

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER  
OF EDUCATION,

Petitioner,

Case No. 19-5851PL

vs.

CARMEN KOMNINOS,

Respondent.

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RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Andrew D. Manko of the Division of Administrative Hearings (“DOAH”), pursuant to sections 120.569, 120.57(1), and 1012.796(6), Florida Statutes (2018), on January 27, 2020, in Naples, Florida.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
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For Respondent: Robert J. Coleman, Esquire  
Coleman and Coleman  
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STATEMENT OF THE ISSUES

The issues to be determined are whether the Florida educator’s certificate of Respondent, Carmen Komninos, is subject to discipline for violating section 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rule 6A-

10.081(2)(a)1, as alleged in the Administrative Complaint, and, if so, the appropriate penalty therefor.

PRELIMINARY STATEMENT

On September 5, 2019, Petitioner Richard Corcoran, as Commissioner of Education (“Commissioner”), issued an Administrative Complaint alleging that Ms. Komninos grabbed two students by the arms forcefully, in violation of the Principle of Professional Conduct requiring her to make reasonable efforts to protect students from conditions harmful to their learning, mental and physical health, and safety. The Commissioner sought discipline within the range of a written reprimand to revocation of her educator’s certificate.

On September 20, 2019, Ms. Komninos answered the Administrative Complaint, denied the material allegations, and timely requested an administrative hearing. The Commissioner referred the matter to DOAH for assignment of an Administrative Law Judge to conduct an evidentiary hearing under chapter 120.

The final hearing occurred on January 27, 2020. The Commissioner presented the testimony of six witnesses: (1) Andrei Ghelman, the Collier County School District’s (“School District”) coordinator for secondary schools and human resources; (2) Harry Kasten, the principal of Cypress Palm Middle School (“School”) at the time of the alleged misconduct; (3) Melissa Coleman, the School’s assistant principal; (4) B.T., III (“B.T.”), a student allegedly grabbed by Ms. Komninos; (5) B.T., Jr., B.T.’s father; and (6) C.M., a student allegedly grabbed by Ms. Komninos. Petitioner’s Exhibits 1 through 15 were admitted into evidence over Respondent’s hearsay objections to Petitioner’s Exhibits 10 through 14. Petitioner’s Proposed Exhibit 16—a handwritten letter signed by several non-testifying students complaining about Ms. Komninos—was excluded on foundational and relevancy grounds.

Ms. Komninos testified on her own behalf and presented the testimony of Corporal Luis Soto, the School's youth relations deputy at the time of the alleged misconduct. Respondent's Exhibits 1 and 2 were admitted into evidence over the Commissioner's hearsay objections.

A one-volume Transcript of the final hearing was filed on February 26, 2020. The parties timely filed their Proposed Recommended Orders ("PROs"), which were duly considered in preparing this Recommended Order.

All references to the Florida Statutes and the Florida Administrative Code are to the 2018 versions, none of which have been materially amended since. In making the findings below, the undersigned only considered hearsay evidence that either supplemented or explained other evidence or would be admissible over objection in civil actions. § 120.57(1)(c), Fla. Stat. To protect the privacy of the minor students, they are referred to herein by their initials.

#### FINDINGS OF FACT

1. Ms. Komninos holds Florida Educator's Certificate No. 985529, which covers Elementary Education, English for Speakers of Other Languages (ESOL), and World Language – Spanish, and is valid through June 2021.


2. Ms. Komninos began her 42-year career as an educator in New Jersey. She moved to Florida in 2006 and started working for the School District. She primarily taught Spanish at the School from 2007 until she retired in 2019.



3. During the 2017-2018 school year, Ms. Komninos served as a Spanish teacher and taught B.T. and C.M., among other students.

4. The Administrative Complaint focuses on two separate incidents in which Ms. Komninos allegedly grabbed B.T. and C.M. by their arms. Neither B.T. nor C.M. reported the alleged incidents to the School when they happened. Rather, they only disclosed them during the School's investigation of complaints made by other students.

5. That investigation began on March 22, 2018, when a teacher received the following two documents from an unidentified student: (1) a handwritten letter of unknown origin purportedly signed by several students complaining about Ms. Komninos<sup>1</sup>; and (2) a copy of a photograph posted to Snapchat.

6. The photograph clearly depicts Ms. Komninos standing behind B.T. and holding onto his left arm with both of her hands. She does not appear to be exerting any force. B.T. is facing away from her and clearly smiling. The photograph contained the following two captions:

 how aggressive

Hey Look! “Los novios”  

The use of the cry-laughing emoji multiple times seems to reflect that the students who posted the photograph found the incident humorous. But, the record contains neither evidence as to who took the photograph, posted it to Snapchat, or drafted the captions, nor evidence as to when that occurred.

7. The teacher brought the documents to a guidance counselor who gave them to the assistant principal. The assistant principal brought them to the principal and Corporal Soto, the School’s youth relations deputy.

8. The principal notified the School District and immediately removed Ms. Komninos from teaching duties pending the investigation. Mr. Ghelman, the School District’s coordinator for secondary schools and human resources at the time, directed the principal to obtain statements from the students.

9. In his statement, B.T. acknowledged that he got out of his seat to sharpen his pencil after being told not to do so by Ms. Komninos and then refused to heed her directive to sit down. At that point, she grabbed his arm and tried to pull him back into his seat while his classmates yelled.

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<sup>1</sup> The record is silent as to the letter’s author, no student who signed it testified, and it focuses on allegations beyond the scope of the Administrative Complaint. Thus, the undersigned excluded the letter and has not relied on it in making any finding of fact.

10. In her statement, C.M. indicated that she got up out of her seat to throw a piece of paper in the recycling bin and did so without permission because Ms. Komninos did not have a rule requiring them to ask first. C.M. stated that Ms. Komninos approached her at the recycling bin, grabbed her arm forcefully, and pushed her down to pick up the paper from the bin. C.M. said she picked up the paper and walked back to her desk.

11. In their written statements, neither B.T. nor C.M. indicated when their respective incidents occurred or stated that they suffered (or could have suffered) any harm.

12. Upon receipt of the statements, Mr. Ghelman met with Ms. Komninos. Contrary to C.M.'s statement, Ms. Komninos confirmed that she required the students to ask permission before getting up from their seats. She also said that she never placed her hands on a student. When shown the photograph, she ultimately agreed that it depicted her and B.T., but she did not recall the incident. She noted that she met with B.T.'s parents earlier that year to address B.T.'s struggles in her class. As to C.M., Ms. Komninos recalled the incident, but said that she never pushed C.M. and only told her to sit down when she got up without permission.

13. Around the same time, Corporal Soto interviewed B.T. B.T. conceded that he wrongly got up without permission and refused to sit after being told to do so. B.T. said that, at that point, Ms. Komninos grabbed his arm to prevent him from continuing to walk towards the pencil sharpener and he went back to his seat. B.T. confirmed he suffered no injuries.

14. Corporal Soto contacted B.T.'s father, who did not know about the incident. After viewing the photograph and speaking to his son, he informed Corporal Soto that they did not want to press charges. However, he remained concerned because he had met with Ms. Komninos and the guidance counselor before the incident to address concerns with her teaching style.

15. In early April 2018, the principal met with B.T., his father, and Ms. Komninos. B.T.'s father wanted to ensure that Ms. Komninos would not

treat his son differently if she returned to the class. She apologized for the incident and promised to help B.T. with the class. The principal believed that B.T.'s parents accepted the apology and welcomed her assistance.

16. On April 18, 2018, after concluding its investigation, the School District suspended Ms. Komninos for one day without pay. She accepted the discipline and returned to the classroom. B.T.'s father confirmed that she treated B.T. fairly and that he passed her class.

17. Notwithstanding the discipline already imposed, the Commissioner conducted its own investigation and obtained additional written statements from the students in November 2018.

18. In B.T.'s statement, he indicated that he stood up to sharpen his pencil during a test, after Ms. Komninos told him he could not do so, and she then grabbed his arm and pulled to get him back to his seat. This statement largely mirrored the one he gave in March 2018.

19. In C.M.'s statement, she indicated that Ms. Komninos forcefully grabbed her arm when she got up to throw away trash, pulled her, and told her to return to her seat. C.M. did not believe she needed permission since they were doing independent study. She was upset that Ms. Komninos grabbed her, instead of asking her to sit down. This statement conflicted with the one she gave in March 2018, in which she never accused Ms. Komninos of pulling her.

20. Much like their first statements, neither B.T. nor C.M. indicated when their respective incidents occurred or stated that they suffered (or could have suffered) any harm.

21. Several other students also submitted statements, though none of them testified at the hearing. A.A. indicated that B.T. got out of his seat after the bell rang, at which point Ms. Komninos grabbed B.T.'s arm and would not allow him to leave until he handed in his work. M.C. indicated that Ms. Komninos grabbed B.T.'s arm and pulled him over to her desk. C.R. indicated that Ms. Komninos grabbed C.M.'s wrist and pulled her to the front

of the room, yelling that she would not give C.M. respect without it being returned. Most of these accounts conflicted with the details described in the statements of B.T. and C.M.

22. In the meantime, Ms. Komninos continued teaching at the School until her retirement in July 2019. Upon her retirement, the School District issued a “Resolution in Recognition of Outstanding Service Leading to Retirement” to recognize her excellent service, contributions to the School District, and devotion to the school system. The resolution recognized that Ms. Komninos served the School District in a meritorious, faithful, and outstanding manner.

23. The honor bestowed on her is not surprising. The principal who evaluated Ms. Komninos’s performance for many years, including at the time of the alleged incidents, believed she was a strong educator, a hard worker, and a rule follower based on his observations of her in the classroom. According to him, she clearly communicated her rules to the students, had a great rapport with them, and maintained control over the classroom.

24. After Ms. Komninos already had been disciplined by the School, received an award from the School District for her years of dedicated service, and retired from teaching, the Commissioner issued its Administrative Complaint seeking to discipline her educator’s certificate as a result of the two incidents. Specifically, the Commissioner alleged that she violated the Principle of Professional Conduct requiring her to make reasonable efforts to protect the students from conditions harmful to their learning, mental and physical health, and/or safety. In its PRO, the Commissioner seeks to issue a letter of reprimand, place Ms. Komninos on probation for two years, and levy a \$750 fine against her.

25. Only three witnesses who were in the classroom when the incidents allegedly occurred testified at the hearing—B.T., C.M., and Ms. Komninos.

26. Ms. Komninos generally explained that she required students to raise their hands before getting out of their seat for any reason. They knew the

rules because she wrote them on the bulletin board and repeated them verbally. However, some of the students pushed the envelope.

27. As to the incident concerning B.T., Ms. Komninos credibly testified that she did not recall the incident even after seeing the photograph, which she agreed depicted her holding onto B.T.'s arm. She said the same thing to both the principal and Mr. Ghelman during the investigation. She credibly explained that the photograph must have been taken in the Fall of 2017 based on the items posted on the cabinet doors in the background. She agreed that she met with the principal and B.T.'s father after the investigation began, reassured them that she would harbor no ill will towards B.T., and offered to help him better his grade. The undersigned credits Ms. Komninos's testimony and found her to be forthcoming and truthful.

28. B.T. testified that he thought the incident occurred within a month or two before the March 2018 investigation. He explained that Ms. Komninos would not allow him to sharpen his pencil during a test, so he violated her rules and got up without permission. Instead of walking to the back of the room to the sharpener, he started walking to the front. Ms. Komninos then grabbed his arm to stop him from walking. She held onto his arm for a matter of seconds and let go. He initially confirmed that she never pulled him back into his seat, contrary to his prior written statements, but later waived and agreed that his memory was better back then.

29. B.T. confirmed that he suffered no injuries in the incident and felt embarrassed more than anything else. That is why he smiled. He definitively testified that he never felt there was even a chance of Ms. Komninos harming him, though he waived when counsel for the Commissioner later asked whether he could have been harmed had he continued to walk forward.

30. Based on the weight of the credible evidence, the undersigned finds that Ms. Komninos held onto B.T.'s arm for a few seconds to stop him from further violating the rules by walking around during a test, but she did not pull him back into his seat. B.T. suffered no harm and the credible evidence



established that Ms. Komninos never acted in a manner that could be seen as failing to make reasonable efforts to protect B.T. from conditions harmful to learning, mental and physical health, and/or safety.

31. As to the incident concerning C.M., Ms. Komninos credibly explained that it occurred in March 2018. Ms. Komninos testified that C.M. got out of her seat without permission and, when Mr. Komninos instructed her to sit down, she further defied her order by continuing to walk to the recycling bin. Ms. Komninos walked to the recycling bin, instructed C.M. to remove the paper, and followed her back to her seat to ensure that she did not walk around the room and disturb the other students. Ms. Komninos credibly confirmed that she never touched C.M., pushed her down towards the recycling bin, or pushed her into her seat. She stayed at least a foot away from C.M. the entire time.

32. C.M. testified that Ms. Komninos pushed her down towards the recycling bin, grabbed her arm for a brief period of time, and pulled her back to her seat. However, C.M.'s testimony conflicted with her prior written statements. In the first statement, she indicated that Ms. Komninos forcefully grabbed her arm and *pushed* her down to pick up the paper from the bin. In the second statement, she accused Ms. Komninos of forcefully grabbing her arm, *pulling* her, and telling her to sit down. When confronted with these inconsistencies, C.M. said the first statement—that omitted any reference to pulling her—more accurately reflected the incident. She also could not recall on what day the incident occurred. Nevertheless, C.M. confirmed that she suffered no harm and only got upset because Ms. Komninos could have asked her nicely to sit down.

33. Based on the weight of the credible evidence, the undersigned finds that Ms. Komninos did not forcefully grab C.M.'s arm, push her down towards the recycling bin, or pull her back to her seat. C.M. suffered no harm and the credible evidence established that Ms. Komninos never acted in a manner that could be seen as failing to make reasonable efforts to protect

C.M. from conditions harmful to learning or to her mental and physical health, and/or safety.

#### CONCLUSIONS OF LAW

34. DOAH has jurisdiction over the parties and subject matter of this cause. §§ 120.569, 120.57(1), and 1012.796(6), Fla. Stat.

35. Respondent, as Commissioner of the Department of Education, is the state agent responsible for investigating and prosecuting allegations of misconduct against teachers holding Florida educator's certificates. §§ 1012.795(1) and 1012.796(6), Fla. Stat.

36. It is well settled under Florida law that determining whether charged conduct violates a statute or rule is a question of ultimate fact to be decided by the trier-of-fact based on the weight of the evidence. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985); *McKinney v. Castor*, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); *Langston v. Jamerson*, 653 So. 2d 489 (Fla. 1st DCA 1995). Thus, determining whether Ms. Komninos's alleged misconduct violates the law is a factual, not legal, inquiry.

37. The Commissioner has the burden to prove its allegations against Ms. Komninos by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996); *Avalon's Assisted Living, LLC v. Ag. for Health Care Admin.*, 80 So. 3d 347, 348-49 (Fla. 1st DCA 2011) (citing *Ferris v. Turlington*, 510 So. 2d 292, 294-95 (Fla. 1987)). As the Florida Supreme Court has stated:

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 explicit and the witnesses must be 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 Henson*, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

38. “Where a statute imposes sanctions and penalties in the nature of denial or revocation of a license to practice for violating its proscriptions, such a statute ‘must be strictly construed and no conduct is to be regarded as included within it that is not reasonably proscribed by it.’ ” *McCloskey v. Dep’t of Fin. Servs.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013) (citing *Lester v. Dep’t of Prof’l & Occ. Regs.*, 348 So. 2d 923, 925 (Fla. 1st DCA 1977)); accord *Elmariah v. Dep’t of Prof’l Reg.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990) (holding that a statute imposing “sanctions or penalties” is “penal in nature and must be strictly construed, with any ambiguity interpreted in favor of the licensee”); see also *Djokic v. Dep’t of Bus. & Prof’l Reg.*, 875 So. 2d 693, 695 (Fla. 4th DCA 2004) (same).

39. The Commissioner alleged in the Administrative Complaint that Ms. Komninos forcefully grabbed B.T. and C.M. by their arms. By doing so, the Commissioner alleged that she violated the Principle of Professional Conduct requiring her to make reasonable effort to protect the students from conditions harmful to their learning, mental and physical health, and/or safety, outlined in rule 6A-10.081(2)(a)1, and may be disciplined accordingly for that violation under section 1012.795(1)(j).<sup>2</sup>

40. As to the Principles of Professional Conduct, rule 6A-10.081 provides in pertinent part:

(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.

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<sup>2</sup> The Administrative Complaint contains two individual counts. Count I alleges a violation of section 1012.795(1), which authorizes the Commissioner to discipline an educator for violating a Principle of Professional Conduct, whereas Count II alleges violations of a Principle of Professional Conduct based on the alleged incidents involving B.T. and C.M. The Commissioner conceded in his PRO that Count I did not constitute an independent violation, so the undersigned resolves both counts together herein.

(a). Obligation to the student requires that the individual:

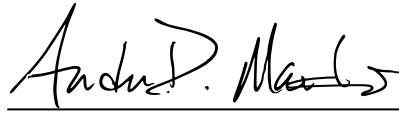
1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

41. Based on the findings of fact above, the undersigned finds as a matter of ultimate fact that the Commissioner failed to establish by clear and convincing evidence that Ms. Komninos violated rule 6A-10.081(2)(a)1. The Commissioner failed to prove that Ms. Komninos forcefully grabbed B.T. and C.M. by their arms, as alleged. The weight of the credible evidence did not establish that Ms. Komninos ever grabbed C.M.'s arm at all and, at most, established that Ms. Komninos merely held onto B.T.'s arm, not forcefully, for a matter of seconds and let go. It is undisputed that neither B.T. nor C.M. suffered injury and, more importantly, no credible evidence showed that either student reasonably could have suffered injury based on Ms. Komninos's actions. In short, the weight of the credible evidence simply failed to establish that Ms. Komninos acted in a manner that could be seen as failing to make reasonable efforts to protect students from conditions harmful to learning or to their mental health, physical health, and/or safety.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission, issue a final order dismissing the Administrative Complaint against the Respondent, Carmen Komninos.

DONE AND ENTERED this 26th day of March, 2020, in Tallahassee, Leon County, Florida.



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ANDREW D. MANKO  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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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.