

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANNY DIAZ, JR., AS COMMISSIONER OF
EDUCATION,

Petitioner,

Case No. 22-1198PL

vs.

MARIA LYN TURNER,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on July 22, 2022, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Ron Weaver, Esquire
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Ocala, Florida 34477-0088

For Respondent: Branden M. Vicari, Esquire
Herdman & Sakellarides, P.A.
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STATEMENT OF THE ISSUES

Whether Respondent violated section 1012.795(1), Florida Statutes, and Florida Administrative Code Rules 6A-10.081(2)(a)1. and 6A-10.081(2)(a)5. as

alleged in the Administrative Complaint; and, if so, what disciplinary penalty should be imposed.¹

PRELIMINARY STATEMENT

On March 29, 2021, Petitioner, Richard Corcoran, as Commissioner of Education (Petitioner/Commissioner),² filed an Administrative Complaint (Complaint) against Maria Lyn Turner (Respondent), alleging violations of section 1012.795(1)(j), and rules 6A-10.081(2)(a)1. and 6A-10.081(2)(a)5. Respondent timely filed an Election of Rights form wherein she disputed the allegations and requested a hearing. On April 19, 2022, Petitioner referred the instant matter to DOAH for assignment of an administrative law judge.

At the final hearing, Petitioner presented the testimony of Lisa M. Cropley, Matthew Goldrick, Cari Lynn O'Rourke, Lauren Rogers Carlo, and students RL, BR, LH, and KL. Respondent testified on her own behalf and did not call any additional witnesses. Petitioner's Exhibits 1 through 17 were admitted into evidence. Respondent's Exhibits 1 and 2 were also admitted into evidence.

The one-volume Transcript was filed with DOAH on August 9, 2022. On August 16, 2022, pursuant to motion by Respondent, an Order Granting Extension of Time was entered wherein the parties were authorized to file proposed recommended orders on or before August 26, 2022. Each party

¹ Except where otherwise indicated, all references to the Florida Statutes in this Recommended Order are to the 2018 edition, as the Administrative Complaint contains allegations from the 2018-2019 academic year. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441, 444 (Fla. 5th DCA 2013) (holding that statutes and rules in effect at the time of the allegations apply, unless otherwise specified).

² Mr. Corcoran, the former Commissioner of Education, filed the June 28, 2021, Administrative Complaint. Mr. Corcoran subsequently stepped down from his position as Commissioner, and the Governor appointed Manny Diaz, Jr., as Commissioner, whereupon the style of this case was amended accordingly.

timely filed a Proposed Recommended Order, and the same have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Commissioner is the agency head of the Florida Department of Education (Department). The Commissioner is responsible for investigating allegations of misconduct against persons holding Florida educator certificates. Upon a finding of probable cause, Petitioner is responsible for filing an administrative complaint, and if the educator disputes its allegations, prosecuting the administrative complaint pursuant to chapter 120, Florida Statutes.

2. At the time of the allegations contained in the Complaint, Respondent held Florida Educator's Certificate 1313234 (license), which covered the area of "world language-Spanish." Respondent's license expired on June 30, 2021. Respondent has been an educator for more than 30 years and has never been subject to disciplinary action by the Department.

3. During the 2018-2019 academic year, Respondent was employed as a Spanish teacher at Challenger K-8 School in the Hernando County School District (school district). The 2018-2019 academic year was the first year Respondent taught at Challenger K-8.

4. The Complaint alleges the following:

During the 2018-2019 school year, Respondent made inappropriate comments to her class of eighth grade students, which include but may not be limited to:

a. Telling students she took a Human Sexuality and Intimacy Course and/or the professor would give extra credit to students who turned in naughty and/or sex comics;

b. Telling students she was a bartender in college and customers would bring her naughty and/or sex cartoons;

- c. Discussing personal stories with students;
- d. Telling students how she showered naked with her gay best friend; and
- e. Telling students not to say "pizza" in Spain because it meant male semen. Or words to that effect.

As a result, students felt uncomfortable.

5. In the Joint Pre-hearing Stipulation, the parties stipulated:

During the 2018-2019 school year, Respondent told her students she took a human sexuality and intimacy course, and the professor g[a]ve extra credit to students who turned in naughty comics.

6. On or about April 26, 2019, a “concerned parent” brought to the attention of the administration at Challenger K-8 that Respondent, during her second period Spanish class, made comments of a sexual nature that caused some of her eighth-grade students to feel uncomfortable.

7. Within hours of being contacted by the concerned parent, the administration had students from Respondent’s second period Spanish class to prepare written statements and also interviewed Respondent about the matter. At the conclusion of its investigation, the school district disciplined Respondent by issuing her a letter of reprimand.

8. As part of the investigation, Respondent met with school district administrators on April 26 and May 3, 2019. Statements made by Respondent during these two meetings were summarized and reduced to writing as reflected in Petitioner’s Exhibits 2 and 5. During these meetings, Respondent answered questions about what transpired during her second period Spanish class. Also, on or about May 1, 2019, Respondent provided a written statement to the investigating officials where she once again addressed matters related to what transpired during the second period Spanish class.

9. The summaries from the two meetings, as well as Respondent's written statement, are materially consistent with the testimony that Respondent offered during the final hearing, which is set forth in the following paragraphs.

10. Respondent required her students keep and maintain binders, which contained their written classwork. Respondent regularly stressed to her students the importance of maintaining their binders, and routinely explained that one reason for doing so was so that they could easily reference learned material for class assignments and tests. Respondent's expectations for maintaining binders were set forth in the class syllabus.

11. During her first period class on the day in question, Respondent noticed that many students were not maintaining their binders—a few students claimed their binders were stolen and one student said he only pretends to write in his binder. Respondent decided to have a pep talk with her first period class about the importance of maintaining and keeping binders; however, the discussion did not go well. Respondent testified she could tell the students “were not clued in.”

12. During her second period class on the day in question, Respondent gave the same pep talk and saw the same sea of blank faces. In an effort to impress upon her students the importance of properly maintaining their binders, Respondent shared a story about how keeping her school binder had assisted her throughout the years. Respondent explained to her students that while in college, she took a class called Human Sexuality and Intimacy where the professor offered extra credit if students brought in naughty cartoons, and that years later, when she was an administrator, she used some of the cartoons from her binder to begin meetings.

13. Respondent offered credible testimony that she never used the terms “sex cartoons/comics” or “pornography” when speaking with her students. Respondent also offered credible testimony that she never described the specific details of the comics when mentioning the comics to her class.

14. Respondent credibly testified that the Spanish curriculum includes teaching not only reading, writing, listening, and speaking in the language, but it also includes educating students about the various cultures and non-verbal communications shared between Spanish speaking countries.

15. Respondent testified that she lived in Spain for two-and-a-half years and spent several extended stays in Costa Rica. She explained to her students some of the cultural differences between Spanish speaking countries and the United States. She explained how pillowcases, toilets, showers, faucets, holidays, and certain words are different between countries.

16. Respondent testified that while teaching her students about some of the cultural differences that she experienced while living in a boarding house in Spain, she explained to them that the showers had floor to ceiling stalls that allowed her and a male friend to shower simultaneously, though separated by a wall. Respondent also explained to her students that while living in Costa Rica, she would not have hot water while taking a shower. Respondent credibly testified that these items related to the portion of the Spanish curriculum that dealt with housing considerations.

17. Respondent's instruction to her Spanish class regularly included discussions about language, words, and their meanings. While teaching the food unit, Respondent explained to her students that very simple words can have double meanings, and they had to be careful about how they express these things because, with the double meaning, they could end up saying something that is not what they are trying to say. The words "pizza" and "milk" came up during the discussion as words with double meanings. Some of her eighth-grade students wanted to know the Spanish meaning of these words, but Respondent credibly testified that she did not provide the Spanish meaning of these words to her students.

18. Petitioner offered into evidence several "witness statements" prepared by students who were enrolled in Respondent's second period Spanish class during the 2018-2019 academic year. A number of the students testified

during the final hearing, but their testimony consisted of “adopting” their written statements with no illuminating details regarding what happened in Respondent’s second period Spanish class.

19. Fourteen students prepared written statements on or near April 26, 2019. In reviewing these statements, there were two instances where it was mentioned that Respondent’s statements “made students feel uncomfortable.” It is not clear from the record how these two students were able to determine that other students in the classroom felt uncomfortable. Then, on or about September 30, 2020, supplemental written statements were prepared by some of the students, and of those, four students mentioned for the first time that Respondent’s statements made them feel uncomfortable, with one student indicating that he felt no discomfort whatsoever as a result of Respondent’s statements. These evidentiary dynamics weigh against finding that this evidence rises to the level of being clear and convincing.

20. Having considered Respondent’s testimony, as well as having reviewed and synthesized the written statements prepared by the students, it is clear that Respondent: 1) told her students that she took a Human Sexuality and Intimacy Course while in college, and that Respondent earned extra credit in the course by submitting naughty comics; 2) told her students that she was a bartender in college and that customers would bring her naughty comics; 3) discussed personal stories with her students; 4) told students that when she lived in Spain, the showers had floor to ceiling stalls that allowed her and a male friend to shower simultaneously, though separated by a wall; 5) told students that the word “pizza” does not mean the same in the Spanish language as it does in the English language; and 6) some students felt “uncomfortable” when Respondent mentioned these matters to her second period Spanish class.

21. However, the evidence was neither clear nor convincing to establish that Respondent, through her comments, failed to protect students from harmful conditions, or that her comments were intended to expose students

to unnecessary embarrassment or disparagement. As the credible evidence demonstrated, Respondent's statements were intended to illustrate to her students the importance of staying organized and were, in part, made in the context of helping her students to understand some of the cultural aspects of Spanish speaking countries. Succinctly stated, there is insufficient evidence that Respondent intentionally exposed her students to unnecessary embarrassment or disparagement, or failed to protect them from harmful conditions.

CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to sections 120.569 and 120.57(1).

23. The Education Practices Commission has the authority to impose discipline against Florida educators pursuant to chapter 1012.

24. This is a disciplinary proceeding in which Petitioner seeks to discipline Respondent's educator certificate. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co., Inc.*, 60 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

25. 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). The Florida Supreme Court further enunciated the standard:

This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

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)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 989 (Fla. 1st DCA 1991).

26. Section 1012.795 and rule 6A-10.081 are penal in nature and must be strictly construed, with any ambiguity construed against Petitioner. Penal statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden the application of such statutes. *Beckett v. Dep’t of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Latham v. Fla. Comm’n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997).

27. Whether particular conduct constitutes a violation of the applicable statutes and rules is a factual question to be decided in the context of the alleged violation. *Langston v. Jamerson*, 653 So. 2d 489, 491 (Fla. 1st DCA 1995). Whether specific conduct constitutes a deviation from the required standard is an ultimate finding of fact within the realm of the administrative law judge’s fact-finding discretion. *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 1st DCA 1985).

28. The allegations set forth in the Complaint are those upon which this proceeding is predicated. *Trevisani v. Dep’t of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); *Cottrill v. Dep’t of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits Petitioner from taking disciplinary action against a licensee based on matters not specifically alleged in the charging

instruments, unless those matters have been tried by consent. *See Shore Vill. Prop. Owner's Ass'n v. Dep't of Envtl. Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); *Delk v. Dep't of Prof'l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

29. Count 1 of the Complaint seeks to discipline Respondent on charges that she violated section 1012.795(1)(j), which states:

(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:

* * *

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

Count 1 cannot constitute an independent violation, but rather is dependent upon a corresponding violation of the rules constituting the Principles of Professional Conduct.

30. Counts 2 and 3 of the Complaint seek to discipline Respondent on charges that she violated rules 6A-10.081(2)(a)1. and 6A-10.081(2)(a)5., which state:

(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.

* * *

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

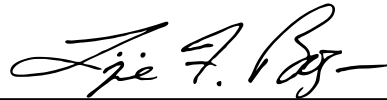
31. Based on the Findings of Fact, Petitioner failed to prove, by clear and convincing evidence, that Respondent violated rules 6A-10.081(2)(a)1. and 6A-10.081(2)(a)5., in that her remarks, when considering the context in which they were presented, did not result in Respondent failing to make reasonable effort to protect her students from conditions harmful to learning and/or to her students' mental health and/or physical health and/or safety, and did not intentionally expose her students to unnecessary embarrassment or disparagement.

32. The undersigned concludes that Petitioner failed to prove, by clear and convincing evidence, that Respondent committed the violations alleged in Counts 1, 2, and 3 of the Complaint.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Education Practices Commission enter a final order dismissing the Administrative Complaint against Maria Lyn Turner.

DONE AND ENTERED this 15th day of September, 2022, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of September, 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.