

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

RICHARD CORCORAN, AS COMMISSIONER  
OF EDUCATION,

Petitioner,

Case No. 20-4366PL

vs.

JACQUELINE MARTIN AL-GHAMDI,

Respondent.

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RECOMMENDED ORDER

The final hearing was held in this case by Zoom Video Conference in Tallahassee, Florida, on January 29, 2021, before Brian A. Newman, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:     Ron Weaver, Esquire  
                          Post Office Box 770088  
                          Ocala, Florida 34477-0088

For Respondent:    Branden M. Vicari, Esquire  
                          Herdman & Sakellarides, P.A.  
                          29605 U.S. Highway 19 North, Suite 110  
                          Clearwater, Florida 33761

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent committed the acts alleged and violations charged in the Administrative Complaint; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On December 18, 2019, Richard Corcoran, as Commissioner of Education (Petitioner), issued an Administrative Complaint alleging that Jacqueline Martin Al-Ghamdi (Respondent) violated section 1012.795(1)(g) and (j), Florida Statutes (2017),<sup>1</sup> and Florida Administrative Code Rule 6A-10.081(2)(a)1. and (c)1.

Respondent timely requested a hearing involving disputed issues of material fact to contest the charges against her. The case was forwarded to DOAH and a final hearing was set for December 9, 2020. The case was continued once at the request of Respondent for good cause, and held on January 29, 2021.

Prior to the final hearing, the parties filed a Joint Pre-hearing Stipulation, in which they stipulated to certain facts. To the extent relevant, the parties' stipulated facts have been incorporated in the Findings of Fact below.

At the hearing, Petitioner presented the testimony of Rebecca Eggers, Joyce Lynn Brown, Lisa Ann Scalero-Gonzalez, Stephanie Doehlman, Kathleen Gloria Brickley, and John Zegzdryn. Petitioner's Exhibits 1 through 3, 7a through 7h, 9 through 17, 21 through 24, and 26 were admitted in evidence. Respondent testified on her own behalf.

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<sup>1</sup> The Administrative Complaint is based on events that occurred in August 2017. Accordingly, although the Administrative Complaint does not identify the version of the statutes or rules on which charges are predicated, the charges must be based on the law in effect at the time of the acts claimed to be violations. *Childers v. Dep't of Envtl. Prot.*, 696 So. 2d 962, 964 (Fla. 1st DCA 1997). Therefore, unless otherwise indicated, references herein to statutes and rules are to the versions in effect in August 2017.

The two-volume Transcript of the final hearing was filed on February 24, 2021. The parties timely filed Proposed Recommended Orders, which have been considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Respondent holds Florida Educator's Certificate 722947, covering the area of Varying Exceptionalities.

2. At the time of the allegations in the Administrative Complaint, Respondent was employed as a pre-kindergarten teacher at Curlew Elementary School in the Pinellas County School District. She had worked for the Pinellas County School District since 1993.

3. At the time of the events at issue here, Respondent's class consisted of approximately 12 pre-kindergarten students with varying mental and physical exceptionalities. Respondent had two paraprofessionals assigned to her classroom—Tiffany Jones and Lisa Ann Scalero-Gonzalez.

#### Student C.G.

4. C.G. was a student in Respondent's class for approximately two years before the events at issue had occurred. C.G. utilized a wheelchair and was unable to stand or walk. He could, however, roll over, scoot on his stomach, and move his legs. He had some feeling in his legs.

5. On August 22, 2017, C.G. was in Respondent's classroom laying under a Johnny Gym, a toy with padded crossbars and dangling mobiles. C.G. was wearing short pants. Respondent sat in front of C.G. in a small chair. C.G. rolled onto his stomach, scooted out of the Johnny Gym, and attempted to crawl.

6. Respondent had not seen C.G. crawl before and testified that she believed she was witnessing a physical breakthrough. C.G. attempted to crawl for approximately five minutes before tiring and placing his head down on the carpet. Respondent then picked up C.G. and placed him in a chair.

7. C.G. appeared pleased with himself while trying to crawl. He did not cry or appear to be in any discomfort while attempting to crawl.

8. Later that day, at approximately 1:00 p.m., the school nurse, Stephanie Doehlman, R.N., came to Respondent's room to administer a tube feeding to C.G. When Ms. Doehlman arrived, C.G. was on his belly on the rug. This was not unusual according to Ms. Doehlman. Ms. Doehlman did not notice any blisters at that time, but the room was dimly lit. Ms. Doehlman picked up C.G. and placed him in a chair and fed him through the feeding tube placed in his belly. The feeding took about five to ten minutes. Ms. Doehlman left Respondent's classroom after the feeding was over.

9. Shortly after Ms. Doehlman left the classroom, the lights were turned on and Ms. Scalero-Gonzalez noticed that blisters were starting to form on C.G.'s knees. Ms. Scalero-Gonzalez asked Ms. Doehlman to return to the classroom to examine C.G.'s knees. Ms. Doehlman returned to Respondent's classroom at about 1:30 p.m. and noted that C.G. appeared to have rug burns forming on both knees.

10. Later that day, C.G. was placed in his wheelchair and taken outside for physical education. After C.G. was outside in the daylight, Ms. Doehlman could see that both of C.G.'s knees were blistered. Ms. Doehlman cleaned C.G.'s knees with soap and water and notified his parents.

11. Photographs taken of C.G.'s knees one or two days later show significant rug burns on both knees. It is likely that C.G. sustained the rug burns when he attempted to crawl for approximately five minutes in Respondent's classroom on August 22, 2017. Petitioner did not prove, with certainty, that it was reasonably foreseeable that significant rug burns would result from this activity. Likewise, Petitioner failed to prove that the rug burns are the result of Respondent's failure to adequately supervise C.G.

#### Student A.M.

12. A.M. was a student in Respondent's classroom in 2017. A.M. was also unable to walk and utilized a wheelchair.

13. At approximately 1:16 p.m. on August 24, 2017, Respondent transported A.M. to the playground in his wheelchair while pulling a wagon loaded with students behind her. Respondent opened the door that accesses the playground and let go of A.M.'s wheelchair while she attempted to pull the wagon through the same doorway. As she let go of A.M.'s wheelchair, it started to roll down a concrete slope toward the playground. A video of the incident shows A.M. in his wheelchair rolling toward the playground, unescorted, and Respondent chasing after him. Before Respondent could catch up to A.M.'s wheelchair, its wheels hit the landscape edging separating the playground mulch from the sidewalk. The wheelchair tipped forward when its wheels struck the edging, causing A.M. to strike the mulch with his head. A.M. remained belted in his wheelchair, but his head hit the playground mulch with significant force when the wheelchair hit the edging and tipped forward. Within seconds, Respondent picked up A.M.'s wheelchair and removed him from it.

14. A.M. began to cry as soon as he hit the playground mulch. After Respondent removed A.M. from his wheelchair, she sat down in a chair and rocked him in an effort to console him. Respondent held A.M. and rocked him for two minutes, but A.M. continued to cry. Respondent then carried A.M. to a playground swing and swung him. Ms. Scalero-Gonzalez told Respondent that she needed to take A.M. to the nurse immediately, but Respondent refused. Respondent continued to swing A.M. in the playground swing for about 20 minutes, and then carried A.M. to see Ms. Doehlman.

15. Ms. Doehlman examined A.M. and found that he had redness over his left eye and a scratch on his forehead. There was no bruising or blood. Ms. Doehlman called A.M.'s mother at 1:55 p.m. to report the incident to her.

16. Because A.M. injured his head, Respondent was required to describe the circumstances that led to the incident in a Student Injury Worksheet and Student Injury Report. After Respondent carried A.M. to Ms. Doehlman,

Respondent hand-wrote the following account of the incident in the Student Injury Worksheet for A.M.:

[A.M.] was in a wheelchair going to p.e., he propelled himself to the edging that separates concrete from mulch. His wheelchair tipped and he went forward in the chair. Teacher caught him as he hit the mulch.

This is a false account of the incident. A.M. did not propel himself to the edging; Respondent let go of A.M.'s wheelchair and it rolled down a concrete slope, struck the landscape edging, and tipped forward, causing A.M.'s head to hit the mulch. Respondent did not catch A.M. as he hit the mulch. A.M. hit the mulch with significant force before Respondent caught up to his wheelchair. The Student Injury Report Respondent completed on August 24, 2017, contains the same false report of the incident involving A.M.

17. The reasonable inference is that Respondent hoped to avoid reporting this incident altogether by attempting to console A.M. for 20 minutes before she finally took him to see Ms. Doehlman. Then, Respondent lied about the incident in the Student Injury Worksheet and Student Injury Report to avoid responsibility for having caused the accident.

18. It is reasonably foreseeable that letting go of A.M.'s wheelchair could cause it to roll down the concrete slope and cause an accident. To her credit, Respondent ran after A.M.'s wheelchair as soon as she noticed it was rolling toward the playground. Unfortunately, Respondent could not catch the wheelchair in time. This was a momentary lapse that, fortunately, did not cause serious harm to A.M. This was not an intentional act, and there was no evidence that Respondent had been careless in the past when transporting A.M. or other students to the playground.

19. Respondent's actions after the incident are far more troubling. Respondent should have taken A.M. to the school nurse immediately after the accident happened. Respondent did not take A.M. directly to the school

nurse because she hoped he would calm down and she could avoid reporting the incident. The resulting delay in examination could have resulted in serious harm to A.M. had he suffered a more severe injury when his head hit the mulch. After she carried A.M. to the school nurse, she lied about the incident, hoping to avoid any responsibility for her carelessness. Respondent's delay in taking A.M. to the school nurse and false report of the incident are intentional acts of misconduct.

20. Respondent failed to make reasonable effort to protect A.M. from conditions harmful to his physical health when she let go of his wheelchair and when she delayed his presentation to the school nurse for approximately 20 minutes.

21. Respondent failed to maintain honesty in professional dealings when she knowingly and intentionally submitted a false report of the incident involving A.M. in the Student Injury Worksheet and the Student Injury Report that she completed on August 24, 2017.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2020).

23. In this proceeding, Petitioner seeks to discipline Respondent's educator's certificate. Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). 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 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*, 492 So. 2d 797, 800 (Fla. 4th DCA 1983)). *Accord Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991) (“Although this standard of proof may be met where the evidence is in conflict, ... it seems to preclude evidence that is ambiguous.”).

24. The Administrative Complaint charges Respondent with violating sections 1012.795(1)(g) and (j). Section 1012.795 provides, in pertinent part:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*



(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

Section 1012.795(1)(j) requires proof of a violation of the Principles of Professional Conduct for the Education Profession prescribed by rule of the State Board of Education. Thus, this charge is linked to and predicated on the charged rule violation, rule 6A-10.081(2)(a)1. and (c)1.:

(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.

\* \* \*

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

25. Petitioner alleges in the Administrative Complaint that Respondent violated the rule, and therefore violated section 1012.795(1)(j), by failing to supervise C.G., thus allowing him to sustain rug burns on both knees. Petitioner failed to prove by clear and convincing evidence that C.G. sustained rug burns on both knees because Respondent failed to make reasonable efforts to supervise him in the classroom.

26. Petitioner alleges in the Administrative Complaint that Respondent violated the rule, and therefore violated section 1012.795(1)(j), by failing to

maintain control of A.M.'s wheelchair and failing to transport him to the school nurse immediately after the accident, and by falsely reporting the incident. Petitioner has proven these allegations by clear and convincing evidence.

27. Petitioner also alleges that Respondent violated section 1012.795(1)(g) because she committed conduct that seriously reduces her effectiveness as an employee of the district school board. Petitioner is not required to offer testimony from a parent, teacher, or co-worker to establish this violation, and the misconduct does not have to occur off-campus. *See Purvis v. Marion Cty. Sch. Bd.*, 766 So. 2d 492, 498 (Fla. 5th 2000) (evidence that teacher lied under oath and resisted arrest is sufficient to establish impaired effectiveness). Here, Respondent delayed A.M.'s presentation to the school nurse and submitted false reports about the accident to avoid responsibility for her carelessness. This serious intentional misconduct, standing alone, establishes that Respondent violated section 1012.795(1)(g) by clear and convincing evidence.

28. At the time of the incident involving A.M., the disciplinary guidelines, codified in Florida Administrative Code Rule 6B-11.007, provided that the normal penalty range for the violations found here was from probation to revocation. *See Fla. Admin. Code R. 6B-11.007(2)(f), (i)16., and (i)22.*, effective April 9, 2009.

29. Rule 6B-11.007(3) provides that a penalty outside the normal range is allowed when warranted by consideration of mitigating and aggravating circumstances. The applicable mitigating and aggravating circumstances codified in the rule have been considered. As for mitigating circumstances, Respondent has held a teaching certificate for over 27 years and has no history of prior discipline from the Education Practices Commission. A serious aggravating factor is that Respondent took steps to cover up the accident, including delaying A.M.'s presentation to the school nurse and submitting false reports of the incident. This misconduct was intentional and

placed A.M.'s health in additional jeopardy. Fortunately, A.M. was not seriously injured, but Respondent did not know that at the time she delayed his presentation to the school nurse.

30. Consideration of the mitigating and aggravating circumstances do not warrant imposition of a penalty outside the normal range. Petitioner has proposed a penalty at approximately the midpoint of the normal range, to include a two-year suspension followed by one year of probation. Respondent did not propose an alternative penalty, arguing only for dismissal of the Administrative Complaint. Petitioner's proposed penalty is reasonable.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order finding that Respondent violated sections 1012.795(1)(g) and (j) through a violation of rule 6A-10.081(2)(a)1. and (c)1., and imposing the following as penalties: suspension of Respondent's educator's certificate for a period of two years from the date of the final order; and probation for a period of one year after the suspension, with conditions to be determined by the Education Practices Commission.

DONE AND ENTERED this 26th day of March, 2021, in Tallahassee, Leon County, Florida.



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BRIAN A. NEWMAN  
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Filed with the Clerk of the  
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this 26th day of March, 2021.

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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.