

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 06-0797
)
WALTER GILBERT,)
)
 Respondent.)

)

RECOMMENDED ORDER

This cause came on for formal hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on May 23, 2006, in Sarasota, Florida.

APPEARANCES

For Petitioner: Arthur S. Hardy, Esquire
 Matthews, Eastmore, Hardy,
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For Respondent: Robert E. Turffs, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Walter Gilbert should be terminated from employment by the Sarasota County School Board.

PRELIMINARY STATEMENT

On June 8, 2005, Walter Gilbert (Mr. Gilbert), who was employed by the School Board of Sarasota County (the Board) as an aide at Sarasota High School, was placed on administrative leave with pay, based on an investigation into allegations that he had inappropriate contact with female student D.B. On February 14, 2006, he was informed by the Superintendent that he had found probable cause to terminate his employment.

On February 22, 2006, Mr. Gilbert informed the Board through counsel that he wished to contest termination and requested a hearing. He was given notice of termination by the Board in a letter dated March 7, 2006, which informed him that he was terminated effective March 8, 2006.

The parties stipulated that, "If the allegations of inappropriate behavior with a student against Mr. Gilbert are proven, the School Board has just cause to terminate his employment." It was further stipulated that criminal charges which arose out of the alleged activities of Mr. Gilbert were nolle prosequi by the State Attorney.

At the hearing the Board called D.B., Sarasota Police Detective Corrine Stannish, Sarasota High School Principal Jeffrey Hradek, Amy Mazner, and Scott J. Lempe. The Board offered four exhibits, which were accepted into evidence.

Exhibit 1 is the transcript of a deposition of School Resource Officer Brian Woodring. Exhibit 4 is a group exhibit consisting of letters and a mail receipt.

Mr. Gilbert testified and offered no exhibits.

No transcript was ordered. After the hearing Petitioner and Respondent filed their Proposed Findings of Fact and Conclusions of Law on June 2, 2006. References to statutes are to Florida Statutes (2005).

FINDINGS OF FACT

1. The Sarasota County School Board is the agency responsible for the administration of the Sarasota County School System.

2. Mr. Gilbert is a 53-year-old man who has worked for the Board since 1998. He has been employed as a security aide since 2000, and was so employed during the 2004-2005 school year. It is his job to protect students at Sarasota High School.

3. Mr. Gilbert has been a football coach, has been active in the Youth Football League, and is prominent in the community. He is married, has seven children, and is a grandfather.

4. D.B. is a 2006 graduate of Sarasota High School. She was born November 26, 1987. She was 17 years old in the winter and spring of 2005, when the events that will be related herein, occurred.

5. Sarasota High School is a large school and comprises numerous buildings. Approximately 2500 students attend the school. The campus includes a field house, a football field, the original building, a cafeteria, a library, and numerous classrooms.

6. D.B. has been an acquaintance of Mr. Gilbert for several years. She frequently talked to him, and his long-time friend John Jones (Mr. Jones), beginning in the ninth grade. She would talk to Mr. Gilbert and Mr. Jones, who is also a security aide, almost every day. She was advised by Principal Hradek not to talk to Mr. Jones so much. Principal Hradek counseled Mr. Gilbert on at least one occasion to act professionally in his conduct with regard to students.

7. Before Christmas 2004, D.B. and Mr. Gilbert discussed lingerie. Sometime after these discussions Mr. Gilbert presented her with lingerie. This occurred around Christmas 2004. D.B. described this lingerie on some occasions as three thongs, and on at least one other occasion, two thongs and a pair of "regular" panties that did not fit her.

8. D.B. said Mr. Gilbert on at least one occasion asked her to show him her underwear, which she was wearing. She showed him the thong underwear by pulling it upwards over her pants although on another occasion she said she did this by removing, or at least lowering, her pants.

9. In January 2005 D.B., engaged in fellatio with Mr. Gilbert under a stairwell in Building 13 of Sarasota High School during the school day. The stairwell was not readily accessible to students.

10. Subsequently, during the spring of 2005, she had sexual intercourse in the Building 13 stairwell with Mr. Jones, in the Building 13 maintenance room with Mr. Jones, in the Building 13 stairwell with Mr. Gilbert, in a Building 13 maintenance storeroom with Mr. Gilbert, in a Building 13 maintenance room with Mr. Jones, in a coach's office in the field house with Mr. Gilbert, and in the field house bathroom with Mr. Gilbert.

11. Also during this period, she and Mr. Gilbert were in an unused school resources office in Building 5 together but did not engage in sex acts. When they left that room they went into an elevator but only kissed while on the elevator.

12. On one occasion, Mr. Gilbert took her into a room in Building 5 that had a chair in it. D.B.'s clothes were removed and Mr. Gilbert attempted intercourse but was unable to do so. Thereafter Mr. Jones entered the room and had intercourse with D.B. while Mr. Gilbert watched.

13. As the end of the 2004-2005 school year approached, she ended her relationship with Mr. Gilbert but continued engaging in sex acts with Mr. Jones.

14. All of the sexual activity between Mr. Gilbert and D.B., and Mr. Jones and D.B. was consensual. All of the sexual activity took place on campus, during school hours, and in places generally inaccessible to students. Mr. Gilbert and Mr. Jones were gentle and kind with her, according to D.B. She did not wish to cause them trouble with the authorities.

15. Near the end of the 2004-2005 school year, Assistant Principal Downes became aware of rumors that D.B. was having a sexual relationship with a member of the school staff and as a result called D.B. into his office. When confronted by him, she denied the allegation. She also denied it to the police and to her mother. Eventually, she admitted to her mother that she had a sexual relationship with Mr. Jones and the appropriate authorities were notified and an investigation ensued.

16. Subsequently, she revealed her relationship with Mr. Gilbert and participated in a controlled telephone conversation with him while in the company of Detective Corrine Stannish.

17. After the revelation of these encounters D.B. met with Detective Stannish, Deputy Brian Woodring, who is the School Resource Officer, and a Sarasota Police Department evidence technician on the Sarasota High School Campus. This occurred after the end of the school year in 2005.

18. D.B. was asked to describe to the officers the site of each sexual encounter. After some initial confusion over whether she was going to Building 13 or 14, buildings which are mirror images of each other, she led the officers to Building 13, and to the other places in which she had encounters with Mr. Gilbert and Mr. Jones.

19. The places where D.B. led the officers were places that students would not normally access. Many of the sites were locked. D.B. was able to describe with remarkable precision the interior of these sites before she entered them with the officers.

20. The evidence technician used a "black light" in an effort to locate semen. Semen fluoresces when exposed to a black light. No residue of semen was found.

21. Subsequent to a report from a custodian during August 2005, Assistant Principal Downes and Deputy Woodring discovered keys in Mr. Gilbert's locker in the field house. These keys included two Sarasota High School master keys, a golf cart key, an elevator key and a gate lock key. The master keys would open Building 13.

22. Although, D.B. offered contradictory testimony with regard to the description of lingerie presented to her by Mr. Gilbert, and offered confusing and sometimes contradictory testimony with regard to the location and the identity of the

participant with regard to some encounters, and preliminarily denied certain aspects of her activities to her assistant principal, police officers, and her mother, on the whole it is proven by a preponderance of the evidence that D.B. had sexual liaisons with Mr. Gilbert during the time she was a minor student at Sarasota High School.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat.

24. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). To meet this burden, the Board must establish facts upon which its allegations of misconduct are proven by a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3rd DCA 1990) and Sublett v. Sumter County School Board, 664 So. 2d 1178 (Fla. 5th DCA 1995). See also § 120.57(1)(j).

25. Because the parties stipulated that, "If the allegations of inappropriate behavior with a student against Mr. Gilbert are proven, the School Board has just cause to terminate his employment," it is necessary only to determine that Mr. Gilbert engaged in inappropriate behavior. It is found

by a preponderance of the evidence that Mr. Gilbert had sexual relations with a minor on the campus of Sarasota High School. The behavior proved is inappropriate behavior.

RECOMMENDATION

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

RECOMMENDED that the School Board of Sarasota County, Florida, uphold the termination of Walter Gilbert's employment.

DONE AND ENTERED this 7th day of June, 2006, in Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of June, 2006.

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.