

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-0917PL  
 )  
JORGE VAZQUEZ, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 4, 2010, in Orlando, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
Post Office Box 5675  
Douglasville, Georgia 30154-0012

For Respondent: Joseph Egan, Jr., Esquire  
Egan, Lev & Siwica, P.A.  
Post Office Box 2231  
Orlando, Florida 32802-2231

STATEMENT OF THE ISSUE

Whether it is appropriate for Petitioner to discipline Respondent's Florida educator's certificate for acts alleged in Petitioner's Administrative Complaint dated December 15, 2009.

PRELIMINARY STATEMENT

On December 15, 2009, Petitioner, Dr. Eric J. Smith, Commissioner of Education, filed an Administrative Complaint advising Respondent, Jorge L. Vazquez, that he was seeking disciplinary sanctions against his Florida educator's certificate.

On January 14, 2010, Respondent requested a formal administrative hearing. On February 19, 2010, Petitioner forwarded the case to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

On February 22, 2010, an Initial Order was sent to both parties requesting, inter alia, mutually-convenient dates for the final hearing. Based on the response of the parties on March 3, 2010, the case was scheduled for final hearing on May 4, 2010, in Orlando, Florida.

The hearing took place as scheduled on May 4, 2010. Petitioner presented four witnesses: Rose Stewart-Kellam, Tracie Snell, Maxine Risper, Margaret Harriston, Patricia Shavers, and Theresa Shavers. Petitioner submitted six exhibits that were received into evidence and marked Petitioner's Exhibits 1 through 6. However, Petitioner's Exhibit 6, a "disc," was never received by the undersigned Administrative Law Judge and was, therefore, not considered in this Recommended Order. Respondent testified in his own behalf and offered five

exhibits that were received into evidence and marked Respondent's Exhibits 1 through 5.

The Transcript of Proceedings was filed on June 10, 2010. Both parties timely submitted Proposed Recommended Orders.

All statutory references are to Florida Statutes (2008), unless otherwise noted.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following Findings of Fact are made:

1. Respondent holds Florida Professional Educator's Certificate No. 1010487, covering the area of social science, which is valid through June 30, 2009. He is 48 years old and has taught for nine years. He lives with a woman and her two daughters in a marital-type relationship.

2. At the time of the incident alleged in the Administrative Complaint, Respondent was employed as an economics teacher at Oak Ridge High School, Orlando, Florida. Respondent listed his personal cellular telephone number and email address on his teaching syllabus.

3. Theresa Shavers, was an 18-year-old senior in Respondent's Fall semester economics class.

4. January 9, 2009, was the last day of regular class for the Fall semester. Respondent's students, Ms. Shavers among them, who had a high grade-point average, did not have to take

the final exam. Grades for the Fall semester were posted on January 14, 2009.

5. Respondent's birthday party, given by his students, was held during this time period. Theresa Shavers attended and gave him a hand-made card.

6. On January 12, 2009, Ms. Shavers initiated a text-message communication with Respondent; and on January 13, 2009, Ms. Shavers and Respondent had a 26-minute telephone conversation. Text messages and telephone calls, initiated by both Ms. Shavers and Respondent, continued until January 19, 2009. Some of the telephone calls were inordinately long, e.g., 81 minutes.

7. Both Ms. Shavers and Respondent testified regarding the content of their conversations. While there was general agreement regarding some of the conversations, their testimony regarding any topic that could be considered inappropriate between a teacher and student is contradictory. Petitioner presented two witnesses who heard parts of the conversations; their testimony added little.

8. The following are points of agreement regarding their conversations: that Ms. Shavers revealed to Respondent that she had been raped/molested by an uncle; that she was concerned about having a place to live because her mother was moving to North Carolina (Ms. Shavers remained in Orlando living with a

friend to complete her senior year); and that she expressed concern about her future and college. It is not unreasonable to believe that a teacher, when confronted by the foregoing information, would be concerned about the student's emotional well-being and become involved in extended conversations with the student.

9. At some point during the relevant period, Ms. Shavers transmitted digital photographs of herself to Respondent. Some of the photographs depicted Ms. Shavers in a bra and panties. These photographs were not solicited by Respondent. Of significance, Ms. Shavers did not reveal this to any investigator or school official. In fact, Ms. Shavers denied having sent the photographs when questioned by the school board investigator.

10. Much of the telephoning and texting took place while school was not in session; the semester break occurred in the relevant period and there was a weekend and a school holiday, Martin Luther King, on Monday, January 19, 2009.

11. Early Tuesday morning, January 20, 2009, Ms. Shavers reported her version of the interaction between herself and Respondent to a teacher. Immediate action was taken by school authorities; Respondent was relieved of his teaching responsibilities that morning.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57, Fla. Stat. (2009); Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

13. Because Respondent's Florida educator's certificate is at risk of being sanctioned, Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osbourne, Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The definition of clear and convincing evidence is found in the case of Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

14. Because the statute and rules providing grounds for disciplining Respondent's Florida educator's certificate are penal in nature, they must be construed in favor of Respondent. Rosario v. Burke, 605 So. 2d 523 (Fla. 2d DCA 1992); Lester v. Department of Professional Regulations, 348 So. 2d 923 (Fla. 1st DCA 1977).

15. Section 1012.795, Florida Statutes, which Respondent is alleged to have violated, reads, in pertinent part, 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 a 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 ten 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.

\* \* \*

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

\* \* \*

(j) Has violated the Principles of Professional Conduct for the Education

Profession prescribed by the State Board of Education rules.

16. The Administrative Complaint further states that Respondent violated Florida Administrative Code Rule 6B-1.006 which, in pertinent part, states as follows:

(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.

17. To understand the meaning of "gross immorality" or "moral turpitude," resort is made to provisions within Florida Administrative Code Rule Chapter 6B-4.

18. Florida Administrative Code Rule 6B.4009(2) defines immorality as:

[C]onduct that is inconsistent with standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the educational profession into public disgrace or disrespect and impair the individual's service in the community.



For the conduct to be considered "grossly" immoral, it would need to be a form of immorality that is obvious and inexcusable.

19. "Moral turpitude" is defined at Florida Administrative Code Rule 6B-4.009(6) as a:

[C]rime 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 fellowman or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

20. Because of contradictory testimony regarding anything that may have remotely fallen within the definitions of gross immorality and moral turpitude, the credibility of Petitioner's complaining witness, Theresa Shavers, regarding those matters, would have to be believed; her testimony is not credible.

21. No persuasive evidence was presented relating to the allegation that Respondent's effectiveness as a teacher was impaired.

22. Petitioner has failed to prove by "clear and convincing evidence" that Respondent was guilty of gross immorality or an act of moral turpitude, was guilty of personal conduct that reduces his effectiveness as a teacher, or that he violated the Principles of Professional Conduct for the Education Profession in Florida in that he failed to "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."

RECOMMENDATION

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

RECOMMENDED that Respondent, Jorge Vazquez, be found not guilty of the violations alleged in the Administrative Complaint and that no disciplinary action be taken.

DONE AND ENTERED this 18th day of August, 2010, in Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
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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.