

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-6375PL  
 )  
ASHLEY JASON RICHARDS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On June 25, 2010, a hearing in this case was conducted by video teleconference in Tallahassee and Orlando, Florida, by William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Todd P. Resavage, Esquire  
Brooks, LeBoeuf, Bennett,  
Foster & Gwartney, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: Ashley Jason Richards  
13630 First Avenue  
Winter Garden, Florida 34787

STATEMENT OF THE ISSUES

The issues in the case are whether the allegations set forth in the Administrative Complaint are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By an Administrative Complaint dated June 5, 2009, Dr. Eric J. Smith, as Commissioner of Education (Petitioner), alleged that Ashley Jason Richards (Respondent) violated specified statutes and rules by distributing the script of a play the Petitioner asserted was inappropriate to middle school students in the Respondent's drama class.

The Respondent disputed the allegations and requested a formal hearing. On November 16, 2009, the Petitioner forwarded the request to the Division of Administrative Hearings. The hearing was scheduled and was twice continued without objection at the Respondent's request. By Amended Notice of Hearing by Video Teleconference dated June 1, 2010, the hearing was scheduled to commence on June 25, 2010. On June 10, 2010, the case was transferred to the undersigned Administrative Law Judge.

At the hearing, the Petitioner presented the testimony of one witness and had Exhibits identified as A through D admitted into evidence. The Respondent testified on his own behalf.

The Transcript of the hearing was filed on July 8, 2010. The Petitioner filed a Proposed Recommended Order on July 19, 2010.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was employed as a seventh and eighth-grade drama teacher at Lakeview Middle School, a unit of the school system of Orange County, Florida.

2. At the time of his employment, the Respondent held a Temporary Florida Educator's Certificate numbered 1019741. The Respondent's certification was for grades 6 through 12 drama and was valid from July 1, 2006, to June 30, 2009.

3. The drama class historically produced two shows annually, one in the fall and another in the spring. The drama class teacher was responsible for selection of the theatrical material to be produced by the students.

4. The Respondent was hired after the commencement of the school year, and course materials were already present in the classroom. Also included in the materials present in the classroom were scripts of a play titled "The Compleat Wks of Willm Shkspr (Abridged)."

5. During the 2007-2008 school year, the Respondent distributed the scripts of "The Compleat Wks of Willm Shkspr (Abridged)" to the students in his drama class.

6. The play, a script of which was admitted as an exhibit at the hearing, is a comedic re-telling of well-known excerpts from 37 plays written by William Shakespeare (Shakespeare).

7. The cast of the play is composed of three male actors, who, as was the practice during the time the original plays were written, perform all the roles in the play. The actors also play "themselves," and there are improvisational opportunities in the material, allowing the actors to vary from the script.

8. As written, the actors' dialogue includes recurring references to the supposedly diminutive size of Romeo's erect penis, as well as to sexual activity by characters in Shakespeare's plays (i.e. Romeo's efforts to "get into Juliet's pants," other characters "playing hide the salami," and participating in a "lovely bisexual animalistic orgy").

9. Additionally, the script contain numerous footnotes, apparently included for the amusement of the script reader, as there is nothing to suggest that the footnotes were to be performed by the actors.

10. The footnotes include sardonic suggestions to the "children or teenagers who may be reading this book" to avoid alcohol and drug use ("Don't drink. And, if you drink, don't drive. Drinking is not cool." But "drugs, however, are great. Do lots of them.").

11. The footnotes include sarcastic instructions to comply with parental authority ("Never question authority" and "Don't think for yourself and above all, don't have any fun.") and disparaging references to homosexuality ("butt-love," "rump-

ranger," and "rear admiral"). Finally, the footnotes include a mocking religious reference, when, in asserting a belief that Shakespeare wrote all the works attributed to him, the footnote writer also states "the editor firmly believes that Jesus Christ was actually a transvestite sackcloth salesman from a small planet in the lesser spiral arm of the Andromeda Galaxy, so reader beware."

12. One of the parents of a student in the Respondent's drama class obtained the script from the child, reviewed the material, and then, offended by the material, contacted Shirley Fox, the principal at Lakeview Middle School.

13. Ms. Fox reviewed the material and determined it to be inappropriate, given the age of the students to whom the script was provided.

14. Ms. Fox testified at the hearing that the material was harmful to the health and safety of the students who were required to read the script. She also testified that the material could expose the students to unnecessary embarrassment or disparagements.

15. After reading the material, Ms. Fox contacted the Respondent and discussed the issue with him. The Respondent subsequently resigned his employment, but his resignation was at least in part because he had obtained employment as a high

school drama teacher and intended to leave the middle school in any event.

16. At the hearing, the Respondent admitted he did not seek authorization from any school official prior to distributing the material to the students in his class. He testified that he believed that the text of the play had been approved for distribution to the students, because the script was present in the classroom materials when he arrived.

17. At the hearing, the Respondent read into the record vaguely-erotic passages of various materials obtained from the Lakeview Middle School library, suggesting that the materials were no less offensive than the text and footnotes of the play he distributed to his students. However, nothing about the passages read by the Respondent was overtly offensive. More importantly, there was no evidence offered to establish that any student had been required to read the library materials.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

19. The Petitioner has the burden of proving, by clear and convincing evidence, the allegations set forth in the Administrative Complaint against the Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. As cited in the Administrative Complaint, Subsection 1012.795(1)(d), Florida Statutes (2008), provides as follows:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 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 up to 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 an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

\* \* \*

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

21. The terms "gross immorality" and "an act involving moral turpitude" are not defined in Chapter 1012, Florida Statutes (2008). Florida Administrative Code Rule 6B-4.009 provides guidance as to the meaning of the terms as they are used in Section 1012.795, Florida Statutes (2008). Castor v. Lawless, 1992 WL 880829 (EPC Final Order 1992).

22. "Immorality" is defined by Florida Administrative Code Rule 6B-4.009(2) as follows:

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.

23. "Gross immorality" has been described as misconduct that is more egregious than mere "immorality." As stated in Brogan v. Mansfield, Case No. 96-0286 (DOAH August 1, 1996) (EPC Final Order 1996):

The term "gross" in conjunction with "immorality" has heretofore been found to mean "immorality which involves an act of misconduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard of proper moral standards." Education Practices Commission v. Knox, 3 FALR 1373-A (Department of Education 1981).

24. "Moral turpitude" is defined by Florida Administrative Code Rule 6B-4.009(6) as follows:



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.

25. Moral turpitude has also been defined as anything done contrary to justice, honesty, principle or good morals, though 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 (Fla. 1933).

26. In determining whether any teacher is guilty of gross immorality or an act involving moral turpitude, it must be remembered that "[b]y 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).

27. In this case, the evidence established that the Respondent's distribution of the material constituted "immorality," because the distribution of the script was inconsistent with the standards of public conscience and good

morals, given the age of the students in the Respondent's classroom.

28. However, the evidence failed to establish that the distribution of the script constituted the "gross immorality" or an "act involving moral turpitude" alleged in the Administrative Complaint. The evidence failed to establish that the Respondent's distribution of the theatrical script displayed a flagrant disregard of proper moral standards or was an act of baseness, vileness or depravity.

29. Florida Administrative Code Rule 6B-1.006 sets forth the Principles of Professional Conduct for the Education Profession in Florida. Violation of any of these principles may subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law. See Fla. Admin. Code R. 6B-1.006(2).

30. As cited in the Administrative Complaint, Florida Administrative Code Rule 6B-1.006(3) provides as follows:

(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.

31. Given the age and educational level of the students to whom the Respondent distributed the material, the evidence established that the Respondent failed to make a reasonable effort to protect his middle school students from conditions harmful to learning. The Respondent failed to ascertain whether the theatrical material distributed in class was acceptable to the school's administrators and the students' parents or appropriate for the students in his drama class.

32. There was no credible evidence presented to establish that any student was intentionally exposed to unnecessary embarrassment or disparagement by the Respondent's distribution of the material. Other than a student's parent, who complained to the school's principal after obtaining the script from the student, and the principal herself, there was no credible evidence presented that anyone other than the Respondent even read the script.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission issue a final order reprimanding the Respondent for a violation of Florida Administrative Code Rule 6B-1.006(3)(a) and, otherwise, dismissing the Administrative Complaint filed in this case.

DONE AND ENTERED this 20th day of August, 2010, in  
Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
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Filed with the Clerk of the  
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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.