

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 10-2203PL
)
JILLIAN F. JARDAS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 23, 2010, in Tampa, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ron Weaver, Esquire
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For Respondent: Robert F. McKee, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes (2008),¹ and Florida Administrative Code

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

PRELIMINARY STATEMENT

On December 15, 2009, Petitioner filed a six-count Administrative Complaint against Respondent, Jillian F. Jardas (Ms. Jardas), alleging that she violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes, and Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(e), and 6B-1.006(3)(h). Ms. Jardas requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on April 23, 2010.

The parties filed a Joint Pre-hearing Stipulation, in which they stipulated to certain facts contained in Section E of the Joint Pre-hearing Stipulation. Those facts have been incorporated into this Recommended Order.

At the final hearing, Petitioner called the following witnesses: Linda Kippley, Arlene Castelli, Kevin Cooper, Katie Brees, Donald Grant Smith, and M.B. Petitioner's Exhibits 1 and 2 were admitted in evidence. Mr. Jardas testified in her own behalf and offered no exhibits for admission in evidence.

The Transcript of the final hearing was filed on July 12, 2010. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties have timely filed their Proposed Recommended Orders,

which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Jardas holds Florida Educator's Certificate No. 1072218, covering the area of social science, which is valid through June 30, 2012. She graduated from college in December 2006.

2. At all times material to this proceeding, Ms. Jardas was employed as a social studies teacher at Giunta Middle School (Giunta) in the Hillsborough County School District (School District). She began her employment at Giunta as a long-term substitute teacher in January 2007. In August 2007, she was hired as an annual contract teacher. Her annual contract was renewed for a second year.

3. During the 2008-2009 school year, M.B. was a student in Ms. Jardas' sixth-period geography class. In September or October 2008, M.B. approached Ms. Jardas for help with her school work and for guidance regarding M.B.'s problems in school attendance and problems at home. M.B. would stay after class about once a week and talk to Ms. Jardas in the classroom about M.B.'s problems. Other teachers were concerned about M.B.'s academic behavior and had discussed the situation with Ms. Jardas.

4. Both M.B. and Ms. Jardas are lesbians. In November 2008, M.B. told Ms. Jardas that she wanted to have a romantic relationship with Ms. Jardas. Ms. Jardas told M.B. that she could not have a relationship with M.B. because she was a teacher, and M.B. was a student, and such a relationship would be inappropriate. Ms. Jardas did not report to the administrative staff at Giunta that M.B. had approached her about having a romantic relationship.

5. Ms. Jardas was involved in the mentoring program at Giunta, where specific students would be assigned to specific teachers who would provide guidance to the students. M.B. was not part of the mentoring program.

6. The School District had policies with respect to teachers meeting students off the campus during non-school hours. The general manager of the School District's professional standards office explained the policies as follows:

Teachers do not meet with students off campus, however, that is not done and it is not approved to do so without the knowledge of the principal, who is the responsible party at the school site, and many times, that involves parents' permission, sometimes written permission, for that off-site visitation or interaction with one another. It is always related to either a curriculum-related instructional program, something to do with the academic focus for children. Even in a mentoring situation, there are guidelines as to how you meet with children and how you do not meet with children. It is never approved for you to meet alone with

a student or to meet outside of school hours without it being directly related to some group activity or activity that has been approved by the district or the principal.

7. Katie Brees (Ms. Brees) was at one time a friend of M.B.'s family. During the 2008-2009 school year, M.B. lived at Ms. Brees' home. Sometime in November or December 2008, Ms. Brees sent a text message to Ms. Jardas, stating that M.B. had a problem and needed to talk to Ms. Jardas. Ms. Jardas had not given M.B. her telephone number; however, Ms. Jardas had called M.B.'s grandmother to discuss M.B.'s grades, and M.B. had gotten Ms. Jardas' number from her grandmother's telephone.

8. At the time that Ms. Jardas received the telephone message from Ms. Brees, Ms. Jardas was at work at her second job at CVS Pharmacy, where she worked from 4:30 p.m. to 10:00 p.m. Ms. Jardas told Ms. Brees that she was at work and that, if it was an emergency, Ms. Brees and M.B. could come to the pharmacy.

9. Ms. Brees and M.B. did go to the pharmacy around 8:00 p.m. They remained in the car. One of Ms. Jardas' job responsibilities was to empty the trash containers and take them to a dumpster outside the building. When Ms. Jardas went out to empty the trash, she would talk to M.B. through the car window about M.B.'s problems. Ms. Jardas told M.B. that she could not keep coming to the pharmacy to talk to Ms. Jardas. Ms. Jardas

did not report to Giunta administration that M.B. had come to the pharmacy to see her.

10. Sometime in February 2009, Ms. Jardas got another text message from Ms. Brees, who said that M.B. had been cutting herself. Mr. Jardas, who was at work at the pharmacy, said that she could not leave work, but that she would meet them after work. Ms. Brees told Ms. Jardas to meet them at some property, which was owned by Ms. Brees' brother. The location was dark and secluded. Ms. Brees parked her car behind Ms. Jardas' car, and M.B. got out and went to sit with Ms. Jardas on the hood of Ms. Jardas' car. Ms. Brees remained in her car. It was cold, and Ms. Jardas got a blanket from the trunk of her car. Ms. Jardas and M.B. sat underneath the blanket and talked for several hours. M.B. tried to get closer to Ms. Jardas, but Ms. Jardas would not allow her to do so. Ms. Jardas did not report her encounter with M.B. at the property of Ms. Brees' brother to the Giunta administration.

11. In February or early March 2009, Ms. Jardas received another text message from Ms. Brees, asking Mr. Jardas to meet with M.B. at Ms. Brees' house. M.B. had been absent from school a lot. Ms. Jardas was again at work and told Ms. Brees that she would meet them after work.

12. Ms. Jardas arrived at Ms. Brees' home around 10:30 p.m. and went to the backyard. M.B. came out, and she and

Ms. Jardas sat on the patio. Ms. Brees remained in the house. Around one a.m. or two a.m. when Ms. Brees went to sleep, M.B. and Ms. Jardas were still on the patio. M.B. tried to kiss Ms. Jardas, but Ms. Jardas rebuffed M.B.'s advances. Again, Ms. Jardas did not report her meeting with M.B. to the administration at Giunta.

13. Ms. Jardas had made it clear to M.B. that she did not want to have a romantic relationship with M.B. Sometime in March 2009, M.B. began sending text messages to Ms. Jardas, saying that she hated Ms. Jardas and could not understand why Ms. Jardas did not want to have a relationship with her. Ms. Jardas had her telephone company block calls coming from M.B.'s telephone number. On March 16, 2007, Ms. Jardas received a photograph on her telephone which showed the nude upper torso of M.B. The photograph came from a telephone number unknown to Ms. Jardas. Ms. Jardas deleted the photograph and had her telephone company block the number from which the photograph was sent.

14. M.B. was angry and upset with Ms. Jardas because Ms. Jardas did not want to have a romantic relationship and was trying to break contact with M.B. by blocking M.B.'s telephone number. M.B. told some of her friends that she and Ms. Jardas had been dating. The friends advised the school resource

officer that M.B. and Ms. Jardas were supposedly having a relationship.

15. On March 17, 2009, when M.B. was first questioned by a sheriff's deputy about any relationship with Ms. Jardas, M.B. said that Ms. Jardas was her mentor and had been helping her with problems at home. M.B. advised that she was in love with Ms. Jardas, but Ms. Jardas said that she would have to stop seeing M.B. and would refer her to a guidance counselor. M.B. told the deputy that no inappropriate touching had taken place.

16. On March 18, 2009, M.B. was again interviewed by personnel from the sheriff's office. At this interview, M.B. said that she had met Ms. Jardas at the property of Ms. Brees' brother and at Ms. Brees' home. M.B. told the officer that they had kissed and hugged each other; that Ms. Jardas had put her hand down M.B.'s pants and rubbed M.B.'s vagina; that Ms. Jardas asked M.B. to play with herself, and M.B. complied; and that Ms. Jardas had said that she wanted to be deep inside M.B.

17. At the final hearing, M.B. recanted her second interview with the sheriff's deputy and stated that there had been no inappropriate touching by Ms. Jardas and that she had lied because she was mad at Ms. Jardas because Ms. Jardas did not want to be with her and would not give her a chance. M.B.'s

testimony that there had been no inappropriate touching is credited.

18. After the school resource officer became involved, there were rumors around Giunta concerning the alleged relationship between Ms. Jardas and M.B. The School District became involved and placed Ms. Jardas on administrative leave with pay, pending the outcome of the investigation. No criminal charges were filed against Ms. Jardas.

19. The School District decided not to renew Ms. Jardas' contract for the 2009-2010 school year. On March 27, 2009, prior to being formally advised of that decision, Ms. Jardas resigned her position with the School District, citing personal reasons. The School District allowed the resignation date to be the last day of school, which resulted in Ms. Jardas' receiving pay to the end of contract. Ms. Jardas was not allowed to continue to teach in the School District. Ms. Jardas is currently teaching in New York.

20. Ms. Jardas was aware that she should have reported her meetings with M.B. to the school administration and that she should have reported to the school administration that M.B. wanted to have a romantic relationship with her. Ms. Jardas explained her rationale for not reporting the situation to higher authorities as follows:

I thought it was just like a school-kid crush, I thought nothing was going to develop from it, I thought that I could control the situation. She [M.B.] trusted in me, she believed in me, she sought me out. I didn't want to, you know, be responsible for anything that she could do to herself, because I was aware that she was [a] cutter and that she would physically, you know, hurt herself, and I didn't want that on my conscience, and she trusted me, and I didn't want her to feel like I ratted her out by going to speak to, like a guidance counselor or my principal.

CONCLUSIONS OF LAW

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

22. The Department 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).

23. Petitioner has alleged that Ms. Jardas violated Subsections 1012.795(1)(d), 1012.795(1)(g), and 1012.795(1)(j), Florida Statutes, which provide:

(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.

* * *

(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 State Board of Education rules.

24. Petitioner has alleged that Ms. Jardas violated Florida Administrative Code Rules 6B-1.006(3)(a), 6B-1.006(3)(g), and 6B-1.006(3)(j), which set forth the obligations of an educator and provide:

(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.

* * *

(h) Shall not exploit a relationship with a student for personal gain or advantage.

25. In the Administrative Complaint, Petitioner sets forth the following factual allegations as the basis for the violations of the cited statutes and rules:

During the 2008-2009 school year, the Respondent engaged in an inappropriate relationship with Student A, a minor female student. Specifically, the Respondent:

(a) kissed Student A and fondled her genital area; and

(b) had contact with Student A during non-school hours, including telephone calls, text messages and having the student visit her at several locations, including the Respondent's residence.

Student A was ages thirteen and fourteen during the course of the relationship.

26. Petitioner has failed to establish by clear and convincing evidence that Ms. Jardas kissed M.B. or fondled M.B.'s genitals. Petitioner did establish by clear and

convincing evidence that Ms. Jardas and M.B. had contact with one another off campus and during non-school hours. Petitioner has established by clear and convincing evidence that Ms. Jardas and M.B. had exchanged text messages. Petitioner did not establish that M.B. and Ms. Jardas met at Ms. Jardas' home. To the extent that the factual allegations state that Ms. Jardas had M.B. meet her at several locations, Petitioner did not establish that the meetings were instigated by Ms. Jardas; rather, the evidence established that Ms. Jardas met M.B. at the request of Ms. Brees.

27. Petitioner has failed to establish by clear and convincing evidence that Ms. Jardas had violated Subsection 1012.795(1)(d), Florida Statutes. Ms. Jardas is guilty of neither gross immorality nor moral turpitude.

28. Petitioner has established by clear and convincing evidence that Ms. Jardas violated Subsection 1012.795(1)(g), Florida Statutes. She failed to follow the School District policies prohibiting meeting with students during non-school hours in non-campus settings without the permission of the parents and knowledge of the School District or the principal. Meeting with a student late at night in a dark and secluded setting is irresponsible and can only lead to problems, particularly with middle-school students. Ms. Jardas was the adult in the situation and knew that she was violating School

District policies when she continued to meet with M.B.

Ms. Jardas' actions seriously reduced her effectiveness as an employee of the School District. As a result of Ms. Jardas' failure to stop the situation from escalating and her failure to follow the policies of the School District, rumors went around the school that she and M.B. had been involved in a romantic relationship, a criminal investigation was commenced, the School District was prepared to not renew Ms. Jardas' annual contract, and Ms. Jardas resigned her position.

29. Petitioner has established by clear and convincing evidence that Ms. Jardas violated Subsection 1012.795(1)(j), Florida Statutes, by violating Florida Administrative Code Rule 6B-1.006(3)(a). Ms. Jardas failed to make a reasonable effort to protect M.B. from conditions that would be harmful to M.B. By continuing to meet with and sending text messages to M.B., Ms. Jardas fueled a volatile situation, which should have been stopped the first time that M.B. told Ms. Jardas that she wanted to have a romantic relationship. Perhaps due to her own inexperience in teaching, Ms. Jardas thought that she could "control the situation" and thought that she would be violating M.B.'s trust by telling the principal.

30. Petitioner has failed to establish by clear and convincing evidence that Ms. Jardas violated Florida Administrative Code Rules 6B-1.006(3)(e) and 6B-1.006(3)(h).

The evidence did not establish that Ms. Jardas was intentionally trying to embarrass or disparage M.B. nor does the evidence establish that Ms. Jardas was trying to have a romantic relationship with M.B. for her own personal advantage.

31. Florida Administrative Code Rule 6B-11.007(2) provides that disciplinary action for engaging in personal conduct which seriously reduces the person's effectiveness as an employee of the school district and for violating the Principles of Professional Conduct for the Education Profession ranges from probation to revocation. Florida Administrative Code Rule 11B-11.007(3) provides that the following aggravating and mitigating factors may be considered in taking disciplinary action:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the violation;
- (e) The number of times the educator has been previously disciplined by the Commission;
- (f) The length of time the educator has practiced and the contribution as an educator;
- (g) The actual damage, physical or otherwise, caused by the violation;
- (h) The deterrent effect of the penalty imposed;

- (i) The effect of the penalty upon the educator's livelihood;
- (j) Any effort of rehabilitation by the educator;
- (k) The actual knowledge of the educator pertaining to the violation;
- (l) Employment status;
- (m) Attempts by the educator to correct or stop the violation or refusal by the educator to correct or stop the violation;
- (n) Related violations against the educator in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (o) Actual negligence of the educator pertaining to any violation;
- (p) Penalties imposed for related offenses under subsection (2) above;
- (q) Pecuniary benefit or self-gain enuring to the educator;
- (r) Degree of physical and mental harm to a student or a child;
- (s) Present status of physical and/or mental condition contributing to the violation including recovery from addiction;
- (t) Any other relevant mitigating or aggravating factors under the circumstances.


32. Ms. Jardas has not been previously disciplined by the Education Practices Commission. Ms. Jardas earnestly thought that she was helping M.B. by counseling her; however, Ms. Jardas was aware that she should not be meeting with M.B. off-campus

during non-school hours. Based on the totality of the circumstances, an appropriate penalty would be a one-month suspension followed by probation for one year.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Ms. Jardas did not violate Subsection 1012.795(1)(d), Florida Statutes, and Florida Administrative Code Rules 6B-1.006(3)(e) and 6B-1.006(3)(h); finding that Ms. Jardas did violate Subsections 1012.795(1)(g) and 1012.795(1)(i), Florida Statutes, and Florida Administrative Code Rule 6B-1.006(3)(a); and suspending her educator's certificate for one month followed by probation for one year.

DONE AND ENTERED this 16th day of August, 2010, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of August, 2010.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2008 version.

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.