regarding the force with which Respondent threw the bookbags.

⁷ See footnote 3, above. Damage to A.A.'s water bottle cannot form the basis of discipline in this proceeding because it was not charged in the Administrative Complaint. However, the fact that her water bottle was broken as a result of Respondent having thrown her bookbag is probative regarding the force with which Respondent threw the bookbags.

SES, and was so assigned during the time period of 2006 through 2017, when Schiavone was principal. Schiavone testified, credibly, that he viewed Respondent as "the consummate professional" and an outstanding teacher; that he had never observed her having anger issues or causing property damage; and that she was very well-liked by her students.

15. Respondent testified that on the day of the incident, students from four classes were entering and exiting the sole doorway to and from the athletic field, and that many of them had thrown their bookbags in a pile in the walkway. She asked them more than once to move the bookbags, but most of them did not do so, so she, with help from a few students, moved them from the walkway to against the wall adjacent to the doorway exit to the athletic field. She testified, credibly, that she did not know electronic devices were in the bookbags. She denied smashing the bookbags on the ground and intentionally damaging students' property.

16. Respondent entered into an agreement with the District under which she received a written reprimand and agreed to pay \$558.00 in restitution for the damage to the electronic devices.

17. Respondent has taught for over 27 years and has not previously been subjected to discipline.

Findings of Ultimate Fact

18. The evidence clearly and convincingly establishes that Respondent threw some students' bookbags with sufficient force to damage electronic devices inside the bookbags. This determination is based on the credible testimony of the students who testified at the final hearing.

19. Respondent moved the bookbags from the walkway, where students were entering through, and exiting from, a doorway between the inside corridor and the outside athletic field. The evidence clearly and convincingly establishes that the bookbags had been piled in a location where they posed a potential tripping hazard. However, even if the bookbags were obstructing the walkway and presented a potential tripping hazard, and notwithstanding

that Respondent had told the students to place their bookbags against the wall, that did not justify Respondent throwing the bookbags with the amount of force sufficient to damage the contents in some of the bags.

20. Thus, the evidence clearly and convincingly establishes that in moving students' bookbags with sufficient force to damage electronic devices inside the bookbags, Respondent failed to make reasonable effort to protect the students from conditions harmful to students' mental health and safety. To this point, as discussed above, the evidence establishes that at least some of the students were distressed as a result of their electronic devices being damaged. Thus, the evidence clearly and convincingly establishes that Respondent violated rule 6A-10.081(2)(a)1.

21. As a result of having violated rule 6A-10.081(2)(a)1., Respondent violated section 1012.795(1)(j).

22. However, the evidence clearly and convincingly establishes that Respondent did not know that students' electronic devices were in some of the bookbags that were thrown, and the evidence does not establish that Respondent intended to damage students' property.

23. Additionally, the evidence does not clearly and convincingly establish that Respondent's actions caused over \$2,000.00 worth of damage to the electronic devices in students' bookbags. Although the evidence clearly and convincingly establishes that Respondent's actions damaged some students' electronic devices, no competent evidence was presented regarding the value of the damaged electronic devices.

24. There was no evidence presented showing that students' physical health or safety was in any way harmed or adversely affected by Respondent's actions in throwing the bookbags.

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).

26. This is a proceeding to impose disciplinary sanctions on Respondent's educator certificate. Because disciplinary proceedings are penal in nature, Petitioner is required 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).

27. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear 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 testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a 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 Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

28. Petitioner alleges in the Administrative Complaint that Respondent violated section 1012.795(1)(j), which authorizes the Education Practices Commission ("EPC") to impose penalties against an educator's certificate if the person has "violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules."

29. The Administrative Complaint also charges Respondent with having violated rule 6A-10.081(2)(a)1. The Principles of Professional Conduct for the Education Profession prescribed by State Board of Education include rule 6A-10.081(2)(a)1.

30. Rule 6A-10.081(2)(a)1. states that Florida educators must "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."

31. As discussed above, Petitioner proved, by clear and convincing evidence, that Respondent failed to make reasonable effort to protect students from conditions harmful to learning and/or to the students' mental and/or physical health and/or safety. Accordingly, it is concluded that Respondent violated rule 6A-10.081(2)(a)1. and, accordingly, violated section 1012.795(1)(j).

32. Florida Administrative Code Rule 6B-11.007 establishes the guidelines for determining the appropriate penalty to be imposed on a person who has committed an act for which the EPC may impose discipline.⁸

33. Pursuant to rule 6B-11.007(2)(i)22., the penalty for violating the Principles of Professional Conduct in violation of section 1012.795(1)(j) ranges from probation to revocation of an educator's certificate.

34. However, rule 6B-11.007(1)(a) provides for the consideration of aggravating and mitigating factors in an individual case in which it is appropriate to depart from the penalty ranges established in rule 6B-11.007(2).

35. Rule 6B-11.007(3) states, in pertinent part:

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;

⁸ The version of rule 6B-11.007 that was adopted on April 9, 2009, was in effect at the time of the conduct giving rise to this proceeding, and, therefore, applies to this proceeding.

* * *

(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;

* * *

(k) The actual knowledge of the educator pertaining to the violation;

* * *

(n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;

* * *

(q) Pecuniary benefit or self-gain inuring to the educator;

(r) Degree of physical and mental harm to a student or a child;

36. Here, there are several mitigating factors that warrant disciplinary action less severe than that prescribed under subsection (2) of the rule.

37. Specifically, although the evidence establishes that Respondent's actions resulted in damage to students' property, the evidence does not establish that she intended to harm students or their property. The credible evidence establishes that she did not anticipate that students would have cell phones or other electronic devices in their bookbags. Thus, the evidence does

not establish that Respondent knew that the bookbags contained electronic devices or that she intended to damage students' property.

38. Moreover, Respondent's actions did not present any danger to the public or to the students' physical health. In fact, her motivation in moving the bookbags was to protect the students' physical health.

39. To this point, although the evidence establishes that Respondent's actions upset at least some of the students whose property was damaged when their bookbags were thrown, none of the students suffered any physical harm as a result of Respondent's actions.

40. Respondent engaged in the offending conduct only once.

41. Importantly, Respondent has not previously been disciplined by the EPC or the District, in over 27 years of employment as a teacher. According to those familiar with her work, Respondent has otherwise been an exemplary teacher.

42. Although the damage caused by Respondent's actions was not insubstantial, she has agreed to pay, and is in the process of paying, restitution to the families of the students whose property she damaged. Thus, she did not gain any pecuniary benefit as a result of her actions.

43. The deterrent effect of discipline is already being served by Respondent's agreement to make restitution. Moreover, Respondent is keenly aware that under rule 6B-11.007(5), an educator who commits violations for which the EPC imposes a penalty on two prior occasions shall have their certificate permanently revoked for a third or subsequent disciplinary case appearing before the EPC. This rule also serves as a deterrent to future violations of pertinent State Board of Education rules and statutes.

44. No evidence was presented that Respondent has ever engaged in, or been subjected to discipline for, any violations of statutes or rules of any other state.


45. Based on the foregoing Findings of Fact and Conclusions of Law, and considering the aggravating and mitigating factors in rule 6B-11.007(3), it is

determined that the appropriate penalty for Respondent's actions at issue in this proceeding is for the EPC to issue a written reprimand to Respondent, with a copy placed in her certification file, pursuant to section 1012.796(7)(f).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that, pursuant to section 1012.796, the Education Practices Commission issue a written reprimand to Respondent, with a copy placed in her certification file, pursuant to section 1012.796(7)(f).

DONE AND ENTERED this 17th day of June, 2021, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of June, 2021.

COPIES FURNISHED:

Lisa Forbess, Executive Director
Education Practices Commission
Department of Education
Turlington Building, Suite 316
325 West Gaines Street
Tallahassee, Florida 32399-0400

Randy Kosec, Jr., Chief
Office of Professional Practices Services
Department of Education
Turlington Building, Suite 224-E
325 West Gaines Street
Tallahassee, Florida 32399-0400

Peter Caldwell, Esquire
Florida Education Association
1516 East Hillcrest Street, Suite 109
Orlando, Florida 32803

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

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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.