

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLIE CRIST, as Commissioner )  
of Education, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-1135PL  
 )  
HAKIM A. SHAHID, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 13, 2001, by video teleconference between Fort Lauderdale and Tallahassee, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Gonzalo R. Dorta, Esquire  
334 Minorca Avenue  
Coral Gables, Florida 33134-4303

For Respondent: Hakim A. Shahid, pro se  
5279 Jamboree Place  
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STATEMENT OF THE ISSUES

Whether Respondent, a teacher, committed the violations alleged in the Administrative Complaint and the penalties, if any, that should be imposed.

PRELIMINARY STATEMENT

On July 20, 2000, Petitioner filed an Administrative Complaint containing factual allegations as to Respondent's conduct. Based on the alleged conduct, Petitioner alleged that Respondent committed the following violations:

Count 1: Violated Section 231.28(3)(c), Florida Statutes (1999), by being guilty of gross immorality or an act involving moral turpitude.

Count 2: Violated Section 231.28(1)(f), Florida Statutes (1999), by being guilty of personal conduct which seriously reduced his effectiveness as an employee of the School Board.

Count 3: Violated Section 231.28(1)(i), Florida Statutes (1999), by violating the Principles of Professional Conduct for the Education Profession in Florida as prescribed by the State Board of Education.

Count 4: Violated Rule 6B-1.006(3)(a), Florida Administrative Code, by failing to make reasonable efforts to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical safety.

Count 5: Violated Rule 6B-1.006(3)(e), Florida Administrative Code, by intentionally exposing a student to unnecessary embarrassment or disparagement.

Count 6: Violated Rule 6B-1.006(5)(d), Florida Administrative Code, by engaging in harassing or discriminatory conduct which unreasonably interfered with an individual's performance or professional or work responsibilities or with the orderly process of education or which created a hostile, intimidating, abusive, offensive, or oppressive environment and further, failed to make reasonable effort to assure that each individual was protected from harassment or discrimination.

Respondent timely requested a formal administrative hearing, the matter was referred to the Division of Administrative Hearings (DOAH), and this proceeding followed.

At the final hearing, Petitioner presented the testimony of Respondent, three of Respondent's co-workers at an after-school program, and one of Respondent's former students. Petitioner offered one composite exhibit into evidence, which was accepted into evidence. Respondent did not offer any additional testimony. Respondent offered as exhibits seven unauthenticated, hearsay statements and one hearsay letter. Respondent's offered exhibits were not admitted into evidence.

A Transcript of the proceedings was filed on August 6, 2001. The undersigned has given due consideration to the Petitioner's timely-filed Proposed Recommended Order. Respondent did not file a Proposed Recommended Order.

#### FINDINGS OF FACT

1. Respondent has held Florida Teaching Certificate 720034 at all times material to this proceeding. His certificate covers the area of sociology and is valid through June 30, 2002.

2. The Broward County School Board (School Board) employed Respondent as a classroom teacher pursuant to a professional service contract at all times material to this proceeding. Respondent began his employment with the School Board on February 14, 1992. On March 8, 1999, Respondent was placed on

administrative leave. On July 20, 1999, the School Board suspended Respondent's employment without pay. On August 17, 1999, Respondent requested a formal administrative hearing, and the matter was referred to DOAH. Petitioner offered no evidence as to the outcome of the DOAH proceeding or as to Respondent's current employment status with the School Board. 1/

3. Respondent's first teaching assignment was at Apollo Middle School, a public school in Broward County, where he taught for three years. His performance was evaluated several times during his tenure at Apollo. Each evaluator found Respondent to need improvement in the area of classroom management.

4. Respondent was transferred to Attucks Middle School, a public school in Broward County, where he was working during the 1998-99 school year. Respondent's assignment for that school year was to teach a class of seventh-grade students who had behavioral problems in other settings. Respondent, a former college and professional basketball player who is approximately 6'7" tall, believed he was given that assignment, in part, because his stature would intimidate the students in that class.

5. On or about November 25, 1998, D. S., a male student in Respondent's class, was misbehaving. Respondent chased D. S. around the classroom, shoved him into a wall, and physically threw him out of the classroom.

6. During the 1998-99 school year, Respondent encouraged the students in his class to settle their differences by fighting, using the expression "fight till you die, death row." He also permitted the students in his class to gamble by flipping coins and playing cards.

7. On or about March 8, 1999, Respondent was placed on administrative leave by the School Board. While on administrative leave, Respondent worked as a counselor for an after-school program located at the Whiddon-Rogers Education Center (Whiddon-Rogers). The City of Fort Lauderdale administered that after-school program and employed the staff for the program. The City of Fort Lauderdale employed Respondent while he worked for the after-school program.

8. K. F. J. is a married female. At all times material to this proceeding, K. F. J. was dually employed as a counselor at Whiddon-Rogers and as a teacher's assistant. The School Board employed K. F. J. during the part of the day that she worked as a teacher's assistant. The City of Fort Lauderdale employed K. F. J. during the part of the day that she worked at the after-school program.

9. K. F. J. testified that her duties as a counselor at Whiddon-Rogers were ". . . to play with the kids with different recreations [sic], ping pong, volleyball, basketball, different games, stuff like that." The after-school program at Whiddon-

Rogers was a child care program. Petitioner failed to establish that the after-school program was an educational activity.

10. While he was employed at Whiddon-Rogers, Respondent repeatedly sexually harassed K. F. J. This behavior regularly consisted of unsolicited sexual advances and offensive behavior implying Respondent's sexual desires. K. F. J. emphatically rebuffed Respondent's advances. Respondent created a hostile, intimidating, abusive, offensive, or oppressive environment for K. F. J., who was justifiably afraid of Respondent.

11. On April 28, 1999, Respondent made sexually inappropriate comments to K. F. J., asking her to give her a hug and to let him grab her "ass." K. F. J. became very angry and an argument ensued. Respondent made vague threats against K. F. J. and her husband. C. C., a seventeen-year-old male student, interceded between Respondent and K. F. J., telling Respondent to leave her alone.

12. James Parrish was the head custodian at Whiddon-Rogers in April 1999. Mr. Parrish heard the verbal exchanges between Respondent and K. F. J., and he saw C. C. intercede between the two of them.

13. Later that afternoon, Respondent came to believe that C. C. had punctured a tire on Respondent's automobile. Respondent saw C. C. leaving Whiddon-Rogers and ran after him. Mr. Parrish and a male counselor named Dennis ran after

Respondent. Respondent caught C. C., grabbed him by the neck, and was about to strike C. C. when Mr. Parrish and Dennis physically restrained Respondent.

14. Petitioner filed the Administrative Complaint that underpins this proceeding on July 20, 2000. 2/

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

16. This is a proceeding to revoke Respondent's teacher's certificate, which is a valuable property right. Petitioner has the burden in this proceeding to prove the allegations against Respondent by clear and convincing evidence. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994). The following statement has been repeatedly cited in discussions of the clear and convincing evidence standard:

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 evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of

(sic) conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So.2d 797, 800 (Fla. 4th DCA 1983).

17. Pursuant to Section 231.28, Florida Statutes (1999), the Educational Practices Commission has the authority to suspend or revoke, including permanent revocation, a teaching certificate for certain specified grounds. Section 231.28(1), Florida Statutes (1999), provides, in pertinent part, as follows:

(1) The Education Practices Commission shall have the authority to suspend the teaching certificate of any person as defined in s. 228.041(9) or (10) for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); to revoke the teaching certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); to revoke permanently the teaching certificate of any person; to suspend the teaching certificate, upon order of the court, of any person found to have a delinquent child support obligation; or to impose any other penalty provided by law, provided it can be shown that the person:

\* \* \*

(c) Has been guilty of gross immorality or an act involving moral turpitude.

\* \* \*

(f) Upon investigation, has been found guilty of personal conduct which seriously



reduces that person's effectiveness as an employee of the district school board.

\* \* \*

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

18. In Count 1 of the Administrative Complaint, Petitioner charged Respondent with violating Section 231.2615(1)(c), Florida Statutes, alleging that Respondent has been guilty of gross immorality or an act involving moral turpitude.

19. Rule 6B-4.009(2), Florida Administrative Code, a rule duly adopted by the State Board of Education, defines the term "immorality" as follows:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

20. "Gross immorality" requires conduct more egregious than that encompassed within the definition of "immorality" found in Rule 6B-4.009(2):

[t]he term "gross" in conjunction with "immorality" has heretofore been found to mean "immorality which involves an act of misconduct that is serious, rather than minor in nature, and which constitutes a

flagrant disregard of proper moral standards." Education Practice Commission v. Knox, 3 FALR 1373-A (Department of Education 1981).

Frank T. Brogan v. Eston Mansfield, DOAH Case No. 96-0286

(Recommended Order, August 1, 1996).

21. Rule 6B-4.009(6), Florida Administrative Code, defines the term "moral turpitude" as follows:

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

22. Teachers are required to maintain a high standard of conduct. Whether a teacher's conduct constitutes an act of gross immorality or an act of moral turpitude should be measured against that high standard. Adams v. State, Professional Practices Council, 406 So. 2d 1170 (Fla. 1st DCA 1981). In Tomerlin v. Dade County School Board, 318 So. 2d 159 (Fla. 1st DCA 1975), the court observed at page 160:

A school teacher holds a position of great trust. We entrust the custody of our children to the teacher. We look to the teacher to educate and to prepare our children for their adult lives. To fulfill this trust, the teacher must be of good moral character; to require less would jeopardize the future lives of our children.

23. Petitioner established by clear and convincing evidence that Respondent is guilty of gross immorality. His sexually harassing a co-worker is immoral conduct; his physically manhandling two different students is immoral conduct; his encouraging his students to fight is immoral conduct; and his permitting his students to gamble in class is immoral conduct.

24. In Count 2 of the Administrative Complaint, Petitioner charged Respondent with violating Section 231.2615(1)(f), Florida Statutes, alleging that the Respondent, upon investigation, had been found guilty of personal conduct which seriously reduced his effectiveness as an employee of the school board. Petitioner failed to prove this alleged violation by clear and convincing evidence. At most, Petitioner proved that there was an investigation and there was an administrative complaint filed by the School Board against Respondent that resulted in a formal proceeding before DOAH. That proof is insufficient to establish the alleged violation.

25. In Count 3 of the Administrative Complaint, Petitioner charged Respondent with violating Section 231.2615(1)(i), Florida Statutes, alleging that Respondent has violated the Principles of Professional Conduct for the Education Profession in Florida prescribed by rules of the State Board of Education. The specific rules Respondent is alleged to have violated are

set forth in the paragraphs designated as Counts 4, 5, and 6 of the Administrative Complaint. Accordingly, it is not necessary to devote separate discussion to Counts 4, 5, and 6 because the violations alleged there are encompassed by the allegations of Count 3.

26. The provisions of Rule 6B-1.006, Florida Administrative Code, which the Respondent is alleged to have violated read as follows:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) 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.

(3) Obligation to the student requires that the individual:

(a) 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.

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

\* \* \*

(5) Obligation to the profession of education requires that the individual:

\* \* \*

(d) Shall not engage in harassment or discriminatory conduct which unreasonably

interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

27. Petitioner established by clear and convincing evidence that Respondent violated Rule 6B-1.006(3)(a), Florida Administrative Code, as alleged in Count 3 as supplemented by Count 4 of the Administrative Complaint by physically manhandling students, by encouraging students to fight, and by permitting students to gamble.

28. Petitioner established by clear and convincing evidence that Respondent violated Rule 6B-1.006(3)(e), Florida Administrative Code, as alleged in Count 3 as supplemented by Count 5 of the Administrative Complaint by physically throwing a student out of his classroom.

29. Petitioner failed to establish that Rule 6B-1.006(5)(d), Florida Administrative Code, applies to the after-school program at Whiddon-Rogers run by the City of Fort Lauderdale. While Petitioner clearly established that Respondent sexually harassed K. F. J. while they both worked as counselors at the after-school program, Petitioner failed to establish that the after-school program had sufficient connection with the educational process to come within the

purview of the rule. No violation should be found based on the allegations of Count 3 as supplemented by Count 6.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order adopting the findings of fact and conclusions of law set forth herein. The final order should revoke Respondent's teaching certificate.

DONE AND ENTERED this 6th day of September, 2001, in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of September, 2001.

ENDNOTES

1/ From a review of DOAH's records, the proceeding to terminate Respondent's employment appears to have been DOAH Case 99-3764, which was closed on September 11, 2000, following Respondent's apparent failure to respond to an Order to Show Cause. Petitioner offered no evidence as to whether the School Board thereafter entered a Final Order terminating Respondent's employment.

2/ The matter was not referred to DOAH until March 22, 2001.

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.