

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 07-0563
)
PAUL PARISI,)
)
 Respondent.)

)

RECOMMENDED ORDER

The final hearing in this case was held on June 20, 2007, in Orlando, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Brian F. Moes, Esquire
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For Respondent: Joseph Egan, Jr., Esquire
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STATEMENT OF THE ISSUE

Whether Respondent, Paul Parisi, committed the violations charged in the Administrative Complaint of the Orange County School Board (School Board) and, if so, whether just cause

exists to terminate Respondent's annual contract of employment as a teacher.

PRELIMINARY STATEMENT

On December 12, 2006, the School Board suspended Respondent and advised him of its intent to terminate his employment contract based on the charges of misconduct in office, willful neglect of duty, gross insubordination, conduct unbecoming a public employee, and breach of his employment contract as set forth in the Administrative Complaint issued on November 21, 2006. Respondent timely requested an administrative hearing, and the matter was referred to DOAH for the assignment of an Administrative Law Judge to conduct an evidentiary hearing.

At the final hearing, the School Board presented the testimony of James Rigling, John Hawco,^{1/} Laura Beusse, and J.L.^{2/} The School Board's Exhibits 4 and 5 were admitted into evidence. Respondent testified on his own behalf and presented the testimony of Barbara Tyson and Shannon Ballard through their depositions. Respondent's Exhibits 1, 2, 5, and 8 through 10 were admitted into evidence.^{3/}

The two-volume Transcript of the final hearing was filed with DOAH. The parties filed Proposed Recommended Orders that were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent was a teacher at Ocoee High School in Ocoee, Florida, for the 2006-2007 school year. Respondent is 42 years old.

2. J.L. was a female, eleventh grade student at Ocoee High School and 17 years old at the time of the events which are the subject of this case.

3. After obtaining a master's degree in education from the University of West Florida in 2004, Respondent was employed as a fourth grade teacher for one semester at Kissimmee Charter Academy in Osceola County and, then, as a fifth grade teacher for one year at Catalina Elementary School in Orange County.

4. In 2006, Respondent was hired as a language arts teacher at Ocoee High School. One of the courses he was assigned to teach was a one-semester ACT/SAT Preparatory Course designed to prepare students for taking the Academic College Test and Scholastic Achievement Test for admission to a college or university.

5. J.L. had generally performed poorly in high school, had a grade point average less than 2.0, and needed to significantly improve her grades to graduate. She was particularly weak in math. In the 2006-2007 school year, she was attending night classes after the regular school day to obtain course credits for classes she had failed.

6. The 2006-2007 school year at Ocoee High School started on or about August 7, 2006. J.L. was enrolled in Respondent's ACT/SAT Preparatory Course, along with about 15 other students. The Course was scheduled for every other school day and was held during the last period of the school day. Math is a prominent part of the course.

7. On August 31, 2006, J.L. went to see Mr. Rigling, a guidance counselor at Ocoee High School. She told Mr. Rigling that she wanted to be transferred out of Mr. Parisi's class. She did not immediately tell Mr. Rigling the reason she wanted out of the class.

8. Generally, students are allowed to drop and add classes within the first two weeks of the school year, but not thereafter. Students are not permitted to drop classes after the second week except in exceptional circumstances. When J.L. told Mr. Rigling that she wanted to drop Mr. Parisi's class, Mr. Rigling told J.L. that she could not do so without a "substantial" reason. It was then that J.L. told Mr. Rigling that she felt "uncomfortable" in Respondent's class.

9. Mr. Rigling described J.L. as "tense" and "reluctant" to explain to him why she felt uncomfortable in Respondent's class. She eventually showed Mr. Rigling a greeting card she had received from Respondent and told Mr. Rigling about two conversations she had with Respondent that caused her to feel

uncomfortable. These allegations will be discussed in detail below.

10. Mr. Rigling asked J.L. to wait in his office and then informed Laura Beusse, an assistant principal, of J.L.'s accusations against Respondent. Mr. Rigling and Ms. Beusse contacted the School Board's employee relations department, which has exclusive authority to investigate allegations of sexual abuse or harassment.

11. Mr. Rigling then asked J.L. to fill out a witness statement form. In her witness statement prepared on August 31, 2006, J.L. stated:

On Tuesday, August 29th, after class, I received a "friendly" card from my SAT/ACT prep teacher. I didn't think to [sic] much of the gesture because Mr. Parisi is a nice teacher. To bring things back; I first had small talk with Mr. Parisi [sic] on August 25th. The small talk consisted of my past and how far I had come and changed my life. I do not recall why our conversing went from simple to deep or how it did, but the content which first made me unsure, was when I had mentioned that my parents allowed my boyfriend to live with us, and Mr. Parisi bluntly said "so you were having sex at 15." I answered him, and told him yes and gave him my own Email address so that he could look me up on My Space. I did not think anything of it at first; then on Tuesday 8/29 I had stayed after class, because I had night school at three o'clock, so I stayed in class and talked to Mr. Parisi in our classroom alone. The entire conversation was about mostly my past experiences [sic] and life in general. For some reason it seemed that the conversation continued to

return to my sexual past: The question he asked me that most made me uncomfortable was him asking me, "What my favorite position was, as in term [sic] of having sex. In the card he gave me his personal email first and then his work email. Also he signed it with your friend. He did say that he asked such questions because he thought I was very interesting, But I felt as if we were on an ♥ informal date or something . . . trying to find out things about each other. He also kept mentioning that I was pretty. When Mr. Parisi and I had our first chat and I had mentioned my ex-boyfriend and how he was living with me, and then Mr. Parisi assumed that I had been sexually active, he acted very interested in that particular subject.

12. Mr. Rigling completed an OCPS Management Directive A-4 Reporting Form on August 31, 2006, the purpose of which was to independently recount what he had been told by J.L.

Mr. Rigling's written statement was as follows:

On 8/31 at approximately 10:20 a.m., in room 620 Officer Grogran asked that I speak with [J.L.]. [J.L.] and I went into my office and discussed a problem that took place after school. [J.L.] said on 8/25 she had begun to speak with Mr. Parisi about some problems she had in her past. She discussed some concerns with her boyfriend as well as regarding sex. Mr. Parisi discussed in a general way the risks of having sex at an early age. [J.L.] told me she felt uncomfortable during the discussion. On 8/29 while waiting for night school [J.L.] was in Mr. Parisi's class. Mr. Parisi gave her a card (enclosed). They continued a general conversation about school and life. [J.L.] reports that the teacher repeatedly try [sic] to steer the conversation toward her past and present boyfriend. Earlier [J.L.] had spoken with Mr. Parisi about feeling pressured by her ex boyfriend to

have a threesome. Mr. Parisi told [J.L.] that she is very interesting and that he was intrigued by her. [J.L.] stated she felt very uncomfortable. [J.L.] reports he then asked her what is your favorite position. [J.L.] stated she did not answer and tried to redirect the conversation to a nonsexual one. [J.L.] said that Mr. Parisi told her how pretty she was. He [sic] [J.L.] reports that he said this more than once and she felt uncomfortable.

13. The greeting card referred to in these two statements had a cover depicting "Historic Route 66" and, inside, Respondent wrote the following:

Hello [J.L.]

I am grateful to have met such a wonderful person as you along the road that criss-crosses [sic] life. I hope that where ever [sic] our roads take us that we are better people for having met and can keep in touch. [Respondent then lists both his private and school email addresses.]

You are a pleasure to have in class and I enjoy your smile, enthusiasm, optimism, and contributions of intellect.

Keep on being the best "[J.L.]" that you can be.

Your Friend

Mr. Parisi

14. Later the same day, August 31, 2006, the principal of Ocoee High School came to Mr. Parisi's classroom and directed that he immediately vacate the school campus and go to the employee relations department. He was not told why. Respondent

returned to the campus only once thereafter, to obtain his personal items.

Discrepancies in the Two Written Statements

15. There are two prominent discrepancies in the written statements of J.L. and Mr. Rigling. First, J.L. suggests that the sexual content of the conversation with Respondent on August 25 was initiated by Respondent in response to her telling him that her parents allowed her boyfriend to live with them. However, Mr. Rigling indicates that J.L. initiated the discussion of sexual matters. Second, Mr. Rigling reports that J.L. told Respondent in their August 29 conversation about being pressured by her boyfriend to have a "threesome," but J.L. did not mention that in her own statement.

16. Based on the more persuasive evidence in the record, it is found that Mr. Rigling's account is the more accurate account.

The August 25 Conversation

17. The central elements of the August 25 conversation between J.L. and Respondent, according to the written statements of J.L. and Mr. Rigling, are as follows:

- a. J.L. initiated the conversation.
- b. J.L. initiated the sexual content of the conversation.

- c. Respondent discussed the problem of having sex at an early age.
- d. J.L. felt uncomfortable.

18. In her written statement, J.L. indicated that her discomfort was the result of Respondent's blunt statement, "So you were having sex at 15." It is inferred that J.L. meant to convey that she thought this was a presumptive or provocative comment. Mr. Rigling's statement does not contain an explanation for J.L.'s discomfort on August 25, unless it is inferred that Respondent's comments about "the risks of having sex at an early age" caused J.L. to feel uncomfortable.

19. It is difficult to reconcile J.L.'s claim of discomfort about Respondent's alleged statement, "So you were having sex at 15," with (1) her admission that she was having sex at 15, (2) her telling Respondent that her boyfriend was living with her, and (3) her apparent comfort in talking to Respondent about "concerns with her boyfriend regarding sex."

20. Respondent's account of the August 25 conversation is that it lasted approximately one minute, consisted of J.L. coming up to his desk after class and telling him she had to take the bus home, and his simple response to the effect, "Then don't miss your bus." Respondent testified at the final hearing that he thought at the time that J.L. was implying that she

wanted him to give her a ride home, which he had no interest in doing.

21. J.L. subsequently changed her account of what happened on August 25. J.L. admitted that she changed her story at her deposition when she was asked why she would have given Respondent her email address on August 25, if he had made her feel uncomfortable on that day. J.L.'s revised account of the events was that Respondent did not say anything to her on August 25 to make her feel uncomfortable and that is why she was willing to give him her email address. According to J.L.'s revised account, all of Respondent's statements that caused her to feel uncomfortable occurred on August 29, 2006.

22. J.L. tried to explain how her witness statement could be reconciled with her final hearing testimony. However, her explanation was unpersuasive. J.L. ultimately conceded that her written statement was "really twisted" and "that's not how it happened at all."

The August 29 Conversation

23. The central elements of the August 29 conversation between J.L. and Respondent, according to the written statements of J.L. and Mr. Rigling and their testimony at the final hearing, are as follows:

- a. J.L. and Respondent were alone in the classroom.

- b. J.L. initiated the sexual content of the conversation.
- c. J.L. told Respondent that her boyfriend was pressuring her to engage in a "threesome."
- d. Respondent repeatedly tried to steer the conversation to sexual matters.
- e. Respondent told J.L. she was pretty.
- f. Respondent asked J.L. about her "favorite position."
- g. J.L. felt uncomfortable.
- h. Respondent gave J.L. a greeting card.

24. Respondent's account of the August 29 conversation is that J.L. talked about her family, her plan to go away to college, and that her boyfriend lived with her. Respondent testified that he told J.L. not to focus on her boyfriend and sex, but to focus on academics. He denies telling J.L. that she was pretty and asking her about her favorite sexual position. Respondent handed J.L. the greeting card which he thought she had requested. Respondent claims that during at least half of the conversation, another student was in the room using the telephone.

25. Assistant Principal Laura Beusse testified that the appropriate action for a teacher to take when a student reveals personal sexual matters is to notify a supervisor.

The Greeting Card

26. When Respondent gave J.L. the greeting card, it was in an envelope. J.L. did not open the card when she was in the classroom with Respondent on August 29. She did not open the card until she got home later that day.

27. J.L. testified that when she asked for a card, she meant Respondent's business card. Respondent says he did not have any business cards, and he thought J.L. wanted his email address in a greeting card. Respondent thought the card was a good opportunity to give J.L. positive reinforcement, which the teachers at Ocoee High School were encouraged to do.

28. J.L. described the greeting card as "a nice gesture," but also testified that it upset her "a little" because "I didn't know what he expected."

29. Respondent's statements of praise for J.L. in the greeting card are exaggerated in light of what he knew about J.L. and the fact that he had already observed that she was not a good student. His explanation for the words he used was that it was just his "style" of making a positive personal connection with J.L. Assistant Principal Beusse was not asked specifically about the greeting card, but she testified that it was important for teachers to make personal connections with their students.

30. The School Board focuses on two elements of the greeting card that it claims were inappropriate. First, the

School Board claims it was inappropriate for Respondent to give J.L. his personal email address in the card. However, no evidence was presented to show that it is contrary to a specific policy of Ocoee High School or the School Board for a teacher to give a student his or her personal email address. The unrebutted testimony of another Ocoee High School student and J.L.'s best friend, Shannon Ballard, was that "a lot of teachers give out their [private telephone] numbers" to students so the teachers can be more easily available to students if the students need help.

31. The School Board's second claim regarding the greeting card is that it was inappropriate for Respondent to end the card with the salutation, "Your Friend." However, Respondent signed the card "Mr. Parisi," rather than with his first name.

32. When J.L.'s mother saw the greeting card, she thought it was "friendly," "encouraging," and did not think there was anything in it that was inappropriate.

33. Mr. Rigling did not consider the statements made by Respondent in the greeting card to be inappropriate. In email correspondence between Mr. Rigling and J.L., she discussed personal (including sexual) subjects and they exchanged expressions of fondness. J.L. began one email "Dearest Mr. Rigling," and in another mentions cheating on her boyfriend "last night in a very ungodly way." Mr. Rigling responded "You

and I are kindred spirits," "You have a big fan here," and "You have helped and inspired me."

Credibility

34. In a case like this, where there are no witnesses other than the accuser and the accused, the Administrative Law Judge must examine the record for indices of credibility or lack of credibility, weigh the evidence, and determine who is more believable. Having considered the evidence presented and the demeanor of the witnesses, it is found that Respondent's account of the events is more believable than J.L.'s account. This finding is based in large part on the following evidence:

a. There was a clear and compelling motive for J.L. to fabricate accusations against Respondent. The accusations provided the substantial reason required to get out of Respondent's class and avoid a bad grade, which would jeopardize her ability to graduate.

b. J.L. did not accuse Respondent until after she was told by Mr. Rigling that she needed a substantial reason to get out of Respondent's class.

c. J.L.'s accusation was easy to fabricate because she had already set the stage for the accusation by initiating a conversation with Respondent about her sexual experiences, and she could use the greeting card to support her story.

d. J.L.'s worst accusation against Respondent, that he asked her what her favorite position was, sounds like something an adolescent would make up if she had only a short time to fabricate an improper teacher statement.

e. J.L. did not expect her accusation to cause Respondent to be fired. That serves to explain why J.L. was willing to do something so destructive to Respondent's teaching career and life; she did not foresee the consequences.

f. Just before she made her accusation against Respondent, J.L. told her best friend, Shannon Ballard, about the card she received from Respondent, but said nothing about him asking about her "favorite position." Shannon said she was "amazed" J.L. did not tell her about that. J.L.'s failure to tell Shannon the rest of the story is consistent with the proposition that there was nothing else to tell; the accusation had not yet been fabricated.

g. J.L.'s story changed, and the change appears to be the result of fabrication, rather than innocent mistake.

h. J.L.'s claim of discomfort is not consistent with her personality, which her best friend aptly

described as "very forward." This is a 17-year-old who is not uncomfortable about telling a teacher she hardly knows that her boyfriend is pressuring her to have a "threesome." A teacher's comments to a student can be improper and constitute misconduct without regard to whether the student was offended, embarrassed, or otherwise made uncomfortable by the comments. The point here is that J.L.'s claim of discomfort is not credible.

i. J.L.'s accusations also require a finding that Respondent, who had recently received his master's in education with accolades from university faculty and was only in his third week as a new high school teacher, was already attempting to steer a student into some kind of sexual relationship. Such a thing is possible, but would represent an extreme deviation from common moral conduct and, therefore, requires a concomitant degree of proof to believe, which was lacking in this case.

j. With regard to Respondent's credibility, the worst that can be said of his actions is that by giving J.L. a greeting card during the school year, he created a situation where his intention of providing her with positive reinforcement could be misperceived

by J.L as a romantic gesture. The same card, if given on the last day of school, would probably not have been perceived to have a possible romantic connotation. However, Respondent's use of the card can be explained by his naiveté and enthusiasm as a new teacher. When considered with the totality of the evidence, the card does not prove the veracity of J.L.'s accusations. Furthermore, when Respondent's greeting card is compared with Mr. Rigling's correspondence with J.L., it can be seen that J.L.'s "very forward" behavior caused both men to wax poetic near the boundary of propriety.

CONCLUSIONS OF LAW

35. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2006).^{4/}

36. District school boards have authority to operate, control, and supervise all public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law. § 1001.32(2), Fla. Stat.

37. Such authority extends to personnel matters and includes the power under Subsection 1012.33(1)(a), Florida

Statutes, to dismiss professional service contract teachers for "just cause."

38. "Just cause," as defined in Subsection 1012.33(1)(a), Florida Statutes, includes, "but is not limited to," misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude. The use of the words "but is not limited to" in the statute indicates the Legislative intent that other wrongdoing may also be deemed just cause for dismissal. See Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2d DCA 1994).

39. "Misconduct in office" is defined in Florida Administrative Code Rule 6B-4.009 ("Criteria for Suspension and Dismissal") as follows:

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.

40. The Principles of Professional Conduct for the Education Profession in Florida, set forth in Florida Administrative Code Rule 6B-1.006, require a teacher to, among other things, make a reasonable effort to protect a student from harmful conditions and to not "exploit a relationship with a student for personal gain or advantage."

41. Misconduct in office may be established, even in the absence of specific or independent evidence of impaired effectiveness, where the conduct engaged in by the teacher is of such a nature that it "speaks for itself" in terms of its seriousness and its adverse impact on the teacher's effectiveness. See Purvis v. Marion County School Board, 766 So. 2d 492, 498 (Fla. 5th DCA 2000); Walker v. Highlands County School Board, 752 So. 2d 127, 128-29 (Fla. 2d DCA 2000); Summers v. School Board of Marion County, 666 So. 2d 175, 175-76 (Fla. 5th DCA 1995).

42. The School Board bears the burden of proving, by a preponderance of the evidence, each element of the charged offenses which may warrant dismissal. McNeill 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).

43. The School Board did not meet its burden of proof to establish that Respondent made inappropriate statements to J.L. of a sexual nature.

44. Furthermore, the School Board did not prove that in giving J.L. the greeting card and his personal email address, he engaged in misconduct as defined in Florida Administrative Code Rule 6B-4.009. It was not proven that Respondent intended to exploit his relationship with J.L. for personal gain or

advantage, and the greeting card did not impair his effectiveness as a teacher in the school system.

45. Respondent's failure to inform a supervisor that J.L. had disclosed sexual matters to him warrants a reprimand at most, not his dismissal.

46. The School Board did not establish just cause for the dismissal of Respondent.

RECOMMENDATION

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

RECOMMENDED that the School Board issue a final order rescinding its prior action against Respondent and reinstating his employment as a professional service contract teacher with the School Board, as well as any pay and benefits of which he was deprived.

DONE AND ENTERED this 24th day of August, 2007, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of August, 2007.

ENDNOTES

^{1/} The testimony of John Hawco, an investigator for the School Board, was stricken by the Administrative Law Judge as not based on personal knowledge and irrelevant.

^{2/} At the request of the School Board, and without objection from Respondent, J.L.'s name was not disclosed in the Transcript of the hearing.

^{3/} At the hearing, ruling was reserved on the admissibility, over the School Board's objection, of Respondent's Exhibit 6, which is a composite of prose and poetry by J.L. that appears on her My Space website page, and includes writings in which J.L. refers to herself as a liar. The School Board's objection is sustained. The Exhibit is not relevant to prove J.L. fabricated her accusations against Respondent.

^{4/} Unless otherwise indicated, all references to the Florida Statutes are to the 2006 codification.

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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.