

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JIM HORNE, AS COMMISSIONER OF )  
EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 03-2271PL  
 )  
CHRISTOPHER EBRAHIMOFF, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on January 28 and 29, 2004, in Orlando, Florida.

APPEARANCES

For Petitioner: Aaron W. Proulx, Esquire  
Broad and Cassel  
100 North Tampa Street, Suite 3500  
Post Office Box 3310  
Tampa, Florida 33601-3310

For Respondent: Joseph Egan, Jr., Esquire  
Egan, Lev & Siwica, P.A.  
Post Office Box 2231  
Orlando, Florida 32802-2231

STATEMENT OF THE ISSUE

Should Petitioner impose discipline on Respondent's Florida Educator's Certificate No. 782510, based upon the allegations in the Amended Administrative Complaint, Case No. 012-0456-m,

before the Department of Education, Education Practices Commission?

PRELIMINARY STATEMENT

On May 7, 2003, Petitioner, Jim Horne, as Commissioner of Education, filed an Administrative Complaint setting forth factual allegations attributed to Respondent, Christopher Ebrahimoff, which allegedly violated certain Florida Statutes and Florida Administrative Code rules. Respondent disputed the allegations and requested a hearing before an Administrative Law Judge of the Division of Administrative Hearings.

The case was received by the Division of Administrative Hearings on June 18, 2003. An Initial order was sent to both parties on June 19, 2003. The case was initially scheduled for final hearing on August 11, 2003, in Orlando, Florida.

Respondent's Motion for Continuance, dated July 25, 2003, was granted; the case was rescheduled for final hearing on September 22, 2003.

On September 9, 2003, Respondent filed a Motion for Leave to Amend the Administrative Complaint. This motion was granted, which necessitated continuing the scheduled final hearing. The final hearing was rescheduled for November 25, 2003.

Petitioner's Emergency Motion for Continuance dated November 21, 2003, was granted; the final hearing was rescheduled for January 28 and 29, 2004.

The case was presented as rescheduled. At the final hearing, Petitioner presented the testimony of the following witnesses: A.C. and H.P., Boone High School students and friends of A.S.; Robin McCormick, Belynda Thomas, Kim Porterfield, Hugh Hattabaugh, and Cheryl Pleicones, Boone High School faculty members; Don Shearer, an Orange County School Board administrator; and James Cooney, a Dr. Phillips High School faculty member. The depositions of Beverly Middleton, a Boone High School faculty member, and A.S., the complaining student, were received in lieu of their live testimony.

Petitioner offered nine evidentiary documents at the final hearing, which were received into evidence and marked Petitioner's Exhibits B, D, E, F, H, I, J, K, L, and M. Two additional documents became part of the evidence by their attachment to the deposition of A.S. dated October 21, 2003. They were identified as Petitioner's Exhibits 1 and 2.

Respondent testified on his own behalf. In addition, Respondent presented the testimony of the following witnesses: C.R. and M.C., Boone High School students, and Pam Covert, Judith Zeek, Arthur Harmon, and Ann Calendrino, Boone High School faculty members. Hal Litchford, Esquire, a parent of a former Boone High School student, also testified. Respondent's Composite Exhibit 1 was received into evidence.

Subsequent to the final hearing, on February 13, 2004, the deposition of Beverly Middleton was taken and, as mentioned above, was received in lieu of her live testimony.

The Transcript of Proceedings was filed on April 13, 2004. The parties requested, and received, extensions for filing proposed recommended orders. Both parties filed Proposed Recommended Orders on June 22, 2004.

#### FINDINGS OF FACT

Based on the testimony and demeanor of the witnesses, and the documentary evidence presented, the following findings of fact are made:

1. Respondent was a mathematics teacher at Boone High School in Orlando, Florida, during the 2000-2001 and 2001-2002 school years. He also was an athletic coach at Boone, Dr. Phillips and Apopka High Schools during this same period. He held Florida Educators Certificate No. 782510.

2. A.S. was a student at Boone High School; 2000-2001 was her junior year, and 2001-2002 was her senior year. She was a member of the Boone High School varsity cheerleading squad during both school years.

3. While Respondent was not A.S.'s classroom teacher, he held positions of responsibility which could occasion his contact with any student at Boone High School, including A.S. For example, he participated in a Florida Comprehensive

Assessment Test (FCAT) prep program, was a faculty member of the "SAFE Team," and assisted in the anger management program and the American Lung Association student non-smoking program.

4. "Program Excellence" was a program held after school in which Respondent volunteered to help students prepare for the FCAT.

5. The SAFE Team is comprised of faculty members who are available to counsel students with personal problems; these faculty members are encouraged to conduct open discussions with students. Students are encouraged to discuss their personal problems with the SAFE Team members whose names appear on a published list of SAFE Team members posted in classrooms. The Boone High School principal, Hugh Hattabaugh, testified that it would not be atypical for a SAFE Team member to interrupt a class to talk to a student.

6. In addition to his classroom teaching responsibilities, Respondent, as did a significant number of other teachers, had "hall duty" where the teachers would post themselves in the school passageways to monitor students who were passing to and from classes.

7. Respondent also provided assistance to students who were having difficulty with mathematics. Some of these students were not his classroom students. In addition, Respondent assisted students, particularly athletes, who were attempting to

obtain college athletic scholarships by contacting college coaches and athletic departments on behalf of the student athletes. A parent of a Boone High School student who received a college scholarship as a result of Respondent's efforts testified and confirmed that he was aware that Respondent similarly helped other students obtain scholarships.

8. Petitioner's Amended Administrative Complaint contains material allegations that Respondent engaged in "inappropriate conduct with students." These instances of inappropriate conduct are discussed below.

9. Respondent invited A.S. to dinner. A.S. testified that Respondent invited her to dinner; she does not recall when or for what reason. Respondent acknowledged that he did invite graduating seniors to dinner after graduation. One witness, a faculty member, testified that A.S. had advised her that Respondent invited her to dinner after graduation. Respondent testified that while at Dr. Phillips High School, he became aware that teachers invited graduating seniors, typically in groups, out to dinner. He anticipated starting such a "tradition" at Boone High School. This is not inappropriate conduct.

10. Respondent repeatedly pulled A.S. from class to discuss non-academic matters. A.S.'s testimony, which is unclear, at best, recalls at least three occasions during her

junior year and one, possibly more occasions, during her senior year when Respondent came to a class and asked the teacher to speak to A.S. These conversations were all very brief and occurred immediately outside the classrooms. Most discussions involved cheerleading; on one occasion, A.S. reports that Respondent commented that her boyfriend, who was a freshman in college, would not be faithful to her or words to that effect.

11. The Boone High School principal testified that it would not be atypical for a SAFE Team faculty member to pull a student from class. In addition, because Respondent was coaching at another high school, which required him to leave the Boone High School campus immediately at the end of the final school period, he found it necessary to communicate with students who were not in his classes by visiting with them while they were in class. Respondent testified that on one occasion, during A.S.'s senior year, he sought A.S. out to speak to her during class because her cheerleading coach had told him that A.S. was having difficulty. These contacts were not inappropriate.

12. Respondent made inappropriate comments about A.S.'s physical attributes. In her deposition, A.S. stated Respondent commented that he "liked the way that my chest looked in the shirt that I wore." In a December 31, 2001, written statement A.S. reported that Respondent said "I like that shirt on you, it

makes your boobs look nice." She maintains that he made other comments about her appearance, but she can remember nothing specific. Respondent denies making any comment about A.S.'s breast size. There are no other witnesses to this accusation. The evidence does not establish clearly and convincingly that Respondent made the alleged comments.

13. Respondent called A.S. on her cell phone. A.S. reports that Respondent called her two times on her cell phone. The occasion she remembers clearly occurred during the summer between her junior and senior years while she was attending cheerleading camp at the University of Central Florida. He called seeking the phone number of another student that he was attempting to assist in obtaining a baseball scholarship. Respondent needed to contact this student athlete immediately. This information (student athlete's phone number) was provided by another cheerleader who participated in the phone conversation.

14. Although A.S. does not recall the topic of the second conversation, Respondent acknowledges the conversation and advises that the subject was A.S.'s interest in seeking enrollment at the University of Kentucky with which Respondent had indicated he would assist. He had a brief conversation with A.S. to advise that he had been playing "telephone tag" with the University of Kentucky cheerleading coach. A.S. does not know

how Respondent got her cell phone number; Respondent testified that it was given to him by A.S. so that he could contact her regarding his efforts assisting in her enrollment at the University of Kentucky. Respondent testified that the only subjects of his phone conversations with A.S. were school-related. These telephone contacts were not inappropriate.

15. Respondent made inappropriate comments regarding A.S.'s personal life. It is alleged that Respondent said that A.S.'s boyfriend was going to cheat on her while he was away in college. A witness confirmed that Respondent told A.S. to be careful regarding her boyfriend, who was away at college, because he didn't want her to get hurt. Respondent testified that the only discussion he had with A.S. regarding her boyfriend was initiated by A.S. and is the same discussion referred to and in the presence of the above-referenced witness. Respondent testified that he advised her to worry about her grades, not her boyfriend, or words to that effect. The witness supports Respondent's recollection of the circumstances and specifics of the comments regarding A.S.'s boyfriend.

16. Respondent sought A.S. out between classes. The evidence reflects that Respondent had hall duty, as did other teachers, which would occasion his presence in the school passageways. A.S. vaguely testified that on several occasions

Respondent and A.S. would have brief contact while she was going from class to class.

17. Respondent kissed A.S. on the head. On one deposition, A.S. reported this activity; it was not reported on a second deposition or on two written statements. Respondent denies this accusation. There are no other witnesses to this accusation. The evidence is insufficient to demonstrate clearly and convincingly that this incident actually occurred.

18. Respondent pulled A.S.'s cumulative folder without authorization and shared its contents with another student. While there is a great deal of discussion regarding what is "authorized access to student records" and the procedure for obtaining same, the testimony from the various teacher/witnesses suggests that these rules, if there were any, were not followed. It appears that Respondent accessed the cumulative folders for A.S. and her friend, H.P. The testimony indicates that his interest in both folders was incidental to recommendations he was preparing to make for both students to colleges. In addition, H.P. wanted to take two math courses during her senior year and had asked Respondent if it was advisable; he was checking her math background in her folder. On one occasion, while both A.S. and H.P. were in his classroom the cumulative folders for both students were on his desk; Respondent apparently referred to A.S. by a nickname he learned from the

folder and showed both A.S. and her friend, H.P., a photograph in the folder that was taken of A.S. when she was younger. There is no evidence that any other contents were disclosed to any third party. Respondent should not have revealed private information from A.S.'s cumulative folder, although his reasons for accessing the two cumulative folders in question are meritorious.

19. Although A.S. testified that she did not recall seeking Respondent's assistance with mathematics, an academic area in which she had great difficulty, a fellow student testified that he repeatedly saw her, among other students, in Respondent's sixth period class receiving assistance with mathematics. Respondent testified that he regularly assisted A.S. with mathematics as many as two or three times a week from February through May of the 2001-2002 school year. Respondent even obtained an Algebra II book from A.S.'s teacher in an effort to assist her.

20. The following is uncontraverted: A.S. volitionally visited Respondent's classroom on numerous occasions during her junior year; she suggested, if not requested, that she be made his classroom assistant for her senior year (this apparently occurred after the reported discussion of her breasts); whether she requested his assistance or not, she readily consented to his proffered assistance in her efforts to be accepted at the

University of Kentucky; she requested and received Respondent's recommendation for participation in the Boone High School cheerleading squad; and there was no attempted physical contact by Respondent with A.S. before or after school or off campus.

21. A.S. has remarkably poor recollection of events significant to her allegations. Critical testimony given by A.S. is inconsistent and contradicted by independent witnesses. The cumulative effect diminishes A.S.'s credibility.

22. The Boone High School principal testified that Respondent's effectiveness at Boone High School was reduced. He equivocated when asked if the reduced effectiveness extended throughout the county. Respondent's teaching assessments, the testimony of the only parent presented, and several of Respondent's teaching contemporaries suggest that Respondent was an exceptional teacher and motivator who had a genuine interest in teaching and students.

#### CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding in accordance with Section 120.569 and Subsection 120.57(1), Florida Statutes (2003).

24. The Amended Administrative Complaint in this case charges Respondent with violations of Subsections 1012.795(1)(c), (f), and (i), Florida Statutes (2003), within

Counts 1 through 3, respectively. In addition, alleged violations of Florida Administrative Code Rule 6B-1.006(3)(a) and (b) are found in Counts 4 and 5.

25. Petitioner bears the burden of proving the allegations in the Amended 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).

26. The consequence of any violation of the counts alleged in the Amended Administrative Complaint is described at Subsection 1012.795(1), Florida Statutes (2003), where it states that:

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 to impose any other penalty provided by the law provided it can be shown that such person: . . .

27. Count 1 of the Amended Administrative Complaint alleges misconduct in violation of Subsection 1012.795(1)(c), Florida Statutes (2003), in that Respondent has been guilty of

gross immorality or an act involving moral turpitude. This allegation has not been proven by the requisite quantum of proof.

28. Count 2 of the Amended Administrative Complaint alleges that Respondent has engaged in misconduct by violating Subsection 1012.795(1)(f), Florida Statutes (2003), in that Respondent has been found guilty of personal conduct which seriously reduces that person's effectiveness as an employee of the district school board. This allegation has not been proven by the requisite quantum of proof. Prior to the allegations associated with this case, Respondent presents as an outstanding teacher. There is no real evidence of notoriety associated with the reported incidents which would have diminished his effectiveness. In addition, Respondent is not guilty of the acts alleged. See Braddock v. School Board of Nassau County, 455 So. 2d 394 (Fla. 1st DCA 1984) and Baker v. School Board of Marion County, 450 So. 2d 1194 (Fla. 5th DCA 1984).

29. Count 3 to the Amended Administrative Complaint alleges misconduct in violation of Subsection 1012.795(1)(i), Florida Statutes (2003). This count alleges general violation of specific provisions within the Principles of Professional Conduct for the Education Profession in Florida addressed in Counts 4 and 5 of the Amended Administrative Complaint.

30. Count 4 of the Amended Administrative Complaint alleges misconduct in violation of Florida Administrative Code Rule 6B-1.006(3)(a), 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 safety. This allegation has not been proven by the requisite quantum of proof.

31. Count 5 of the Amended Administrative Complaint alleges misconduct in violation of Florida Administrative Code Rule 6B-1.006(3)(e), in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement. That allegation has not been proven by the requisite quantum of proof.

32. Having failed to prove the allegations in Counts 4 and 5, Petitioner has also failed to prove the allegations in Count 3.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Petitioner, Jim Horne, as Commissioner of Education, dismiss the Amended Administrative Complaint filed against Respondent, Christopher Ebrahimoff.

DONE AND ENTERED this 27th day of July, 2004, in  
Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of July, 2004.

COPIES FURNISHED:

Kathleen M. Richards, Executive Director  
Education Practices Commission  
Department of Education  
325 West Gaines Street, Room 224  
Tallahassee, Florida 32399-0400

Aaron W. Proulx, Esquire  
Broad and Cassel  
100 North Tampa Street, Suite 3500  
Post Office Box 3310  
Tampa, Florida 33601-3310

Joseph Egan, Jr., Esquire  
Egan, Lev & Siwica, P.A.  
Post Office Box 2231  
Orlando, Florida 32802-2231

Marian Lambeth, Program Specialist  
Bureau of Educator Standards  
Department of Education  
325 West Gaines Street, Suite 224-E  
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel  
Department of Education  
1244 Turlington Building  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

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.