

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH,)
AS COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 09-5350PL
)
ERIC ASHAN RIGGINS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On December 18, 2009, a duly-noticed hearing was held in Brooksville, Florida, before Lisa Shearer Nelson, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
Post Office Box 5675
Douglasville, Georgia 30154

For Respondent: Eric Ashan Riggins, pro se
4594 Chamber Court
Springhill, Florida 34609

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated the provisions of Section 1012.795(1)(c), (f) and (i), Florida Statutes (2007)^{1/}, and Florida Administrative Code Rule 6B-1.006(3)(a) and (e), and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On July 16, 2009, Eric Smith as Commissioner of Education (Petitioner), filed a five-count Administrative Complaint against Respondent, Eric Ashan Riggins (Respondent or Riggins), alleging statutory and rule violations as a result of alleged improper sexual behavior with respect to two female students and drinking alcoholic beverages or being under their influence while socializing with students. On October 1, 2009, the Agency referred the matter to the Division of Administrative Hearings, indicating that there appeared to be disputes of material fact and requesting the assignment of an administrative law judge.

On October 13, 2009, a Notice of Hearing was issued scheduling the case for hearing December 18, 2009, and the case proceeded as scheduled. At hearing, Petitioner presented the testimony of Vicelia Azzarelli, Detective Jill Morrell, Joy Nagy, A.M., M.C., M.G., N.J., Barbara Kidder, Deputy Bill Pope and A.H.^{2/} Petitioner's Exhibit 1 was admitted into evidence. Respondent testified on his own behalf but submitted no exhibits.

The Transcript of the proceedings was filed with the Division on January 12, 2009, and Petitioner filed its Proposed Recommended Order on January 22, 2009. To date, no submission has been received by Respondent. All references are to the 2007 codification of the Florida Statutes unless otherwise indicated.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Respondent held a Florida Educator's Certificate, numbered 1003139, covering the area of athletics coaching. The certificate was valid through June 30, 2008.

2. Petitioner is the state agency charged with the certification and regulation of teachers, pursuant to Chapter 1012, Florida Statutes.

3. At all times relevant to these proceedings, Respondent was employed as an in-school suspension teacher and a track coach at Hernando High School in the Hernando County School District.

4. The allegations in this proceeding involve events that occurred during the 2007-2008 school year, and deal with three separate incidents: Respondent's conduct in connection to the prom; his actions toward M.G.; and his actions toward A.H.

The Prom

5. The prom for Hernando High School was held on or about April 5, 2008, at the Glen Lakes Country Club in Hernando County. Joy Nagy was a coordinator for the prom, and Vicelia Azzarelli was the administrator on duty.

6. Teachers who desired to chaperone the prom signed up in advance. They were given specific responsibilities, including a schedule for monitoring students' behavior. Volunteers' duties did not include dancing with the students. Those teachers who were not volunteering but wanted to stop by and see the students

dressed up in their prom attire were also expected to get prior authorization.

7. According to Joy Nagy, Respondent neither signed up to volunteer nor sought permission to attend the prom.

8. Respondent came to the prom with Mr. Mobley, a long-time substitute teacher. Both men were present for a short time, approximately twenty minutes. During their appearance at the prom, they were seen on the dance floor dancing with the students. Assistant Principal Azzarelli observed Respondent while he was at the prom, and he appeared to her to be under the influence of alcohol. He had the smell of alcohol on his person and on his breath, his eyes were dilated and his gait was unsteady. She and another administrator requested that Respondent and Mr. Mobley leave the dance, and they did so.

9. After the prom, a group of students chose to continue celebrating, and rented rooms at a hotel in Clearwater Beach. Respondent and Mr. Mobley went to the hotel where the students were staying, and socialized with the students. The students were drinking alcohol at the hotel, and the presence of alcoholic beverages was evident.

10. The next week, some students came forward asserting that Respondent and Mr. Mobley were partying with students in Clearwater Beach following the prom. During a subsequent investigation into the partying, Respondent admitted to Ms. Azzarelli that he went to Clearwater Beach after the prom,

and had a couple of drinks at a club there. He also admitted that he went to the hotel room of some of the students. As a result of the investigation into the events surrounding the prom, school officials also received information regarding possible conduct by Respondent with respect to two female students at Hernando High School.

M.G.

11. M.G. is currently a student at Valencia Community College. At the time of the events in this case, she was a senior at Hernando High School, and was, along with a few other students, a manager for the track team.

12. At some point during the 2007-2008 school year, M.G. was sent to the in-room suspension room for a dress code violation, because she was wearing a skirt that was too short. She was the last student to leave the room. As she was leaving the classroom, Respondent came up behind her and reached around, putting his hand underneath her skirt, over her underpants.

13. M.G. immediately left the room. She did not report the incident to anyone initially, because there were no witnesses to the conduct and she did not think anyone would believe her. She thought that by staying out of in-school suspension and working with the other track managers, she would not be in a position where the situation could be repeated.

14. However, there was a subsequent occasion where M.G. was taking inventory of the uniforms for the track team. She was again alone with Respondent, and he again came up behind her and touched her in the crotch area, over her clothes. On this occasion, M.G. was wearing capris pants. She left the room and, as before, did not tell anyone because she did not want to be in a position where she reported the behavior and no one believed her. She only came forward after hearing about another incident involving Respondent's alleged conduct with a female student.^{3/}

A.H.

15. A.H. was also a student at Hernando High School at the time of the events in question. She graduated in 2009, and is now a student at Pasco-Hernando Community College.

16. There was an occasion during the 2007-2008 school year when A.H. was alone with Respondent in the portable where he taught. Respondent kissed her, and she tried to walk out. He grabbed her arm, pulled her back to him and kissed her again.

17. Respondent also sent A.H. inappropriate text messages. For example, he would text her that he did not want to have sex with her because he knew she was a virgin, but that "I'll go down on you and show you a good time."

18. Like M.G., A.H. did not want to tell anyone about the incident with Respondent because she did not want anyone to know about it. When questioned initially by school officials, she denied it for the same reason.

19. Both girls were interviewed by Detective Morrell of the Hernando County Sheriff's Office during her investigation stemming from the conduct related to prom. The information given during the investigation by Detective Morrell and the information provided during the hearing was consistent. Unfortunately for both girls, after the conduct was investigated, there was significant publicity regarding the incidents. Information was published in both the print and electronic media. Consistent with her fears, M.G. was subjected to ridicule and the publicity related to the investigation made it difficult for her to finish her senior year.

20. Neither girl wanted to press charges as a result of Respondent's conduct, because they did not want to have to deal with the publicity associated with criminal charges. Neither girl wanted to testify in this proceeding. However, both girls were candid and credible, despite their obvious reluctance to appear.

21. On or about May 5, 2008, Respondent resigned in lieu of termination from his position with the school district.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2009).

23. This is a disciplinary proceeding to take action against Respondent's certification to teach in the State of Florida. Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

24. As stated by the Florida Supreme Court,

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 797, 800 (Fla. 4th DCA 1983).

25. The Administrative Complaint alleges the following facts to support the imposition of discipline against Respondent:

During the 2007/2008 school year, Respondent inappropriately touched M.G., a seventeen-year-old, female student, outside her clothing in the area of her vagina. During the same time period, Respondent kissed A.H., a seventeen-year-old, female student, against her will twice. Additionally, Respondent conducted himself in an unprofessional and inappropriate manner by drinking alcoholic beverages or being under the influence of alcohol while socializing with students who were also consuming alcohol.

26. Petitioner has proven by clear and convincing evidence the material allegations in the Administrative Complaint. Respondent clearly did not recognize or observe any boundaries with respect to student-teacher relationships. Respondent showed up at prom when he was not scheduled to chaperone or otherwise provide assistance. He socialized with students while staggering and smelling of alcohol. He went on to have drinks at a club in Clearwater Beach before again meeting with students who were drinking alcohol openly. Further, Respondent touched M.G. inappropriately and kissed A.H., two students at the high school where he taught. In both instances the conduct was not consensual.

27. Section 1012.795(1), Florida Statutes, authorizes the Commission to suspend, revoke, or otherwise discipline a teaching certificateholder, where it is shown that he or she:

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

* * *

(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.

28. 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.

29. The Education Practices Commission has not defined "gross immorality" or "moral turpitude" for the purposes of discipline to be imposed pursuant to Section 1012.795, Florida Statutes. The Commission has, however defined "immorality" and "moral turpitude" for use by school districts in taking action against instructional personnel in Florida Administrative Code Rule 6B-4.009. This rule, which may provide guidance in this context, provides in pertinent part:

(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.

* * *

(6) Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties; which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

30. Moral turpitude has also been defined by the Supreme Court of Florida as "anything done contrary to justice, honesty, principle, or good morals, although it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660, 661 (1933).

31. Count One of the Administrative Complaint charges Respondent with violating Section 1012.795(1)(a). The Department has proven this charge by clear and convincing evidence. By socializing with students while either under the influence of alcohol or observing those students drinking alcohol; by touching student M.G. in an inappropriate manner; and by kissing student A.H., Respondent has engaged in acts of gross immorality that cannot be condoned for a person who is supposed to provide a positive role model for students.

32. Count Two of the Administrative Complaint charges Respondent with violating Section 1012.795(1)(f), by committing personal conduct that seriously reduces his effectiveness as a school board employee. Petitioner has proven a violation of this

section by clear and convincing evidence by virtue of the same conduct described in paragraph 36.

33. Count Three of the Administrative Complaint charges Respondent with violating Section 1012.795(1)(i), by violating the Principles of Professional Conduct for the Education Profession as prescribed by rule. As explained below, Respondent's violation of Counts Four and Five require a finding that the Commission has demonstrated a violation of Count Three by clear and convincing evidence.

34. Count Four of the Administrative Complaint charges a violation of Rule 6B-1.006(3)(a), by failing to make a reasonable effort to protect a student from conditions harmful to learning and/or to the student's mental health and/or physical safety. Petitioner has proven this violation by clear and convincing evidence. As an instructor, Respondent should be trying to prevent or stop underage drinking, not socializing with students while they drink. Respondent claimed that he told the students they needed to call their parents to get someone to chaperone them at the hotel. Respondent's testimony is not credited. However, even assuming that Respondent made such a statement, observing students who were drinking openly without taking some steps to stop the behavior, for example, calling the students' parents himself, demonstrates that Respondent failed to make a reasonable effort to protect these students. Moreover, touching or kissing M.G. and A.H. subjected them to conditions that

clearly affected them emotionally and affected their learning experience.

35. Count Five of the Administrative Complaint charges Respondent with violating Rule 6B-1.006(3)(e), by intentionally exposing a student to unnecessary embarrassment or disparagement. Petitioner has proven this charge by clear and convincing evidence. It was clear at hearing that both M.G. and A.H. were embarrassed and humiliated to have to recount their experiences with Respondent. They did so only because they had been subpoenaed to testify. M.G. testified that the publicity regarding the incident made it difficult for her to finish her senior year in high school, and subjected her to ridicule. Clearly, both students were exposed to unnecessary embarrassment as a result of Respondent's actions.

36. By virtue of their leadership capacity, teachers are traditionally held to a high moral standard in a community. Adams v. Professional Practices Council, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981). Given the amount of time spent with and the access to students who are underage, it is imperative, and the Rules of Professional Conduct demand, that teachers act in a manner that sets a positive example and fosters a positive learning environment. Appropriate boundaries are an essential part of establishing that positive learning environment. Drinking with or around students, and engaging in sexual conduct

with students, whether consensual or against their will, is conduct that goes far "over the line."

37. Section 1012.796(7), Florida Statutes (2009), provides the penalties for violations of Section 1012.796 and Rule 6B-1.006. Those penalties include denial of a certificate, revocation or suspension, probation, restriction of the certificate and administrative fines not to exceed \$2,000 per count or offense.

38. The Commission has adopted disciplinary guidelines for the imposition of penalties authorized by Section 1012.796, Florida Statutes. Fla. Admin. Code R. 6B-11.007. The Guidelines allow for revocation for the violations proven in this case, and Petitioner has recommended revocation. The recommendation is appropriate.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That the Education Practices Commission enter a Final Order finding that Respondent violated Section 1012.795(1)(c), (f), and (i), Florida Statutes (2007), and Florida Administrative Code Rules 6B-1.006(3)(a) and (e), and permanently revoking his teaching certificate.

DONE AND ENTERED this 10th day of February, 2010, in
Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of February, 2010.

ENDNOTES

^{1/} Petitioner has cited to the 2009 codification of Section 1012.795, which renumbers the violations charged as subsections (d), (g), and (j). There is no substantive change with respect to the violations charged. However, licensees can only be found to have violated the statutory provision in effect at the time of the conduct alleged. Delk v. Department of Professional Regulation, 595 So. 2d 966 (Fla. 5th DCA 1992). Accordingly, the undersigned will refer to the provisions as they existed in the 2007 codification.

^{2/} Several of the witnesses were minors and students within the public school system at the time of the events at issue in this hearing. To protect their identity, these students are referred to herein by their initials.

^{3/} The allegations regarding that student are not the subject of this hearing.

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.