

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JIM HORNE,)
AS COMMISSIONER OF EDUCATION,^{1/})
)
Petitioner,)
)
vs.) Case No. 03-1737PL
)
WILLIAM F. COOK,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On September 11, 2003, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The hearing location was the Department of Environmental Protection, Northeast District, Teleconference Room, Second Floor, the Center Building, 7825 Baymeadows Way, Jacksonville, Florida. The hearing was held before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 279
Austell, Georgia 30168

For Respondent: Thomas A. Smith, Esquire
800 West Platt Street, Suite 3
Tampa, Florida 33606

STATEMENT OF THE ISSUE

Should discipline be imposed on Respondent's Florida Educator's Certificate No. 611934, based upon the allegations in the Administrative Complaint, Case No. 990-1149-R, before the State of Florida, Education Practices Commission?

PRELIMINARY STATEMENT

On February 22, 2002, Charlie Crist, as Commissioner of Education, State of Florida, brought the Administrative Complaint against Respondent. It contained the following material allegations:

Prior to November 24, 1999, Respondent made inappropriate comments of a sexual nature to B.B., a female student. Respondent indicated to the student he had heard that she had been 'trippin' and having sex while she was 'trippin.' On or about January 18, 2000, Respondent received a letter of reprimand for his conduct.

During the spring of 2000, Respondent sexually harassed a female colleague and made inappropriate comments to students of a sexual nature. Respondent did not deny the charges. On or about May 10, 2000, the superintendent issued Respondent a notice of termination and immediate suspension. On or about June 6, 2000, Respondent was terminated from his position.

Based upon the material allegations Respondent was accused of violating Section 231.2615(1)(f) and (i), Florida Statutes, together with Rule 6B-1.006(3)(a) and (e), and (5)(d), Florida Administrative Code, leading to the possible imposition of a penalty in accordance with Section 231.2615(1), Florida Statutes.

Respondent responded to the Administrative Complaint by electing a formal hearing option in executing the form related to his rights. In addition, Respondent provided a written statement concerning his position related to certain provisions within the Administrative Complaint.

On April 5, 2003, the case was received by the Division of Administrative Hearings upon the request by Kathleen M. Richards, Executive Director, Education Practices Commission, for assignment of an Administrative Law Judge to conduct the hearing. Following a single continuance the hearing took place on the date described.

At the commencement of the hearing the parties entered into a stipulation that paragraphs 1 and 2 to the Administrative Complaint are true.

At hearing Petitioner presented the testimony of Aron Muse, Morgan Hall, Debra Coleman, Charles Crygier, Lawrence Yudin, and Susan Tidwell. Respondent testified in his own behalf and presented David E. McConnell, Beth B. Riggsbee, Diane M. Cook, Wesley Leake, Deloris Wooldridge, Lorri Song, and Brandie Brinksma as his witnesses. No exhibits were provided by the parties.

On October 6, 2003, the hearing transcript was filed with the Division of Administrative Hearings. Petitioner and

Respondent filed proposed recommended orders which have been considered in preparing the recommended order.

All citations are to Florida Statutes (2003), unless otherwise indicated.

FINDINGS OF FACT

STIPULATED FACTS

1. Respondent holds Florida Educator's Certificate No. 611934, covering the areas of History and Physical Education, which is valid through June 30, 2004.

2. At all times pertinent hereto, the Respondent was employed as a social studies teacher at Sandalwood High School (Sandalwood) in the Duval County School District.

ADDITIONAL FACTS

3. Morgan King was a female student at Sandalwood at times relevant to the inquiry. Following her marriage she is known as Morgan Hall. Although Ms. Hall was not a student in Respondent's classes at Sandalwood, she became acquainted with Respondent.

4. Ms. Hall's involvement with Respondent was principally during sixth period of the school day. At that time Ms. Hall would routinely leave her history class at the end of the period and go to Respondent's classroom where she had many friends. When Ms. Hall arrived at Respondent's

classroom Respondent and the students, to include Ms. Hall would "hangout and talk."

5. Some of the conversations that Ms. Hall participated in with Respondent and other students in his classroom were of a sexual nature. These conversations followed an earlier conversation in a prior year when Respondent told Ms. Hall a story about a girlfriend that he had when he was a young teenager. He explained that he and the girlfriend would stay up all night together. The girlfriend had kids. Respondent told Ms. Hall about the sexual relations which he had with the girlfriend while Respondent was a teenager. Beyond that conversation, while in his classroom at Sandalwood Respondent followed the theme in his discussion with Ms. Hall concerning sleeping with numerous women, so many women that he could not remember how many he had slept with. He went on to comment to Ms. Hall that when you are married you could not do that, but it was acceptable conduct before marriage. Respondent's comments to Ms. Hall about having sex with a girlfriend before marriage and about the number of women he had slept with before marriage were voluntarily remarks made to Ms. Hall. She did not begin the discussions.

6. Respondent told Ms. Hall about another female student that had come to his classroom after other students had left

and flipped up the backside of her skirt revealing the thong underwear she was wearing.

7. While in this classroom in sixth period, friends of Ms. Hall would make fun of her by talking about her "backside," saying that she had a "big butt." Respondent would participate in the conversation, remarking in what Ms. Hall considered to be a joking manner, about Ms. Hall's "butt being big." This comment was made by Respondent a few times.

8. Ms. Hall had conversations with Respondent that insinuated discussion about his penis. As Ms. Hall perceived it, part of what he said was something to the effect that Respondent "could suck his own penis."

9. Ms. Hall in response to Respondent's remarks of a sexual nature would tell him that, "You are a sick old man. That's gross." She would make these comments in a joking manner, but at the same time recognizing that this was a serious matter. She did not want to be rude and offend Respondent, thus the lighter nature of her remarks.

10. On one occasion while in Respondent's classroom, Ms. Hall was sitting on the floor next to his desk against a cabinet. Ms. Hall asked Respondent why it was so cold in the room. He replied, "You know why I like it to be cold, you

know why I want it to be cold," while raising his eyebrows. Ms. Hall described how other girls would sit hanging over Respondent's desk with their "boobs are like right there in his face. And everybody's nipples are hard." That was the circumstance that caused Respondent to raise his eyebrows.

11. On the subject of female students being around Respondent's desk in his classroom, Ms. Hall perceived that those students felt comfortable around Respondent. Respondent created the impression that he was like a friend to Ms. Hall and other female students. He was enjoyable company, according to Ms. Hall. She described his conduct as being disgusting a little of the time, but not all of the time. In these exchanges Respondent allowed the female students to act disgusting in their own right.

12. The discussions of a sexual nature at times were promoted by Respondent, at other times they were promoted by the students.

13. Ms. Hall discussed a computer website entitled "Banged Up.com" with Respondent in the classroom. That website contains subject matter with sexual connotations.

14. Debra Coleman was another student at Sandalwood during the relevant time period. She was in Respondent's tenth grade world history class. She had conversations with Respondent of a sexual nature. Ms. Coleman went to Respondent

to talk to him about her sex life. Other students talked to Respondent about sex in her presence. Respondent was open to those conversations.

15. Respondent made a comment to Ms. Coleman and other female students, that if they did not do their work he was going to spank them and that they would like it.

16. On one occasion Ms. Coleman was allowed to have an extended lunch period following a discussion in which Respondent asked her if he could bite her lip. She said, "No." Respondent then reached up and pinched her bottom lip.

17. On another occasion when Ms. Coleman was in Respondent's class, Brandie Brinksma, a female student was sitting next to her. Respondent pulled out a money clip. In addressing the female students he said, "I'll give you \$500 if you, Brandie, turn to your right and kiss Carrie on the cheek. And, Carrie, I want you to then turn around and act like you are going to kiss her on the cheek and instead of just kissing her on the cheek like, Brandie will turn her head." And beyond that point the students would "start making out." Ms. Coleman was offended by those remarks from Respondent. She got mad and walked out of class. She had never walked out of class before. What Respondent said to the two students was stated in front of the entire class.

18. During one instance when Ms. Coleman was at Respondent's desk in the classroom, a Coke can was on the end of Respondent's desk. Respondent told Ms. Coleman to pick up the Coke can. Respondent placed a measuring ruler next to the Coke can and stated "Imagine 9 1/2 inches of that, going up you," while indicating the measurement on the ruler. Ms. Coleman turned red and responded something to the effect "O.K." and went back to her seat. That measurement was perceived by Ms. Coleman to refer to Respondent's penis.

19. In classroom, in Ms. Coleman's presence, Respondent made a comment about his ability to "Suck his own penis" in the shower, to the effect that "He was able to go down on himself." Some of the male students in the class commented that this physical dexterity was not possible. Respondent commented that he was able to perform this act on himself, but that he had not done it in a while.

20. In April 2000, Aron Muse was the affirmative action supervisor/equal employment opportunity coordinator for the Duval County School Board. He was assigned to investigate Respondent's conduct on the subject of Respondent's conversations with the students concerning sexually related topics. Respondent told Mr. Muse that he was a friend of the students and he was trying to assist them in life in discussing subjects of a sexual nature and that he intended to

direct the students in a proper way. Respondent told Mr. Muse that some of his conversations involved sexual jokes. These discussions with students pertain to a bond which the students and Respondent had, according to Respondent. As Respondent told Mr. Muse, the discussions about sexual matters were "nothing personal."

21. Brandie Brinksma was a student of Respondent's at Sandalwood. She is referred to in the Administrative Complaint as B.B. One of her friends was worried about her while she was attending school, concerning Ms. Brinksma's use of drugs and having sex. It is reported that the friend of Ms. Brinksma went to Respondent and asked that Respondent say something to Ms. Brinksma to let Ms. Brinksma know that those were not good choices on her part. Respondent took Ms. Brinksma aside and asked if he could talk to her. Respondent remarked that the other student was worried about Ms. Brinksma's conduct. Respondent advised Ms. Brinksma to think about the consequences of her acts. Although this discussion concerning drugs and sex was not at the instigation of Ms. Brinksma's parents or the school district, Ms. Brinksma was not offended by the discussion with the Respondent. More specifically, in the conversation between Respondent and Ms. Brinksma, Respondent mentioned that he had heard that Ms. Brinksma had been "trippin." This is a term attributable

to the other student who had arranged the conversation between Respondent and Ms. Brinksma. Ms. Brinksma told Respondent that she had been having sex and that she had tried the drug Ecstasy once.

22. At times relevant Susan Tidwell, formerly Susan Tabor, was a teacher at Sandalwood. She was acquainted with Respondent. Respondent said "a lot of sexual things" to Ms. Tidwell.

23. One of the Respondent's actions would be to show his bicep by flexing it in Ms. Tidwell's presence. He would say, "If this is this big, guess what else is." This was perceived by Ms. Tidwell as an insinuation that was sexual in nature.

24. Respondent said to Ms. Tidwell on more that one occasion that he wanted to "See Ms. Tidwell in black straddling . . ." and then he would pause for the effect, and add, "a Harley," referring to a motorcycle. Respondent told Ms. Tidwell that he wanted her to lose her "good girl image" and that black leather would be what he wanted to see her in.

25. Respondent told Ms. Tidwell one time that he wanted her to advertise for his lawn service business and that all she had to do was to sit in the back of his pickup truck with a bikini top and that would drum up business.

26. Respondent told Ms. Tidwell at school, "Hey Susan, do you know why God gave women vaginas." She responded that she did not want to hear his joke. As she left a workroom at the school when the bell rung, Respondent continued to insist that Ms. Tidwell listen to the punch line of the joke. While in the hall he delivered the punch line which was "So men would talk to them." Ms. Tidwell was not amenable to hearing the ending to the joke either.

27. Respondent, while Ms. Tidwell and another female teacher Christie Allen were in a school workroom with him, told the two female teachers that he had a fantasy about being stranded on a desert island with the two of them, so that they could be on an island full of "little cookies."

28. Ms. Tidwell was bothered by Respondent's remarks that have been reported and somewhat embarrassed to that point in time.

29. Later in Respondent's classroom, Respondent told Ms. Tidwell that he had talked to the class about her pending divorce. In this conversation he said, "I guess it has been a long time since you had any, so let me know if you need something." Another part of the discussion at that time involved some reference by David E. McConnell, a former teacher at Sandalwood who was visiting the school and was in Respondent's room. Mr. McConnell brought up Respondent's lawn

business and commented that Ms. Tidwell needed her lawn done. In response Respondent said to Ms. Tidwell "You know I have something you need, you have something I need." Then he grabbed his crotch. Ms. Tidwell considered the circumstances that took place in Respondent's room on that occasion to be intolerable. Ms. Tidwell reported Respondent's conduct to her school department head and to the assistant-principal at the school, which led to an investigation by the Duval County School District.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in accordance with Sections 120.569, 120.57(1), and 1012.796(6).

31. Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The definition of clear and convincing evidence is found in the case Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

32. Although the incidents referred to in the Administrative Complaint took place when Section 231.28(1)(f) and (i), Florida Statutes (1999), and Section 231.2615(1)(f) and (i), Florida Statutes (2000), were in effect, the substantive provisions in those sections are now

found at Section 1012.795(1)(c) and (i). With this change, jurisdiction has been retained over the allegations in the Administrative Complaint. Solloway v. Department of Professional Regulation, 421 So. 2d 573 (Fla. 3rd DCA 1982).

33. The consequence of any violation of counts alleged in the Administrative Complaint is described at Section 1012.795(1), where it states:

1012.795 Education Practices Commission;
authority to discipline.--

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) 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); may revoke the educator 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); may revoke permanently the educator certificate of any person; . . . or may impose any other penalty provided by law, provided it can be shown that the person:

. . .

34. Count 1 to the Administrative Complaint charges Respondent with a violation of Section 231.2615(1)(f), Florida Statutes, now Section 1012.795(1)(f), in that Respondent allegedly:

Upon investigation has been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the school board.

This violation has not been shown. As will be discussed in relation to subsequent counts in the Administrative Complaint, Respondent is guilty of misconduct by his remarks to students of a sexual nature and his sexual harassment of a female colleague but the proof was not made sufficient to demonstrate a violation pertaining to Count 1. The actual consequences of his misconduct concerning Respondent's ability to continue as an effective employee of the school district has not been established from the perspective of teachers, students, parents, guardians, or the overall community. See Braddock v. School Board of Nassau County, 455 So. 2d 394 (Fla. 1st DCA 1984); and MacMillian v. Nassau County School Board, 629 So. 2d 226 (Fla. 1st DCA 1993).

35. Count 2 to the Administrative Complaint charges Respondent with a violation of Section 231.2615(1)(i), Florida Statutes, now Section 1012.795(1)(i), where it is alleged that Respondent:

Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education Rules.

For these purposes, the Principles of Professional Conduct for the Education Profession are described in the remaining counts to the Administrative Complaint. Therefore, a violation of any

count beyond Count 2 would also constitute a violation of Count 2.

36. Count 3 to the Administrative Complaint charges Respondent with a violation of Florida Administrative Code Rule 6B-1.006(3)(a) which states his obligation to the student where it makes it incumbent upon Respondent to:

Make reasonable effort to protect the students from conditions harmful to learning and/or to the students' mental and/or physical health and/or safety.

The remarks which Respondent made to students, in particular, to Ms. Hall and Ms. Coleman, are harmful to learning. As a consequence, Respondent violated Florida Administrative Code Rule 6B-1.006(3)(a).

37. Count 4 to the Administrative Complaint charges Respondent with a violation of Florida Administrative Code Rule 6B-1.006(3)(e) which states that Respondent:

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

Respondent in his remarks to Ms. Hall and Ms. Coleman intentionally exposed those students to unnecessary embarrassment and disparagement. By this conduct Respondent has violated Rule 6B-1.06(3)(e), Florida Administrative Code.

38. Count 5 to the Administrative Complaint charges Respondent with a violation of Florida Administrative Code Rule 6B-1.06(5)(d) which reminds Respondent that he:

Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance or professional 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 harassment or discrimination.

39. Respondent's sexual harassment of Ms. Tidwell, a fellow teacher, unreasonably interfered with her performance of her professional and work responsibility in the orderly process of education. He created an abusive and offensive working environment. Respondent failed to make reasonable effort to ensure that Ms. Tidwell was protected from sexual harassment. For these reasons Respondent violated Florida Administrative Code Rule 6B-1.006(5)(d).

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law reached, it is

RECOMMENDED:

That a final order be entered finding Respondent in violation of Counts 2 through 5, dismissing Count 1, and permanently revoking Respondent's educator's certificate.

DONE AND ENTERED this 7th day of November, 2003, in
Tallahassee, Leon County, Florida.

S

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of November, 2003.

ENDNOTE

^{1/} When this case began Charlie Crist was Commissioner of Education. He was elected Attorney General of Florida, and Jim Horne became the Commissioner of Education.

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.