

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 05-1450
)
FRANKLIN LEWIS,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 24 and 25, 2005, in Fort Myers, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jason L. Odom, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent, Franklin Lewis, inappropriately touched a student, and, if so, whether this misconduct violates Section 1012.33, Florida Statutes (2004),^{1/} and Florida Administrative

Code Rules 6B-1.001 and 6B-4.009 and constitutes "just cause" for Respondent's dismissal.

PRELIMINARY STATEMENT

On March 10, 2005, Dr. James W. Browder, Superintendent of Schools for Lee County, Florida, filed a Petition for Termination of Employment with the School Board of Lee County (School Board). The petition alleged that Respondent Franklin Lewis "kissed and/or touched [a] student's body and/or genitals/pubic area," and recommended that Respondent be dismissed from his employment as an instructional employee with the School Board. Respondent requested an administrative hearing to contest the allegations of the petition. The School Board considered the petition on April 14, 2005. It referred the matter to DOAH and suspended Respondent, without pay, pending the outcome of the hearing and this Recommended Order. Upon its referral of the matter to DOAH, the School Board became the Petitioner (hereinafter "Petitioner") in this proceeding.

At the final hearing, Petitioner presented the testimony of Jeffrey Spiro, Franklin Lewis, M.G., J.M., S.W., and Laurie Beaudry. Petitioner's Exhibits 1 and 2 were admitted into evidence. Petitioner was directed to file a redacted copy of Exhibit 2, the transcript of the deposition of Samuel Dukes, the assistant wrestling coach at Dunbar, following the hearing. The redacted Exhibit 2 was filed on October 3, 2005. In a telephone

conference held on October 12, 2005, Respondent was provided an opportunity to raise any objections to the deposition testimony of Mr. Dukes that were not already stated in the transcript. Respondent raised a generic hearsay objection, and it was agreed by the parties that Mr. Dukes' testimony about what he was told by persons other than Respondent is hearsay and only admissible for the purpose of supplementing or explaining non-hearsay evidence in the record.

At the hearing, Respondent testified in his own behalf and presented the testimony of Marjorie Lewis, P.L., and S.J. Respondent did not offer any exhibits.

The three-volume Transcript of the final hearing was filed on September 29, 2005. The parties timely filed their Proposed Recommended Orders on October 20, 2005, and they have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent has been employed by Petitioner as an instructional employee since August 20, 1996. At the time of his suspension, he taught reading and was the wrestling coach at Dunbar High School (Dunbar) in Fort Myers.

2. Respondent is a member of the collective bargaining unit for instructional personnel. His employment is subject to

the terms and conditions of the written agreement between Petitioner and the Teachers Association of Lee County.

3. Prior to the February 7, 2005, incident^{2/} that is the subject of this case, Respondent was a well-liked and respected person that many students looked up to and turned to for help and support.

4. Respondent is 43 years old. He is divorced and the father of four children.

5. S.W. is 18 years old. He was a student at Dunbar and graduated in 2005. He was a member of the wrestling team during his sophomore, junior, and senior years at Dunbar.

6. Prior to joining the wrestling team, S.W. was in a combined geography/history class taught by Respondent. Respondent encouraged S.W. to join the wrestling team because other students "called him a woman and stuff like that." Respondent believed that if S.W. joined the wrestling team, he would gain the respect of other students because they would know S.W. could defend himself. Mr. Dukes also encouraged S.W. to join the wrestling team.

7. During the wrestling season, October through February, the team practiced every day after school until 5:15 p.m. or 5:30 p.m. Respondent and Mr. Dukes often gave students a ride home after wrestling practices. During the 2004-2005 school

year, Respondent usually drove S.W. home after wrestling practices.

8. Early in 2005, S.W. told Respondent that he was interested in becoming a massage therapist, but he did not want other students to know. Respondent agreed not to tell anyone. According to Respondent, he has chronic neck pain from an old injury and wanted to give S.W. an opportunity to practice massage. Respondent suggested that S.W. give Respondent massages, and Respondent would pay S.W. \$20 for each massage. S.W. gave Respondent two or three massages before February 7, 2005, and Respondent paid S.W. for them.

9. All the massages took place at Respondent's house. The record does not indicate in what room the earlier massages took place, but a reasonable inference from the record evidence is that the massages always took place in Respondent's bedroom. Respondent stated that during the massages, the door to the room was usually closed.

10. S.W. owed money to Respondent. Although the size of the debt was disputed, S.W. was indebted to Respondent for money Respondent spent on food and drinks for S.W. At S.W.'s request, Respondent occasionally purchased food and drinks for S.W. at convenience stores when Respondent was driving S.W. home from wrestling practices. Sometimes Respondent gave money to S.W. to buy food and drinks on his own.

11. Respondent gave or loaned money to other students. Mr. Dukes also gave small amounts of money to students from time to time, but he never asked to be paid back.

Monday, February 7, 2005

12. On February 7, 2005, following wrestling practice, Respondent drove S.W. and two other members of the team, J.M. and P.L., to an apartment complex where Mr. Dukes lived. They went there to use the complex's sauna for the purpose of "sweating off" weight. Wrestlers compete in weight classifications, and it is important to a wrestler to keep his weight within the classification that is considered optimum for him.

13. Following their use of the sauna, the three students got back in Respondent's car to be taken home. Respondent first dropped off P.L. at P.L.'s house and then dropped off J.M. at J.M.'s church. At S.W.'s urging, Respondent drove back to Dunbar so S.W. could use the scale at the school to check his weight. After S.W. checked his weight, Respondent and S.W. drove to Respondent's house.

14. According to Respondent, they went to his house because S.W. wanted to give him a massage to "pay off" S.W.'s debt to Respondent. S.W. says Respondent suggested the massage.

15. When Respondent and S.W. arrived at Respondent's house, Respondent's 10-year-old daughter and adult sister were

in the house. Respondent and S.W. went into Respondent's bedroom. At first, the door to the bedroom remained open. They watched a video of Respondent competing in a wrestling match when he was in high school.

16. When the video ended, Respondent closed the bedroom door. Respondent took off his shirt and lay on the bed to get a massage from S.W. According to Respondent, he was lying on his stomach with his head on a pillow at the bottom of the bed. S.W. was sitting on the bed, at Respondent's right side, with his feet on the floor. S.W. began to massage Respondent's shoulders.

17. According to Respondent, his head was on the pillow at the beginning of the massage; but in order to see what S.W. was referring to on the video that was playing on the television located to Respondent's front and right, Respondent raised his head and held it in his right hand, propped up by his right elbow. Respondent said his body was also twisted to the right. It was from this position that Respondent claims his head accidentally slipped from his hand and landed in S.W.'s lap or on S.W.'s leg.

18. Petitioner claims that, if Respondent's description of the relative positions of Respondent and S.W. on the bed were true, it would have been physically impossible for Respondent's head to have slipped from his hand and fallen against S.W.'s

leg. The evidence is not sufficient to support a finding that it would have been impossible. The improbability of such an occurrence, however, is a factor that contributes to the overall finding that Respondent's account of the incident lacks credibility.

19. According to Respondent, when his head slipped and fell against S.W.'s leg or lap, no part of his hands ever touched S.W. in "his private area."

20. S.W.'s account of the incident in the bedroom is much different. He testified that during the massage, they were not watching a video. Respondent had his head in S.W.'s lap. As S.W. was massaging Respondent's shoulders, Respondent pulled S.W.'s pants outward. S.W. said that he "felt lips on [his] stomach." Then, he felt Respondent's hand go into his pants and touch the "top of [his] penis" and pubic hair. S.W. explained that he was referring to the base of his penis, where it attaches to his abdomen.

21. Respondent and S.W. agree that S.W. pushed Respondent away, and S.W. asked Respondent to take him home.

22. According to Respondent, he told S.W. it was an accident and that he was sorry. S.W. said he walked out of the bedroom and looked back to see Respondent with "his head down shaking it like when, you know, you can't believe you did something."

23. While he was waiting for Respondent to put his shirt back on and take him home, S.W. stood for a few minutes near a pool table where Respondent's sister and daughter were playing pool. Respondent's sister, Marjorie Lewis, M.D., testified that S.W. looked "very calm."

24. According to S.W., during the short drive to his house, Respondent "told me he was sorry, that this never happened before, and he didn't know what got into him."

Tuesday, February 8, 2005

25. The next morning, S.W. got a ride to school from his friend and fellow Dunbar student, M.G. S.W. told M.G. that he was quitting the wrestling team, and M.G. pressed S.W. for the reason. According to M.G., S.W. told him that he was giving Respondent a massage when Respondent placed his head in S.W.'s lap and then put his hand in S.W.'s "pubic area." S.W. told M.G. he shoved Respondent away, and Respondent sat on the bed with his head in his hands, as if "he was ashamed of himself."

26. S.W. did not tell M.G. that Respondent kissed his stomach.

27. At the hearing, S.W. said he told M.G. that Respondent "started to pull his [S.W.'s] pants down," reached into his pubic area, and "tried" to grab his penis. In explaining why he told M.G. that Respondent "tried" to touch his penis, S.W. said

he meant that Respondent only touched the top of his penis, but did not grab all of it.

28. Other statements made by S.W. that Respondent "grabbed my penis," are not inconsistencies that show S.W. lacks credibility. In this case, the inconsistencies simply reflect the imprecision that is common when the circumstances of an event are repeated several times to both friends and strangers. S.W. was a credible witness, and he showed no doubt that Respondent touched his penis.

29. When S.W. and M.G. got to Dunbar, M.G. accompanied S.W., at S.W.'s request, to Respondent's classroom to get some things belonging to S.W. Respondent was in the classroom, and M.G. approached and talked to him. M.G. and Respondent knew each other because M.G. had been on the wrestling team. During their conversation, Respondent never made eye contact with M.G., but kept his eyes on his computer screen. According to M.G., that was unusual behavior for Respondent.

30. Later that same day, M.G. repeated what S.W. told him to S.W.'s friend and wrestling teammate, J.M. J.M. testified that M.G. told him that Respondent made S.W. give him a massage and Respondent "tried to touch his penis."

31. J.M. talked to S.W. in the school cafeteria a short time later. S.W. said he quit the wrestling team because of what happened the day before at Respondent's house and that S.W.

felt "degraded" and "like a four-year-old." J.M. testified that S.W. told him Respondent locked the bedroom door, "tried to reach into [S.W.'s] pants, like touching his pubic area."

32. S.W. did not tell J.M. that Respondent kissed his stomach.

33. Sometime during the school day, Respondent saw S.W. and urged him not to quit the wrestling team. According to Respondent, S.W. told Respondent he was not quitting the team because of the incident at Respondent's house, but because of other "personal reasons."

34. Later that day, Respondent telephoned S.W. According to Respondent, he called to tell S.W. that S.W. was mistaken about Respondent's head hitting S.W.'s lap, that his head only hit S.W.'s leg. According to S.W., Respondent asked S.W. to keep the incident a secret and "he'd do anything." Respondent admits that he told S.W. during this telephone conversation not to report the incident, but did so "because I thought it was silly."

Wednesday, February 9, 2005

35. The next evening, S.W. called Laurie Beaudry, his Big Sister from the Big Brother/Big Sister Program and told her he was quitting the wrestling team. According to Ms. Beaudry, S.W. told her of an "inappropriate touching" incident. Because he was upset, Ms. Beaudry offered to pick him up so they could

talk. She picked S.W. up and returned to her house. On the way to pick up S.W., Ms. Beaudry called Respondent on her cellular telephone and asked Respondent whether he knew why S.W. was upset and wanted to quit the wrestling team. Respondent told her he did not know.

36. After S.W. and Ms. Beaudry arrived at her house, S.W. told her that on Monday he was giving Respondent a massage, "then Mr. Lewis was kissing on his stomach, and then he pulled his pants and grabbed his thing."

37. Later that evening, Respondent telephoned J.M. Respondent and J.M. had a close relationship, and J.M. said he thought of Respondent as a big brother. Respondent asked J.M. what S.W. was telling people about the incident. J.M. asked Respondent to tell his side of the story first. Respondent admitted at the hearing that what he then told J.M. was a lie. He told J.M. that he and S.W. had been practicing a wrestling move, and S.W. got upset when his pants came down. Respondent claims that what he described to J.M. actually happened at Dunbar, a week earlier.

38. According to Respondent, J.M. told him S.W.'s account of the incident was that Respondent made S.W. give him a massage, and Respondent's head fell in S.W.'s lap. According to J.M., he told Respondent that S.W. accused Respondent of trying to touch S.W. in his pubic area. Respondent denies that J.M.

said anything about S.W.'s accusing Respondent of touching S.W.'s "private area."

39. According to J.M., he told Respondent he did not believe Respondent's account of the incident. Respondent began to cry during their telephone conversation and said, "this can't get out" and "this could ruin my life." Respondent asked J.M. to tell S.W. that Respondent would "do anything," such as leave Dunbar or the wrestling team, if S.W. did not report the incident. Respondent denies that he cried or made these statements to J.M.

40. Immediately following his telephone conversation with Respondent, J.M. called Mr. Dukes to discuss the incident. Based on what J.M. told him, Mr. Dukes understood S.W.'s story to be that Respondent fondled S.W. J.M. told Mr. Dukes he was also going to quit the wrestling team because of the incident.

41. Shortly after the conversation between Mr. Dukes and J.M., Respondent and Mr. Dukes talked by telephone. Respondent denied J.M.'s account of the incident. Respondent admitted at the hearing that he told Mr. Dukes the same lie he told J.M., that he and S.W. had been practicing a wrestling move and S.W. got upset when his pants "came down" and Respondent's head "went towards his crotch."

42. Respondent asked Mr. Dukes to accompany Respondent to Ms. Beaudry's house to see S.W. and "get to the bottom of what

was going on." Respondent knew S.W. was at Ms. Beaudry's house because he had called for S.W. at S.W.'s house and had spoken to S.W.'s foster mother. During the drive to Ms. Beaudry's house, Respondent and Mr. Dukes discussed the allegations made by S.W. According to Mr. Dukes, Respondent said, "S.W.'s story is true." Mr. Dukes became upset and Respondent said "he didn't blame [Mr. Dukes] for being mad at him." Respondent denies that he told Mr. Dukes that S.W.'s account of the incident was true.

43. When Respondent and Mr. Dukes arrived at Ms. Beaudry's house, Mr. Dukes suggested that Respondent remain in the car. Inside the house, Mr. Dukes talked with S.W. who was upset and did not want to see Respondent. According to Mr. Dukes, S.W. told him Respondent touched "his private area."

44. At some point, Ms. Beaudry said she wanted to speak to Respondent, and Respondent was asked to come into the house. S.W. went into a bedroom, and S.W. and Respondent did not see or speak to each other. During the discussion between Respondent and Ms. Beaudry, Respondent began crying. Respondent says he was crying because he was thinking about how his children would be harassed when the matter got into the newspaper.

45. According to Mr. Dukes, when Ms. Beaudry confronted Respondent with S.W.'s accusation that Respondent "grabbed his penis," Respondent's reaction was "mournful." Respondent "said

he was sorry, you know, and he don't know why it happened and this has never happened before and things like that."

46. According to Ms. Beaudry, Respondent sat in a chair, held his head in his hands, and rocked back and forth crying and saying, "I'm sorry. I'm sorry. Is [S.W.] OK? Is [S.W.] OK?" Respondent did not deny S.W.'s account of the incident or offer Ms. Beaudry a different account of the incident. Respondent asked Ms. Beaudry and Mr. Dukes not to report the incident and said, "I'll do anything. I'll move. I'll leave the school or whatever."

47. About 11:30 that evening, after Respondent returned home, he told his sister, Dr. Lewis, that there had been a "misunderstanding" with S.W. According to Dr. Lewis, Respondent told her "he may have inadvertently touched [S.W.] near his private area." Dr. Lewis noted that Respondent showed signs of depression in the days that followed.

Thursday, February 10, 2005

48. The next day, February 10, 2005, Mr. Dukes reported the incident to an employee in Dunbar's Office of Student Services. From that first contact, a series of contacts were made with Dunbar officials leading to a formal investigation and Petitioner's initiation of these termination proceedings against Respondent.

49. Sometime that same day, Dr. Lewis called Ms. Beaudry to ask how S.W. was doing and to offer counseling to S.W. Ms. Beaudry declined the offer. A reasonable inference can be drawn from Dr. Lewis' offer of counseling for S.W. that she believed his emotional upset was genuine and not contrived.

Credibility

50. This is not just a case of S.W.'s word against Respondent's. Respondent's account of the events is also contradicted by J.M. (regarding what J.M. told Respondent about the incident, whether Respondent cried, and whether Respondent asked J.M. to keep the incident a secret) and Mr. Dukes (whether Respondent admitted that S.W. was telling the truth). Furthermore, Respondent admitted that his first explanation of the incident to J.M. and Mr. Dukes was a lie.

51. The record evidence does not explain why S.W. would have become so upset if the only thing that happened was what Respondent claims -- an accidental, brief contact between Respondent's head and S.W.'s leg or lap.

52. S.W. testified that he loved and respected Respondent like a brother or father. Respondent did not deny their close relationship. The record contains no credible evidence to establish a motive for S.W. to destroy his relationship with Respondent and jeopardize Respondent's career as a teacher by falsely accusing him.

53. Respondent removed S.W. as one of the captains of the wrestling team sometime during the 2004-2005 wrestling season for using excessive profanity, but Respondent himself never said he believed this "demotion" was the reason for S.W.'s accusation against him. S.W.'s demotion from captain is not sufficient, standing alone, to support an inference that it caused S.W. to become so angry with Respondent that he fabricated the incident that occurred on February 7, 2005. Moreover, it would not account for the contradictions between Respondent's account of his conversations with J.M. and Mr. Dukes and their account of the same conversations.

54. Respondent had an obvious motive to lie in order to avoid the adverse professional and financial consequences of S.W.'s accusation against him. The more persuasive and credible evidence supports a finding that Respondent's account of the incident is untrue.

55. The truthfulness of S.W.'s account of the incident is corroborated by Respondent's behavior in the days that followed. Respondent exhibited remorse, fear, and shame. This behavior, while not always reliable as proof of guilt, was more consistent with S.W.'s account of the incident than with Respondent's account.

56. Petitioner has met its burden to prove by a preponderance of the evidence its factual allegation that on

February 7, 2005, while Respondent was receiving a massage from S.W. in the bedroom of Respondent's home, Respondent reached his hand into S.W.'s pants and touched S.W.'s penis.

57. Ms. Beaudry and Mr. Dukes stated that the incident caused S.W. to become more introverted. Mr. Dukes said S.W. and J.M. performed poorly as wrestlers after the incident. The wrestlers, in general, and S.W., in particular, were teased and picked on by other students when the incident was reported in the news and became public knowledge.

58. Respondent's misconduct undermines the foundation of the relationship between a teacher and his students, and thereby impairs his effectiveness in the Lee County school system. Respondent's dishonesty, which includes some of his testimony under oath in these proceedings, also impairs his effectiveness in the Lee County school system.

CONCLUSIONS OF LAW

59. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57 and Subsection 1012.33(6)(a), Florida Statutes (2005).

60. No due process or other objection was raised by Respondent regarding the procedures or actions taken by Petitioner leading to the referral of this matter to DOAH.

61. Petitioner must prove its factual allegations against Respondent by a preponderance of the evidence. McNeil v. Pinellas County School Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995). Petitioner met its burden of proof.

62. The Petition for Termination of Employment (Petition) charges Respondent with a violation of Section 1012.33, Florida Statutes, and Florida Administrative Code Rule 6B-4.009.

63. The parties stipulated in their August 11, 2005 Joint Pre-Hearing Stipulation that "[t]he Respondent's acts, if proven, constitute 'just cause' for his dismissal pursuant to Section 1012.33, Florida Statutes and State Board of Education Rules."

64. Subsection 1012.33(6)(a), Florida Statutes, provides that instructional staff of the school districts may be suspended or dismissed for "just cause." "Just cause" is defined in Subsection 1012.33(1)(a), Florida Statutes, as including, but not limited to "misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude."

65. Florida Administrative Code Rule 6B-4.009, entitled "Criteria for Suspension and Dismissal," sets forth six bases for charges upon which suspension or dismissal of a teacher may be pursued. The bases that are implicated by the factual

allegations of the Petition are immorality and misconduct in office.

66. Florida Administrative Rule 6B-4.009(2) addresses the charge of immorality:

(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.

67. Respondent's nonconsensual touching of S.W.'s pubic area is inconsistent with the standards of public conscience and good morals. Respondent's conduct was sufficiently notorious to bring him into public disgrace and disrespect. Therefore, Respondent's conduct constitutes immorality.

68. Florida Administrative Rule 6B-4.009(3) addresses the charge of misconduct in office:

Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

69. Florida Administrative Code Rule 6B-1.001 provides:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic

citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

70. Florida Administrative Code Rule 6B-1.006(3) states that the obligation of a teacher to a student requires that the teacher:

(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.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

(c) Shall not unreasonably deny a student access to diverse points of view.

(d) Shall not intentionally suppress or distort subject matter relevant to a student's academic program.

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

(f) Shall not intentionally violate or deny a student's legal rights.

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

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

(i) Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

71. Respondent's nonconsensual touching of S.W.'s public area violated Florida Administrative Code Rule 6B-1.001, the Code of Ethics of the Education Profession. Respondent's actions violated the Principles of Professional Conduct set forth in Florida Administrative Code Rule 6B-1.006(3)(a), (e), (f), and (h). Therefore, Respondent's actions constitute misconduct in office.

72. Even if S.W.'s inconsistency in describing the February 7, 2005, incident, sometimes as touching or grabbing and sometimes as an attempt to touch or grab, were resolved in Respondent's favor as a mere attempt, the incident would still constitute misconduct in office.

73. Respondent's effectiveness as a wrestling coach was immediately impaired when the incident caused S.W. and J.M. to quit the wrestling team. A teacher's misconduct can be so serious that it can be reasonably inferred from the misconduct itself that the teacher's effectiveness in the school system is impaired. See Purvis v. Marion County School Board, 766 So. 2d 492 (Fla. 5th DCA 2000); Walker v. Highlands County School Board, 752 So. 2d 127 (Fla. 2d DCA 2000). In this case, the seriousness of Respondent's misconduct in inappropriately touching S.W., "speaks for itself" because it undermines the foundation of the relationship between a teacher and his students. Respondent's dishonesty with a teacher and a student is also destructive of the trust that is required in Respondent's relationship with students, teachers, and administrators. Therefore, it can be reasonably inferred from the record evidence that Respondent's misconduct impairs his effectiveness in the Lee County school system.

74. Respondent's proven immorality and misconduct in office are "just cause" for his dismissal by the Lee County School Board.

RECOMMENDATION

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

RECOMMENDED that a final order be issued finding Respondent, Franklin Lewis', misconduct constitutes "just cause" under Section 1012.33, Florida Statutes (2004), and Florida Administrative Code Rule 6B-4.009 to dismiss him from his employment as a teacher with Petitioner, the Lee County School Board.

DONE AND ENTERED this 31st day of October, 2005, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2005.

ENDNOTES

^{1/} Unless otherwise indicated, all references are to Florida Statutes (2004).

^{2/} Whenever a reference is made to "the incident," it means the incident involving Respondent and S.W. that occurred on February 7, 2005.

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.