

APPENDIX A
State of Florida First DCA Opinion

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-881

ANDRES CABEZAS,

Appellant,

v.

RICHARD CORCORAN as the
Commissioner of Education,

Appellee.

On appeal from the Education Practices Commission.

April 7, 2020

ROWE, J.

Andres Cabezas appeals a final order of the Education Practices Commission permanently revoking his Florida educator's certificate based on his federal conviction for receipt of child pornography. He argues that he was denied due process because he was not granted a formal hearing before the EPC revoked his certificate. He also contends that the EPC had no authority to revoke his certificate because he had appealed his federal conviction. For the reasons below, we affirm.

Cabezas pleaded guilty to a federal charge of receipt of child pornography. After Cabezas was sentenced to twelve years in federal prison, the EPC filed an administrative complaint seeking to revoke his educator's certificate. The EPC alleged that Cabezas

violated section 1012.795(1)(f), Florida Statutes, by pleading guilty to and being convicted of a disqualifying offense under section 1012.315, Florida Statutes.

Cabezas disputed the charges in the complaint, arguing that the EPC could not revoke his certificate because his federal conviction was not yet final. Cabezas requested a formal hearing on his election of rights form. The EPC reviewed the request and concluded that Cabezas had not disputed issues of material fact that would require a formal hearing under section 120.57(1), Florida Statutes. Instead, finding that Cabezas' dispute was a legal one, the EPC held an informal hearing under section 120.57(2), Florida Statutes. Based on their finding that the federal conviction was a disqualifying offense under section 1012.795, Florida Statutes, the EPC entered an order permanently revoking Cabezas' educator's certificate. This timely appeal follows.

Cabezas argues that the EPC deprived him of due process when it denied his request for a formal hearing. He further argues that the EPC lacked authority to revoke his license because his federal conviction was not yet final. We disagree.

Cabezas had no right to a formal hearing because his challenge to the EPC's complaint did not involve any disputed issues of material fact. Section 120.57(1), Florida Statutes, gives substantially affected parties the right to a formal hearing to challenge the decision of an administrative agency when issues of material fact are in dispute. *Rosenzweig v. Dep't of Transp.*, 979 So. 2d 1050, 1055 (Fla. 1st DCA 2008). When material facts are not in dispute, an agency need not grant a formal hearing and instead may conduct an informal hearing. *Hobe Assocs., Ltd. v. State, Dep't of Bus. Regulation, Div. of Fla. Land Sales, Condos., & Mobile Homes*, 504 So. 2d 1301, 1305 (Fla. 1st DCA 1987).

Cabezas claimed that the EPC could not revoke his educator's certificate under section 1012.795 because his federal conviction was not yet final. Cabezas appealed the conviction and his appeal remained pending. Even so, Cabezas' claim involves a legal dispute, not a factual one. To resolve the claim, the EPC was required only to consider whether Cabezas' conviction needed to be final under section 1012.795, Florida Statutes, before the EPC

could revoke his educator's certificate. Because Cabezas raised only a legal dispute over the finality of his conviction, the EPC did not err by conducting an informal hearing.

On the merits of Cabezas' claim, the EPC correctly concluded that section 1012.795, Florida Statutes, does not require it to await the outcome of an appeal before the EPC may revoke an educator's certificate based on a conviction. Rather, under the plain language of the statute, the EPC may suspend or revoke a license when the educator has "been convicted or found guilty of, has had adjudication withheld for, or has pled nolo contendere to a misdemeanor, felony, or any other criminal charge." § 1012.795(1)(f), Florida Statutes. The statute authorizes revocation of a certificate based on a conviction, or even a plea to criminal charges. Because the statute contains no provision for delaying discipline against an educator's certificate because of a pending appeal, the EPC did not err when it revoked Cabezas' educator certificate based on his federal conviction.

Finally, to the extent that Cabezas sought to challenge the facts supporting his federal conviction, an administrative proceeding is not the forum to relitigate a criminal conviction imposed by a court of competent jurisdiction. *See McGraw v. Dep't of State, Div. of Licensing*, 491 So. 2d 1193, 1195 (Fla. 1st DCA 1986) ("To the extent that appellant sought to relitigate the question of his guilt regarding the subject offense, such is improper."). Cabezas thus could not dispute the basis of his federal conviction in the proceeding before the EPC.

In sum, because Cabezas was not deprived of due process when the EPC conducted an informal hearing and the revocation of his license was authorized under section 1012.795(1)(f), Florida Statutes, the EPC did not err when it revoked Cabezas' educator's certificate.

AFFIRMED.

RAY, C.J., and TANENBAUM, J., concur.

***Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.***

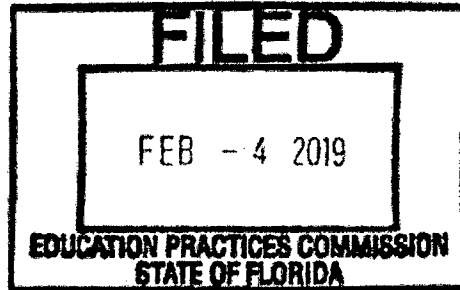
Andres Fernando Cabezas, pro se, Appellant.

Bonnie Wilmot, Deputy General Counsel, Florida Department of
Education, Tallahassee; and Ron Weaver, Ocala, for Appellee.

APPENDIX B
Education Practice Commission's Orders



Before the Education Practices Commission of the State of Florida



PAM STEWART as the
Commissioner of Education,

Petitioner,

vs.

ANDRES CABEZAS,

Respondent.

EPC CASE Nº: 18-0386-TC

Index Nº: 19-072-FOI

PPS Nº: 178-2000

Certificate No.: 1315973

Final Order

This matter appeared before the Education Practices Commission ("Commission") at a duly-noticed public meeting on January 23, 2019 in West Palm Beach, Florida, for a hearing not involving disputed issues of material fact. Petitioner has filed an Administrative Complaint seeking disciplinary action against the Respondent. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Respondent was not present.

RULING ON MOTION

Upon being served with the Administrative Complaint, Respondent filed an

Election of Rights requesting a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, involving disputed issues of material fact, and that this matter be referred to the Division of Administrative Hearings. After review, it was determined there are no material facts in dispute, and accordingly, Respondent is entitled to a section 120.57(2), F.S., hearing not involving disputed issues of material fact. In response, on December 13, 2018, Respondent filed a "Motion to Reinstate and Schedule Formal Hearing" ("Motion").

After review of the Motion and otherwise being fully apprised in the premises thereof, the Commission determined there are no disputed issues of material fact, and therefore, Respondent's Motion should be, and therefore is, DENIED. After denial of the Motion, the Commission convened a hearing not involving disputed issues of material fact.

FINDINGS OF FACT

Therefore, the Commission adopts as its finding of facts the facts alleged in the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Commission concludes the Respondent has violated Section 1012.795(1)(c), Florida Statutes.

The Commission is empowered by Sections 1012.795(1) and 1012.796(7), Florida Statutes, to impose a penalty against the Respondent.

Therefore, it is ORDERED that:

1. Respondent's Florida educator's certificate is hereby permanently revoked as of the date of this Final Order.
2. Respondent is permanently barred from re-application for a Florida

educator's certificate.

3. The Commission retains jurisdiction to enter any and such further orders as necessary to address the material change in circumstances if Respondent's criminal

conviction is overturned on appeal.

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

DONE AND ORDERED, this 4th day of February, 2019.



CRISTINA BASSO, Presiding Officer

COPIES FURNISHED TO:

Office of Professional Practices
Services

Bureau of Educator Certification

Superintendent
Lake County School Board
201 W. Burleigh Boulevard
Tavares, Florida 32778

Chief of Staff
Lake County School Board
201 W. Burleigh Boulevard
Tavares, Florida 32778

Lawrence Harris
Senior 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to Andres Cabezas, Register No. 68854-018, FCI Coleman Low, P.O. Box 1031, Coleman, Florida 33521 by Certified U.S. Mail and by electronic mail to Bonnie Wilmot, Deputy General Counsel, Suite 1232, Turlington Building, 325 West Gaines Street, Tallahassee, Florida 32399 and Ron Weaver, Esq., Post Office Box 770088, Ocala, Florida 34477 on this 4th day of February, 2019.



**Lisa Forbess, Clerk
Education Practices Commission**

APPENDIX C
State Supreme Court Order Denying to Accept Jurisdiction

**Additional material
from this filing is
available in the
Clerk's Office.**