

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANNY DIAZ, JR., AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 22-0339PL

CRYSTAL LEE ANN BUNN,

Respondent.

_____ /

RECOMMENDED ORDER

A duly-noticed final hearing was conducted in this case on April 27, 2022, via Zoom teleconference, before Administrative Law Judge Suzanne Van Wyk of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Anthony Duran, Jr., Esquire
 Tison Law Group
 9312 North Armenia Avenue
 Tampa, Florida 33612

STATEMENT OF THE ISSUES

Whether Respondent violated section 1012.795(1)(j), Florida Statutes (2019), and Florida Administrative Code Rule 6A-10.081(2)(a)1.; and, if so, what penalty should be imposed.¹

¹ Unless otherwise noted, all references to the Florida Statutes herein are to the 2019 version, which was in effect when the actions alleged in the Administrative Complaint took place.

PRELIMINARY STATEMENT

On November 9, 2021, Petitioner filed an Administrative Complaint against Respondent, alleging violations of section 1012.795(1)(j) and rule 6A-10.081(2)(a)1. Respondent subsequently filed an Election of Rights form disputing the allegations in the Administrative Complaint and requesting a hearing. The case was referred to the Division of Administrative Hearings (“Division”) on February 2, 2022, and assigned to the undersigned.

The case was set for final hearing on April 27, 2022, by Zoom conference and commenced as scheduled. Petitioner presented the testimony of Christine Tilford and Lisa Taft, paraprofessionals at Harmony Community School (“Harmony”); Sandra Davenport, principal of Harmony; Osceola County Sheriff’s Deputy Brian McMahon; Osceola County Sheriff’s Deputy Marta Collings; and Dina Ryan, mother of A.S. Petitioner introduced Exhibits 1 through 10, which were admitted into evidence.

Respondent testified on her own behalf and introduced no exhibits.

A one-volume Transcript of the proceedings was filed with the Division on June 6, 2022. The parties requested an extension of time to June 27, 2022, to file their proposed recommended orders, which was granted. Petitioner timely filed a Proposed Recommended Order which has been considered by the undersigned in preparing this Recommended Order. Respondent did not make a timely post-hearing filing.²

² Respondent’s Proposed Recommended Order was filed after 5:00 p.m. on June 27, 2022. By operation of Florida Administrative Code Rule 28-106.104(3), the document was deemed filed on June 28, 2022. Respondent did not file a motion for extension of time pursuant to rule 28-106.204(4).

FINDINGS OF FACT

1. Petitioner is the chief educational officer of the state, with authority to discipline Florida licensed educators following a finding of probable cause. *See* § 1012.796(6), Fla. Stat. (2021).

2. Respondent holds Florida Educator’s Certificate 1162570, covering the areas of Elementary Education, English for Speakers of Other Languages, and Exceptional Student Education (“ESE”), which is valid through June 30, 2021.

3. At the time of the allegations in the Administrative Complaint, Respondent was employed as an Intellectual Disabilities Teacher at Harmony in the Osceola County School District (“the District”).

4. On or about February 13, 2020, Respondent was working with A.S., a six-year-old student who is autistic, non-verbal, and significantly developmentally-delayed.

5. Petitioner gave A.S. a Barbie doll after he had completed an assignment. A.S. walked over to another student and hit the student on the head with the Barbie doll.

6. Respondent reprimanded A.S. for hitting the other student and intentionally struck A.S. on the head with the doll. A.S. began to cry.

7. The strike resulted in a scratch on A.S.’s forehead and another close to his right eye by the base of the bridge of his nose.

8. Respondent immediately sought to comfort A.S., and wrote a note for him to be treated by the school nurse.

9. Christine Tilford, a paraprofessional in Respondent’s classroom, was working with another student across the room. Ms. Tilford witnessed the incident.

10. At approximately 3:30 p.m., Ms. Tilford reported the incident to Sandra Davenport, Harmony’s principal.

11. Ms. Davenport began an investigation into the incident by contacting Deputy Brian McMahan, the school resource officer (“SRO”).

12. Deputy McMahon interviewed Respondent and she admitted she hit A.S. over the head with the doll. She also stated that she did not intend to harm A.S.

13. Ms. Davenport then called the human resources department and was told to begin an internal investigation before contacting the Department of Children and Families (“DCF”).

14. Ms. Davenport interviewed Respondent, who admitted that she struck A.S. on the head with the doll which resulted in scratches to his face. Respondent also informed Ms. Davenport that she had arranged for A.S. to be seen by the school nurse.

15. At that point, Ms. Davenport called DCF and reported the incident.

16. Deputy McMahon excused himself from the investigation at this juncture, citing a conflict of interest in any criminal investigation due to his position as SRO. Deputy McMahon contacted his supervisor, who, in turn, assigned a “road deputy” to complete the investigation.

17. Deputy Marta Collings³ was assigned to complete the investigation into the incident. She interviewed Respondent, as well as the other parties involved.

18. Respondent provided both a written and verbal statement to Deputy Collings. Respondent admitted that she intentionally hit A.S. on the head with the Barbie doll and that A.S. immediately began to cry. Respondent stated that she struck A.S. in a moment of frustration because A.S. frequently hit other students.

19. Deputy Collings observed a small laceration under A.S.’s right eye and a red mark across his right eyebrow. She photographed A.S.’s face to document his injuries.

³ On the date of the incident, Deputy Collings’ last name was Robinson.

20. Deputy Collings arrested Respondent and charged her with child abuse without great bodily harm.⁴

21. Respondent's testimony at the final hearing was consistent with her statements given to Ms. Davenport, Deputy McMahon, and Deputy Collings. Respondent expressed remorse for her part in the incident and indicated she knew she was wrong when she struck A.S. on the head.

22. Respondent worked as an ESE instructor for over ten years and has no prior discipline history.

23. On May 5, 2020, the District issued a letter of reprimand to Respondent and reassigned her to work with children with Autism Spectrum Disorder at Neptune Elementary School ("Neptune").

24. Respondent did not challenge the reprimand.

25. Respondent resigned from her position at Neptune, effective November 6, 2020.

CONCLUSIONS OF LAW

26. The Division has jurisdiction over the subject matter of, and the parties to, this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2021).

27. This is a proceeding in which Petitioner seeks to discipline Respondent's educator's certificate.

28. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in favor of the licensee. *Elmariah v. Dep't of Pro. Regul.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *Taylor v. Dep't of Pro. Regul.*, 534 So. 2d 782, 784 (Fla. 1st DCA 1988).

29. A licensee may only be disciplined for those matters specifically referenced in an administrative complaint against them. *Trevisani v. Dep't of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005); *Ghani v. Dep't of Health*, 714

⁴ Respondent was not prosecuted for the incident.

So. 2d 1113 (Fla. 1st DCA 1998); and *Willner v. Dep't of Pro. Regul.*, 563 So. 2d 805 (Fla. 1st DCA 1990).

30. Because disciplinary proceedings are considered 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).

31. 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 Henson, 913 So. 2d 579, 590 (Fla. 2005)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

Administrative Allegations

32. The Administrative Complaint contains the following material allegations:

On or about February 13, 2020, Respondent inappropriately disciplined A.S., a male student on the Autism Spectrum who is non-verbal and significantly delayed. Respondent struck A.S. over the head with a doll resulting in a scratch to A.S.'s face.

33. The evidence was of such weight that the undersigned has a firm conviction in the truth of those material allegations. Petitioner has proven the material allegations of the Administrative Complaint by clear and convincing evidence.

34. Based on the factual allegations in the Administrative Complaint, Respondent is charged with the following alleged statutory violations:

Count 1: The Respondent is in violation of section 1012.795(1)(j), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules.

* * *

Count 2: The allegations of misconduct set forth herein are in violation of Rule 6A-10.081(2)(a)1., Florida Administrative Code, in that Respondent has failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

35. The referenced principle of professional conduct provides as follows:

(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.

36. Based on the evidence adduced at the final hearing, Respondent was responsible for creating a condition that was harmful to A.S.'s physical health and safety.

37. Petitioner proved Count 2 of the Administrative Complaint—that Respondent violated rule 6A-10.081(2)(a)1.

38. Petitioner proved Count 1 of the Administrative Complaint by virtue of proving Count 2 (i.e., Respondent violated section 1012.795(1)(j), because Respondent violated the Principles of Professional Conduct.).

Discipline to be Imposed

39. The penalty range for a violation of section 1012.795(1)(j) is from reprimand to revocation. *See* Fla. Admin. Code R. 6B-11.007(2)(j)1. In this case, Petitioner is seeking a two-year suspension of Respondent's license.

40. Pursuant to subsection (3) of the rule, the following mitigation and aggravating factors may be considered by the Commission:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (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;
- (i) The effect of the penalty upon the educator's livelihood;
- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;

- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;
- (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (o) Actual negligence of the educator pertaining to any violation;
- (p) Penalties imposed for related offenses under subsection (2), above;
- (q) Pecuniary benefit or self-gain inuring to the educator;
- (r) Degree of physical and mental harm to a student or a child;
- (s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction; and,
- (t) Any other relevant mitigating or aggravating factors under the circumstances.

41. A number of mitigating factors should be considered in determining the appropriate sanction for Respondent's offense: (1) Two years have elapsed since the violation without any repeated conduct; (2) Respondent has never been previously disciplined by the Commission; (3) Respondent has practiced for over ten years in special education, a very demanding aspect of the profession; (4) the degree of physical harm to A.S., two small scratches on his face, was minor; and (5) Respondent was immediately remorseful for her actions and provided honest and consistent testimony to her employer, the SRO, the investigating officer with the Osceola County Sheriff's office, as well as this tribunal. The undersigned further considers, as evidence supporting an appropriate penalty for Respondent's violation, the fact that the District imposed only a reprimand against Respondent.

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 section 1012.795(1)(j), and issue a written reprimand to Respondent.

DONE AND ENTERED this 1st day of July, 2022, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
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this 1st day of July, 2022.

COPIES FURNISHED:

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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.