

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLIE CRIST,)
)
 Petitioner,)
)
 vs.) Case No. 02-2527PL
)
 BRIAN GLASFORD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on September 4, 2002.

APPEARANCES

For Petitioner: Charles T. Whitelock
Whitelock & Associates, P.A.
300 Southeast Thirteenth Street
Fort Lauderdale, Florida 33316-1924

For Respondent: Leslie A. Meek
United Teachers of Dade
Law Department
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Miami, Florida 33137

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of inappropriate sexual conduct with a female student, so as to constitute gross immorality, in violation of Section 231.2615(1)(c), Florida Statutes; personal conduct that

seriously reduces Respondent's effectiveness as an employee of the School Board, in violation of Section 231.2615(1)(f), Florida Statutes; failure to make a reasonable effort to protect a student from conditions harmful to learning or her mental health or physical safety, in violation of Rule 6B-1.006(3)(a), Florida Administrative Code; intentional exposure of a student to unnecessary embarrassment or disparagement, in violation of Rule 6B-1.006(3)(e), Florida Administrative Code; or exploitation of a relationship with a student for personal gain or advantage, in violation of Rule 6B-1.006(3)(h), Florida Administrative Code. If guilty of any of these violations, an additional issue is what penalty that Petitioner should impose.

PRELIMINARY STATEMENT

By Administrative Complaint dated July 27, 2001, Petitioner alleged that during the summers of 1998 and 1999 Respondent made inappropriate advances toward B. L., a female student born on November 3, 1982. The Administrative Complaint alleges that this conduct violates one or more of the provisions cited above and seeks any available discipline, ranging from reprimand to revocation.

Respondent timely requested a formal hearing on the allegations.

At the hearing, Petitioner called four witnesses and offered into evidence five exhibits. Respondent called two

witnesses and offered into evidence one exhibit. All exhibits were admitted.

The court reporter filed the transcript on October 10, 2002. The parties filed their proposed recommended orders by November 22, 2002.

FINDINGS OF FACT

1. Respondent is a certified teacher, holding certificate number 649196. He was first employed by the Miami-Dade School District in January 1989. After working as a substitute teacher, Respondent was hired in a permanent capacity in 1990 or 1991. At the time of the alleged incidents, Respondent was a teacher at Coral Reef Senior High School, where he was the head basketball coach and assigned to teach English classes in the Center for Student Instruction.

2. In the summers of 1998 and 1999, Respondent taught in the Summer Youth Employment Program that took place at Coral Reef. In this program, high-school students from Coral Reef and elsewhere attended classes to develop job skills and received monetary compensation while so enrolled.

3. B. L. was born on November 3, 1982. She graduated from Coral Reef in 2000. During the summers of 1998 and 1999, B. L. took classes at Coral Reef that were sponsored by the Summer Youth Employment Program. The first summer she took a class in business and finance, and the second summer she took a class in

legal and public affairs. Respondent was a coinstructor for both classes.

4. During the summer of 1998, B. L., who was not a discipline problem, engaged in an argument with two other classmates, who were sisters. Respondent and his coinstructor intervened before any blows were exchanged. The coinstructor took the sisters and counseled them, and Respondent took B. L. and counseled her. Respondent removed B. L. from the classroom momentarily to talk to her outside of the hearing of her classmates and advise her that he was disappointed in her because she was one of the top-performing students and she should not "lower her standards" to the level of the sisters with whom she had been arguing. Respondent told B. L. that she was a "bright student, . . . articulate," that she was a "beautiful young lady [with] a lot going for her," that she seemed to have come from a "good family" and "had good standards," and that Respondent did not think that she should conduct herself like that in class. In the context in which it was said, "beautiful" refers to the totality of a person, including intelligence, attitude, and personality," and is not an inappropriate focus upon a person's physical appearance.

5. After a couple of minutes of talking to B. L. outside the classroom, Respondent returned her to the classroom. He then spoke to the coinstructor and reported the incident to the

counselor who dealt with classroom discipline. Respondent was unaware of what, if any, further action the counselor took against B. L. or the sisters.

6. Respondent's other contact with B. L. was unremarkable that summer. A couple of times, he and the coinstructor cited B. L. for violations of the dress code. Generally, though, he taught her and treated her as he did the other students in his class.

7. The following summer, B. L. signed up for Respondent's legal and public affairs class. Concerned that B. L. would be duplicating some of the material that they had covered the previous summer, Respondent spoke with the job counselor, who worked in his classroom. She and Respondent then advised B. L. to transfer to another class, but B. L. refused to do so.

8. During this summer, B. L. confided in a classmate that she had a crush on Respondent and that her relationship with her current boyfriend was unsatisfactory. Nothing significant occurred during that summer between B. L. and Respondent, who again treated her as he did his other students.

9. Obviously, B. L. has testified differently. She testified that, during the first summer, when Respondent had her out in the hall, he told her that a blue dress that she had worn the prior day had been driving him "crazy." She testified that Respondent asked her if she felt attracted toward him, and she

said that she did not. B. L. testified that Respondent concluded the conversation by saying words to the effect, "if you're 'bout it 'bout it, you know where I am." B. L. testified that this meant that if she was serious about getting intimate with Respondent, such as kissing him, he would be available. B. L. testified that this was the only inappropriate conduct the first summer.

10. B. L. testified that the following summer, she and Respondent happened to see each other outside of school at a shopping mall while B. L. was with her boyfriend. She testified that they exchanged brief greetings. B. L. testified that the following week at school Respondent brought up their chance encounter and asked if she recalled their conversation last year. She testified that she answered that she did, and he added, "if you want to talk about it, we can talk about it in a private conversation." B. L. testified that this was the only inappropriate conduct the second summer.

11. B. L. testified that Respondent's conduct made her feel "weird," but she was not scared. She testified that her boyfriend was jealous of Respondent; she testified that he probably thought that she was tempted to engage in an inappropriate relationship with Respondent. She testified that she told her boyfriend of Respondent's advances, and he threatened to tell B. L.'s parents and a school counselor if she

did not complain about Respondent. One time, while talking to her boyfriend about this matter on the phone, B. L. began to cry and her parents overheard enough of the conversation to learn of B. L.'s claims against Respondent.

12. Several problems preclude crediting B. L.'s testimony. First, she acknowledged that Respondent and the job counselor advised her to change classes the second summer, but she declined to do so because it was too much trouble. Second, she denied having a crush on Respondent, but she described any attention from him as though it came from a "movie star." There is no doubt that she had a crush on Respondent based on her description of Respondent at the hearing, the testimony of the friend in whom she confided, and the testimony of the job counselor, who added that B. L. was breathless and "lovesick" and that she told B. L. that Respondent was happily married and to "get over it."

13. It is likely that B. L.'s obvious infatuation with Respondent bothered her boyfriend. It is plausible that stories of resisted advances would gain B. L. credibility with her boyfriend, although B. L.'s motivation in fabricating these claims against Respondent necessarily remains unknown. Additionally, B. L.'s demeanor while testifying did not add to her credibility. Frequently, her tone and expression suggested that she felt uncomfortable testifying, but her discomfort was

not due to victimization by Respondent. Unable to describe her emotions at the time of these claimed advances, B. L.'s discomfort was more likely attributable, at best, to a feeling that Respondent's inappropriate behavior was too trivial for this much attention or, at worst, to an admission of guilt over fabricating these stories and causing Respondent so much trouble. After considering the above-discussed factors, the latter explanation of B. L.'s tone and demeanor is more likely than the former.

14. In any event, Petitioner has failed to prove that Respondent behaved inappropriately toward B. L. at any time.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

16. Section 231.2615(1)(c), (f), and (i) provides:

(1) The Education Practices Commission may 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.

17. Rule 6B-1.006(3)(a), (e), and (h) describes certain of the responsibilities that a teacher owes a student as follows:

(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.

(h) Shall not exploit a relationship with a student for personal gain or advantage.

18. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and

Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

19. For the reasons stated in the Findings of Fact, Petitioner has failed to prove that Respondent committed the sexually inappropriate conduct of which B. L. has accused him.

RECOMMENDATION

It is

RECOMMENDED that the Education Practices Commission enter a final order dismissing the Administrative Complaint against Respondent.

DONE AND ENTERED this 20th day of December, 2002, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of December, 2002.

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 must be filed with the agency that will issue the final order in this case.