



Before the Education Practices Commission of the State of Florida

RICHARD CORCORAN,
Commissioner of Education,

Petitioner,

vs.

DIANE N. TIRADO,

Respondent.



EPC CASE No.: 21-0235-RT
Index No. 22-016-FOF
DOAH CASE No.: 20-4420PL
PPS No.: 189-0633
CERTIFICATE No. 803275

Final Order

This matter was heard by a Teacher Hearing Panel of the Education Practices Commission pursuant to Sections 1012.795, 1012.796 and 120.57(1), Florida Statutes, on December 9, 2021, in Altamonte Springs, Florida, for consideration of the Recommended Order (RO) entered in this case by Administrative Law Judge, Cathy M. Sellers (ALJ). Respondent was present and represented by Mark Wilensky, Esq. Petitioner was represented by Ron Weaver, Esq. Petitioner timely filed an exception to Recommended Penalty and Motion to Increase Penalty. Respondent filed a Response to Petitioner's Exception.

RULING ON EXCEPTION

1. Petitioner's exception is to the penalty imposed in the RO. The ALJ's recommendation states at paragraph 52:

Based on consideration of the relevant factors in rule 6B-11.007(3), it is concluded that placing Respondent's educator's certificate on probation for one calendar year from the date the final order is entered in the proceeding is an appropriate penalty. This penalty recognizes the seriousness of Respondent's offenses, but takes into account that no disciplinary action previously has been taken against her educator's certificate.

2. The standard for consideration of a penalty in an RO is as follows:

The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

3. Petitioner argues that the penalty should be increased because Respondent **intentionally** engaged in contact that resulted in unnecessary embarrassment to the students.

4. Rule 6A-10.081(2)(a)5. states:

(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:

5. Shall not *intentionally* expose a student to unnecessary embarrassment or disparagement.

(emphasis added)

5. The ALJ in finding a violation, would have found that Respondent's actions were "intentional" as a part of the violation. In other words, the intent is part of the violation.

6. Based on a complete review of the record and the above finding, Petitioner's exception is rejected.

Findings of Fact

7. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

8. The Commission specifically points to Paragraphs 21, which outlines some of Respondent's conduct and Paragraph 49 which characterizes Respondent's offense as severe.

9. Although the Commission recognizes Respondent's lack of prior disciplinary action, the Commission also finds that Respondent would benefit from additional training, and expose her to tools which may help her become a more effective educator.

10. There is competent substantial evidence to support the findings of fact.

Conclusions of Law

11. The Education Practices Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 1012, Florida Statutes.

12. The conclusions of law set forth in the Recommended Order are

approved and adopted and incorporated herein by reference.

Penalty

13. Upon a complete review of the record in this case, the Commission REJECTS that the Recommended Penalty issued by the Administrative Law Judge.

It is therefore **ORDERED** that:

14. Respondent is issued a letter of reprimand.

15. Upon employment in any public or private position requiring a Florida educator's certificate, Respondent shall be placed on one (1) year of probation with the conditions that during that period, the Respondent shall:

A. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.

B. Have Respondent's immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

C. Pay to the Commission during the first six (6) months of each probation year the administrative costs (\$150) of monitoring probation assessed to the educator.

D. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

E. Satisfactorily perform all assigned duties in a competent, professional manner.

F. Bear all costs of complying with the terms of a final order entered by the Commission.

G. Complete **one** of the following:

(1) Provide a certified college transcript to verify successful (a grade of “pass” or a letter grade no lower than a “B”) completion of three (3) hours of college level course-work in the area of Education Ethics, which may be taken online, during probation.

Or

(2) Educator shall complete two (2) National Education Association micro-credential courses in the area of Educator Ethics and provide documentation verifying successful completion to the investigative office in the Department of Education within the probationary period.

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

DONE AND ORDERED, this 20th day of January, 2022.




NICHOLAS PIETKIEWICZ, 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 sent by Certified U.S. mail to: Diane Tirado, 3502 Southwest Vollmer St., Port Saint Lucie, FL 34953; Mark Wilensky, Esq., Dubiner & Wilensky, LLC, 1200 Corporate Center Way, Suite 200, Wellington, FL 33414; and by electronic mail to Bonnie Wilmot, bonnie.wilmot@fldoe.org; and Ron Weaver, Esquire, ron@ronweaverlaw.com this 20th day of January, 2022.



Faith Lenzo, Clerk
Education Practices Commission

COPIES FURNISHED TO:

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