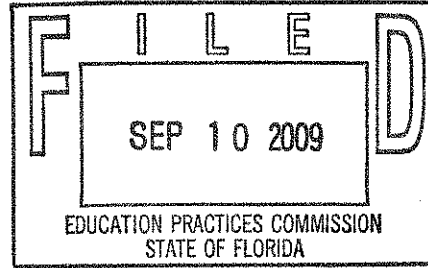




Before the Education Practices Commission of the State of Florida



DR. ERIC J. SMITH as the
Commissioner of Education,

Petitioner,

vs.

BARRY P. SILVER,

Respondent.

CASE N°: 09-0186-RT
EPC Index N° 09-504-AS
PPS N° 045-2547-V

Final Order

Respondent, Barry P. Silver, holds Florida educator's certificate no. 697440. Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the certificate. A copy of the Amended Administrative Complaint is attached to and made a part of this Order.

This cause came before a teacher panel of the Education Practices Commission on August 6, 2009 in Tallahassee, Florida after the Division of Administrative Hearings relinquished jurisdiction.

Respondent was afforded an informal hearing to present evidence and testimony in mitigation. Respondent was not present.

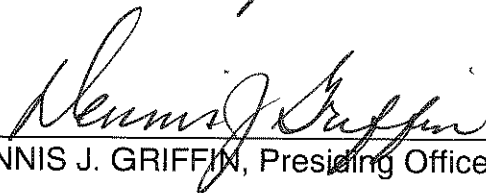
Paragraphs 1 through 17 of the Amended Administrative Complaint were adopted by the Education Practices Commission as its findings of fact. Counts 1 through 7 of the Amended Administrative Complaint were adopted by the Education Practices Commission as its conclusions of law.

Upon consideration, it is ORDERED that:

Respondent's Florida educator's certificate is hereby permanently revoked and Respondent is permanently barred from applying for another Florida educator's certificate.

This order shall become effective upon filing with the Clerk of the Commission.

DONE AND ORDERED, this 3 day of September, 2009.


DENNIS J. GRIFFIN, Presiding Officer

COPIES FURNISHED TO:

Bureau of Professional Practices

Bureau of Teacher Certification

Florida Administrative Law Reports

Superintendent
Broward County Schools
600 S.E. 3rd Ave.
Ft. Lauderdale, FL 33301-3125

Executive Director, Professional
Standards
Broward County Schools
600 S.E. 3rd Ave.
Ft. Lauderdale, FL 33301-3125

DOE Counsel for PPS

Daniel Biggins
Assistant Attorney General

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.

Probation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to Barry P. Silver, 2420 SW 44th Terrace, Fort Lauderdale, Florida 33317 by Certified U.S. Mail this 10 day of September, 2009.

A handwritten signature in cursive script, appearing to read "Don D. Shields", written over a horizontal line.

DON D. SHIELDS,
Education Practices Commission

**STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION**

**DR. ERIC J. SMITH, as
Commissioner of Education,**

Petitioner,

vs.

CASE NO. 045-2547-V

BARRY PAUL SILVER,

Respondent.

_____ /

AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Dr. Eric J. Smith, as Commissioner of Education, files this Amended Administrative Complaint against BARRY PAUL SILVER. The Petitioner seeks the appropriate disciplinary sanction of the Respondent's educator's certificate pursuant to Sections 1012.795 and 1012.796, Florida Statutes, and pursuant to Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Profession in Florida, said sanctions specifically set forth in Sections 1012.795(1) and 1012.796(7), Florida Statutes.

The Petitioner alleges:

JURISDICTION

1. The Respondent holds Florida Educator's Certificate 697440, covering the areas of English, English to Speakers of Other Languages (ESOL) and Middle Grades, which is valid through June 30, 2010.

2. At all times pertinent hereto, the Respondent was employed as an English Teacher at Olsen Middle School in the Broward County School District.

MATERIAL ALLEGATIONS

3. On May 19, 1995, it was reported that Respondent had massaged several male students in an inappropriate manner. The Respondent's principal, James Vanover, provided a verbal warning and directive not to inappropriately touch male students.

4. On June 15, 1995, after another similar incident was reported, the Respondent was provided a written directive and warning regarding his inappropriate touching of male students by

his principal, James Vanover.

5. On July 1, 1995, there was a change in principals at the Respondent's school.

6. On July 21, 1995, the Respondent was verbally warned by his new principal, Kim Flynn, regarding his inappropriate touching of one or more male students. The Respondent was advised that any re-occurrence would result in a more serious disciplinary consequence.

7. On January 5, 1996, a male student complained that Respondent had inappropriately touched him on several occasions. The matter was formally investigated and the Respondent received a written reprimand and ten (10) day suspension from August 20th through September 3, 1996, since the inappropriate conduct had taken place despite repeated warnings.

8. On January 21, 1997, the Commissioner of Education filed an Administrative Complaint concerning the Respondent's aforesaid conduct.

9. On November 15, 1998, the Education Practices Commission approved a Settlement Agreement wherein the Respondent received a reprimand, a ten (10) day suspension of his teaching certificate and was placed on a three (3) year probationary period with specified conditions.

10. That on or about July 16, 2004, the Respondent, while on vacation in Hawaii, inappropriately touched [REDACTED] an eleven year old male. The incident occurred when [REDACTED], who was asleep, was awoken by Respondent and told to turn over on his stomach so the Respondent could provide a back massage. The Respondent began massaging [REDACTED]'s back and then progressed to other portions of [REDACTED]'s body by touching [REDACTED]'s buttock and penis.

11. The parent of [REDACTED] contacted the police the following morning, after learning of the incident. When the police arrived the Respondent's actions caused the police officer to arrest and charge the Respondent with disorderly conduct. The charge of disorderly conduct was later dismissed without prejudice by the deputy prosecuting attorney.

12. On or about June 13, 2005, the Respondent was indicted by the Grand Jury in Hawaii and charged with Five (5) Counts of Sexual Assault in the Third Degree.

13. On January 19, 2007, a jury found the Respondent guilty as charged on Counts One, Three, Four and Five. Count Two had been dismissed by the Judge prior to the trial.

14. Respondent was released on bond pending his sentence by the Court, under the condition that Respondent has no contact with any minor.

15. On March 6, 2008, the Respondent was adjudicated guilty of Counts One, Three, Four and Five as charged in the indictment, consisting of sexual assault on a minor child, less than fourteen (14) years old. The Respondent was sentenced to five (5) years imprisonment in the State prison.

16. The Respondent was convicted by a jury of felonious sexual assault on a minor less than fourteen (14) years old and adjudicated by the Court of these crimes, which involve acts of moral turpitude.

17. As a result of this conviction and these charges, the Respondent is required to register as a sexual predator, and is precluded from working with children, either for compensation or as a volunteer.

The Petitioner charges:

STATUTE VIOLATIONS

COUNT 1: The Respondent is in violation of Section 1012.795(1)(d), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

COUNT 2: The Respondent is in violation of Section 1012.795(1)(f), Florida Statutes, in that Respondent has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

COUNT 3: The Respondent is in violation of Section 1012.795(1)(g), Florida Statutes, in that Respondent has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

COUNT 4: 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 State Board of Education rules.

COUNT 5: The Respondent is subject to Section 1012.795(1)(n), Florida Statutes, in that Respondent has been disqualified from educator certification under 1012.315, Florida Statutes.

RULE VIOLATIONS

COUNT 6: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), 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

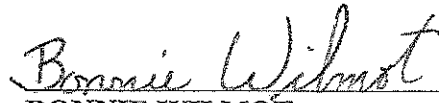
and/or physical health and/or safety.

COUNT 7: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(e), Florida Administrative Code, in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

WHEREFORE, based on the reasons set forth herein and in accordance with the Explanation of Rights and Election of Rights forms attached to and made a part of this Amended Administrative Complaint, Petitioner respectfully recommends that the Education Practices Commission impose an appropriate sanction against the Respondent's educator's certificate pursuant to the authority provided in Sections 1012.795(1) and 1012.796(7), Florida Statutes. The sanctions imposed by the Education Practices Commission may include, but are not limited to, any one or a combination of the following: issuing the Respondent a written reprimand; placing the Respondent on probation for any period of time; restricting the Respondent's authorized scope of practice; assessing the Respondent an administrative fine; directing the Respondent to enroll in the Recovery Network Program; suspending the Respondent's educator's certificate for a period of time not to exceed five years; revoking the Respondent's educator's certificate for a period of time up to 10 years or permanently; or barring the Respondent from reapplying for an educator's certificate for a period of time up to 10 years or permanently.

EXECUTED on this 16th day of January, 2009.

DR. ERIC J. SMITH, as
Commissioner of Education
State of Florida


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