

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN L. WINN, AS COMMISSIONER)
OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-0621PL
)
RONALD ROSEN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 8, 2010, in Tallahassee, Florida, before J. D. Parrish, an Administrative Law Judge, of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edward T. Bauer, Esquire
Brooks, LeBoeuf, Bennett
& Foster
863 East Park Avenue
Tallahassee, Florida 32301

For Respondent: Joan Stewart, Esquire
Florida Education Association
300 East Park Avenue
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent violated Subsections 1012.795(1)(c), 1012.795(1)(e), 1012.795(1)(f), 1012.795(1)(i), and 1012.795(2), Florida Statutes (2006),

and Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(e), 6B-1.006(3)(g), and 6B-1.006(3)(h), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On April 3, 2006, John L. Winn, as Commissioner of Education (Petitioner), filed a nine-count Administrative Complaint against Ronald Rosen (Respondent), alleging that he violated the provisions of Florida law noted above. The Respondent timely disputed the factual allegations of the complaint and executed an Election of Rights that chose the "Settlement Option" with "Formal Hearing" if settlement could not be reached. The parties were unable to reach a settlement.

On February 5, 2009, the matter was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings. On March 23, 2009, Respondent filed a Motion to Hold DOAH Proceedings in Abeyance pending the resolution of related criminal proceedings. By order entered March 25, 2009, the case was placed in abeyance and the parties were directed to file a status report by June 1, 2009. Thereafter the case continued in abeyance until September 1, 2009. A Notice of Hearing was entered September 3, 2009, that set the case for hearing on January 8, 2010. Respondent continued to oppose the instant case being tried because he has filed for post-conviction relief and those efforts have not been exhausted.

The parties' Joint Motion to Change Venue was granted on December 15, 2009.

At the final hearing neither party presented witnesses. Both submitted documentary evidence that was marked and received into evidence as Petitioner's Exhibits 1-15 and Respondent's Exhibits 1-5. The Transcript of the hearing was filed with DOAH on January 25, 2010. The parties were granted ten days' leave within which to file their proposed recommended orders. Petitioner filed a Proposed Recommended Order on January 29, 2010. Respondent's Proposed Recommended Order was filed on February 4, 2010. Both have been fully considered in the preparation of this order.

FINDINGS OF FACT

1. Petitioner, on behalf of the Education Practices Commission, is charged with the responsibility of certifying and regulating public school teachers in Florida.

2. Respondent held Florida Educator's Certificate 345797, covering the area of elementary education grades 1 through 6. His certificate expired on June 30, 2005.

3. At all times material to the allegations in the Administrative Complaint, Respondent was employed as a public school teacher in Brevard County, Florida. All underlying conduct that resulted in criminal charges against Respondent occurred in the Respondent's classroom setting.

4. On or about January 31, 2001, Respondent was arrested in Brevard County, Florida, and charged with making inappropriate contact with his students. More specifically, the allegations stated that Respondent had improperly touched the breasts and/or buttocks of four of his sixth-grade students.

5. Prior to the arrest, one of the students in Respondent's class had written a note to her guidance counselor asking that Respondent be told not to touch her anymore. Thereafter, on investigation, other students claimed that Respondent had also touched them inappropriately.

6. Several months passed and Respondent was formally charged with multiple felony counts of lewd or lascivious molestation. The charges are not disputed. The female students involved in the allegations were 11 or 12 years old at the time of the incidents. Each student testified at the criminal trial.

7. The jury trial resulted in convictions for multiple counts of lewd and lascivious molestation as well as misdemeanor battery.

8. On January 31, 2005, the trial court adjudicated Respondent guilty and sentenced him to concurrent terms of 231 months for each of the lewd or lascivious molestation convictions and twelve months for the misdemeanor battery conviction. Respondent timely appealed the convictions and sentence.

9. On September 8, 2006, the Fifth District Court of Appeal affirmed the guilty judgments and sentences. The court's Mandate was issued on November 17, 2006.

10. The Florida Supreme Court declined discretionary review of Respondent's appeal.

11. Respondent now seeks post-conviction relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure. It is expected that Respondent's challenge based upon ineffective trial counsel will be resolved after an evidentiary review of the facts pertaining to the advice the trial lawyers gave Respondent. Respondent's counsel suggests that had he known of the potential results flowing from conviction, he would have elected to take the plea offered by the state that would not have left him with a felony conviction or jail time.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

13. Subsection 1012.795, Florida Statutes (2006) (the version of the statute in effect at the times relevant to this case), gives the Education Practices Commission the authority to suspend or revoke the teaching certificate of any person, or to impose any penalty provided by law, if the person is guilty of

certain specified acts. Pertinent to this proceeding are the following provisions of that law:

(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 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students 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 or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students 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 thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon order of the court, of any person found to have a delinquent child support obligation; or may impose any other penalty provided by law, provided it can be shown that the person:

* * *

(c) Has been guilty of gross immorality or an act involving moral turpitude.

* * *

(e) Has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.

(f) Upon investigation, has been found guilty of personal conduct which seriously

reduces that person's effectiveness as an employee of the district school board.

* * *

(i) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

* * *

(2) The plea of guilty in any court, the decision of guilty by any court, the forfeiture by the teaching certificate holder of a bond in any court of law, or the written acknowledgment, duly witnessed, of offenses listed in subsection (1) to the district school superintendent or a duly appointed representative of such superintendent or to the district school board shall be prima facie proof of grounds for revocation of the certificate as listed in subsection (1) in the absence of proof by the certificate holder that the plea of guilty, forfeiture of bond, or admission of guilt was caused by threats, coercion, or fraudulent means.

14. Petitioner alleged that Respondent violated the foregoing provisions. Additionally, Petitioner maintains that Respondent's conduct also constitutes a violation of administrative rules governing the actions of educators in Florida. More specifically, Petitioner has alleged that Respondent violated Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(e), 6B-1.006(3)(g), and 6B-1.006(3)(h). Florida Administrative Code Rule 6B-1.006 provides, in pertinent part:

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(3) Obligation to the student requires that the individual:

(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.

* * *

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

* * *

(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.

15. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

16. Petitioner demonstrated that the Respondent was convicted of a felony constituting moral turpitude and failed in his appeal to over-turn that conviction. In response, the Respondent maintains that he was provided ineffective criminal counsel and, should he prevail on the remedy now sought in the criminal case, he should not lose his certificate permanently due to the criminal proceeding.

17. Petitioner has established by clear and convincing evidence that Respondent's conviction constitutes a violation of state law and the rules governing teacher conduct. The jury in the criminal case assessed the Respondent's actions and found him guilty of felony conduct: lewd and lascivious behavior toward minor female students. That conviction alone supports the revocation of Respondent's certificate such that additional conclusions are unnecessary.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding Respondent guilty of being convicted of a felony constituting moral turpitude and permanently revoking his teaching certificate.

DONE AND ENTERED this 9th day of March, 2010, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of March, 2010.

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.