Before the Education Practices Commission of the State of Florida

FILED
SEP 10 2018
EDUCATION PRACTICES COMMISSION
STATE OF FLORIDA

PAM STEWART, as the
Commissioner of Education,

Petitioner,

vs.

SHERRY BARNEY,

Respondent.
_____/

EPC CASE Nº: 18-0100-RT
Index Nº: 18-423-AS
PPS Nº 156-2257

Final Order

Respondent, Sherry Barney, holds Florida educator's certificate no. 634815. Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the certificate.

Petitioner and Respondent have entered into a Settlement Agreement for resolution of this cause. The Settlement Agreement and the Administrative Complaint are attached to and made a part of this Final Order.

A Teacher Hearing Panel of the Education Practices Commission met on September 5, 2018, in Altamonte Springs, Florida. The Commission accepts the Settlement Agreement as the appropriate resolution of this cause.

It is therefore ORDERED that the Settlement Agreement is hereby ACCEPTED and Respondent shall comply with its terms and conditions.

This Order becomes effective upon filing.

DONE AND ORDERED, this 5th day of September, 2018.

CHRISTIE GOLD, Presiding Officer

COPIES FURNISHED TO:

Office of Professional Practices Services

Bureau of Educator Certification

Superintendent
Holmes County Schools
701 E. Pennsylvania Avenue
Bonifay, FL 32425-2397

Lawrence Harris
Assistant Attorney General

Claudia Llado, Clerk
Division of Administrative Hearings

NOTICE OF RIGHT TO JUDICIAL REVIEW

UNLESS WAIVED, 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 mailed to Sherry Barney, [redacted] Westville, FL 32464 and Clay B. Adkinson, Esq., Post Office Box 1207, DeFuniak Springs, FL 32435 by Certified U.S. Mail and by electronic mail to Darby Shaw, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399-0400 and J. David Holder, Esq., 387 Lakeside Drive, DeFuniak Springs, Florida 34235 this 10TH day of September, 2018.

Lisa Forbess, Clerk
Education Practices Commission

RECEIVED
EGC
MAY 29 2018

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

PAM STEWART, as
Commissioner of Education

Petitioner,

vs. **CASE NO. 156-2257**

SHERRY BARNEY,

Respondent.

_____/

SETTLEMENT AGREEMENT

Petitioner and Respondent hereby stipulate and agree as follows:

1. **Certification.** Respondent holds Florida Educator's Certificate Number 634815 issued by the Department of Education covering the areas of Early Childhood Education, Elementary Education and Exceptional Student Education (ESE), which is valid through June 30, 2019.

2. **Employment.** At all times pertinent hereto, Respondent was employed as an ESE Teacher at Ponce de Leon Elementary School in the Holmes County School District.

3. **Allegations.** Respondent neither admits nor denies, but elects not to contest the allegations set forth in Petitioner's Administrative Complaint, which are incorporated herein by reference.

4. **Letter of Reprimand.** Respondent agrees to accept a letter of reprimand, a copy of which shall be placed in her certification file with the Department of Education and a copy of which shall be placed in her personnel file with the employing school district.

5. **Non-Renewal of Certificate and Permanent Bar from Re-Application.** Respondent's Florida educator's certificate will expire June 30, 2019, rendering Respondent ineligible for employment in a position requiring a Florida educator's certificate. Respondent warrants that she has not applied and will not apply to renew her Florida educator's certificate prior to the Education Practices Commission's (EPC) consideration of this settlement agreement. Respondent also warrants that she is not currently employed in a position requiring a Florida educator's certificate and that she will never again apply for, nor accept or hold a position requiring a Florida educator's certificate. Following the EPC's acceptance of this settlement agreement, Respondent agrees that she shall be permanently barred from re-applying or holding

a Florida educator's certificate. (Permanent bar from re-application means that Respondent may never again apply for a Florida educator's certificate.) Therefore, Respondent will be ineligible for employment in a position requiring a Florida educator's certificate.

6. **Violation.** In the event Respondent fails to comply with each condition set forth herein, she agrees that the Petitioner shall be authorized to file an Administrative Complaint or a Notice of Violation with the EPC seeking sanctions against her Florida educator's certificate up to and including permanent revocation of her Florida educator's certificate and a permanent bar from re-application for a Florida educator's certificate, based upon the violation of the terms of this Settlement Agreement.

7. **Costs and Fees.** Respondent agrees that any costs associated with the fulfillment of the terms of this Settlement Agreement shall be her sole responsibility. These costs include, but are not limited to, those associated with the Recovery Network Program (RNP) and Probation, if applicable. The probation monitoring fee shall be held in abeyance if Respondent is not employed as an educator pursuant to the terms of the Probation.

8. **Force and Effect.** This Settlement Agreement constitutes an offer of settlement of disputed issues of material fact until accepted and executed by all parties. The Settlement Agreement has no force or effect unless executed by all parties. Upon execution by the parties, this Settlement Agreement is a binding contract and neither party may withdraw prior to consideration of this Settlement Agreement by the EPC. Approval of this Settlement Agreement by the EPC is a condition subsequent. If the executed Settlement Agreement is rejected by the EPC, it becomes void. If the Settlement Agreement is not accepted and executed by all parties, the terms herein shall be inadmissible in any subsequent formal or informal administrative hearing or in any other legal action between the parties.

9. **Notice of "Three Strikes" Provision.** Respondent is hereby put on notice that Section 1012.795(6)(b), Florida Statutes, provides for permanent revocation of an educator's certificate under certain circumstances when the educator's certificate has been sanctioned by the Education Practices Commission on two (2) previous occasions.

10. **Waiver of Rights.** Respondent understands provisions of this Settlement Agreement, their legal effect, and her rights under Florida law to a formal hearing before a duly designated administrative law judge of the Division of Administrative Hearings (DOAH) or an informal hearing before the EPC. Respondent specifically waives her right to both a formal and an informal hearing, except she may appear before the EPC in order to urge the adoption of this Settlement Agreement. Respondent further acknowledges that she is under no duress, coercion or undue influence to execute this Settlement Agreement and that she has had the opportunity to receive the advice of legal counsel prior to signing this Settlement Agreement.

11. **Approval.** The parties intend to be bound by this Agreement. When fully executed, this Settlement Agreement is a binding contract and shall be submitted to the EPC with the joint request by the parties that the EPC accept and adopt the terms of this Settlement Agreement as the basis for its Final Order in this proceeding. The parties understand that the EPC has the discretion to reject this Settlement Agreement and order a full evidentiary hearing on the allegations of the Administrative Complaint if, in the exercise of its discretion, it deems such action to be appropriate.

12. **Notice.** Respondent waives all statutory and regulatory provisions concerning notice of hearing and agrees that this Settlement Agreement may be presented to the EPC for consideration at its next available scheduled meeting, provided that Respondent is given reasonable advanced notice of time, place and date of said meeting.

(SIGNATURES AND NOTARIZATION ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on this 22nd day of May, 2018.

Sherry Barney
SHERRY BARNEY

STATE OF FLORIDA
COUNTY OF Walton

The foregoing instrument was acknowledged before me this 22nd day of May, 2018, by Sherry Barney, who is ✓ personally known or produced _____ as identification [type of identification produced].

BRENDA NICHOLE GALLOWAY
Commission # GG 173697
Expires January 28, 2022
Bonded Thru Budget Notary Services

Brenda N Galloway
NOTARY PUBLIC
My commission expires:

J. David Holder
J. DAVID HOLDER, ESQUIRE
Law Office of J. David Holder
387 Lakeside Drive
DeFuniak Springs, FL 32435
Telephone (850) 508-4964
Facsimile (850) 951-2347

ATTORNEY FOR PETITIONER

CLAY B. ADKINSON, ESQUIRE
Adkinson Law Firm
572 U.S. Highway 90 East
DeFuniak Springs, Florida 32433
Telephone (850) 892-5195
Facsimile (850) 892-3013

ATTORNEY FOR RESPONDENT

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION

PAM STEWART, as
Commissioner of Education,

Petitioner,

vs. **CASE NO. 156-2257**

SHERRY BARNEY,

Respondent.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner, Pam Stewart, as Commissioner of Education, files this Administrative Complaint against SHERRY BARNEY. The Petitioner seeks the appropriate disciplinary sanction of the Respondent's educator's certificate pursuant to sections 1012.315, 1012.795, and 1012.796, Florida Statutes, and pursuant to Rule 6A-10.081, 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 634815, covering the areas of Early Childhood Education, Elementary Education and Exceptional Student Education (ESE), which is valid through June 30, 2019.

2. At all times pertinent hereto, the Respondent was employed as an ESE Teacher at Ponce de Leon Elementary School in the Holmes County School District.

MATERIAL ALLEGATIONS

3. On or about January 26, 2016, Respondent inappropriately disciplined five year old, male student, [redacted], when Respondent forced [redacted] to lie on his stomach on the ground, pinned [redacted] with her knee, held [redacted] down by his arms, and pulled [redacted] by his legs or feet. Respondent continued to hold [redacted] down despite [redacted] telling Respondent that he could not talk or breathe. Respondent's conduct caused redness and bruising to [redacted]'s head, arms, and legs.

The Petitioner charges:

STATUTE 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 State Board of Education rules.

RULE VIOLATIONS

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.

COUNT 3: The allegations of misconduct set forth herein are in violation of Rule 6A-10.081(2)(a)5, 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 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; determining the Respondent to be ineligible for certification; 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 20th day of September, 2017.

Pam Stewart

PAM STEWART, as
Commissioner of Education
State of Florida

EDUCATION PRACTICES COMMISSION
STATE OF FLORIDA

GRETCHEN KELLEY BRANTLEY
Executive Director
LAWRENCE HARRIS
Legal Counsel
LISA FORBESS
Clerk of Court

CHRISTIE GOLD
Chairperson
NICHOLAS PIETKIEWICZ
Co-Chairperson

September 05, 2018

Sherry Barney
[redacted]
Westville, Florida 32464

Re: Pam Stewart vs. Sherry Barney
EPC No.: 18-0100-RT; DOE No.: 634815

Dear Ms. Barney:

As you know, the teacher panel of the Education Practices Commission reviewed the matter pending against you. The panel concluded that you violated the Principles of Professional Conduct for the Education Profession prescribed by the State Board of Education rules and hereby reprimands you for the conduct alleged in the Administrative Complaint which is incorporated herein.

This panel, which includes fellow educators, believes that, as a teacher, you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession and have diminished your position as an educational leader. The profession cannot condone your actions, nor can the public who employ us.

The Education Practices Commission sincerely hopes it is your intention never to violate any professional obligation in fulfilling your responsibilities as an educator. To violate the standards of the profession will surely result in further action.

This letter of reprimand is being placed in your state certification file, and a copy is being sent to the Holmes County School Board for placement in your personnel file.

Sincerely,

Christie Gold
Presiding Officer