STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE SCHOOL BOARD OF MIAMI-DADE COUNTY,FLORIDA.	)	
Petitioner,	)	
v.	)	Case No. 10-9452
LUIS G. GUERRERO,	)	AMENDED AS TO COPIES FURNISHED ONLY
Respondent.	)	

*AMENDED RECOMMENDED ORDER

Administrative Law Judge Eleanor M. Hunter of the Division of Administrative Hearings, conducted the final hearing on April 27, 2011, at video teleconference sites in Miami and Tallahassee, Florida. Due to Judge Hunter's retirement, Administrative Law Judge Robert E. Meale has assumed responsibility for this case, pursuant to section 120.57(1)(a), Florida Statutes.

APPEARANCES

For Petitioner: Christopher La Piano, Esquire
School Board Attorney's Office
School Board of Miami-Dade County
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For Respondent: Teri Guttman Valdes, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the district school board has just cause to dismiss the Respondent from employment, pursuant to section 1012.33(1)(a), Florida Statutes.

PRELIMINARY STATEMENT

By Amended Notice of Specific Charges filed March 14, 2011, Petitioner alleged that it has just cause to dismiss Respondent, pursuant to sections 1001.32(2), 1012.22(1)(f), 1012.33(1)(a) and (6)(a), and 447.209, Florida Statutes, because Respondent violated School Board rules 6Gx13-4-1.09, 6Gx13-4A-1.21, and 6Gx13-4A-1.213.

The Amended Notice of Specific Charges alleges that, at all material times, Respondent was a math teacher at Miami Coral Park Senior High School where, during the 2009-10 school year, he engaged in an inappropriate relationship with a female high school student. The Amended Notice of Specific Charges alleges that Respondent maintained a sexual relationship with the student, as well as an inappropriate level of telephone and text-messaging contact. The Amended Notice of Specific Charges alleges that Petitioner had ordered Respondent not to have any contact with the student during the administrative investigation, but that, during this period, Respondent contacted the student and discussed the case with her. In these

discussions, Respondent allegedly tampered with the witness and attempted to cause her not to cooperate with the investigation.

In Count I, the Amended Notice of Specific Charges alleges that Respondent committed misconduct in office so serious as to impair his effectiveness in the school system, in violation of Florida Administrative Code Rule 6B-4.009(3), which incorporates the Principles of Professional Conduct set forth in Florida Administrative Code Rule 6B-1.006. Respondent allegedly failed to make a reasonable effort to protect the student from conditions harmful to learning or the student's mental health, physical health, or safety; exploited a relationship with a student for personal gain or advantage; and failed to maintain honesty in all professional dealings.

In Count II, the Amended Notice of Specific Charges alleges that Respondent committed immorality, in violation of Florida Administrative Code Rule 6B-4.009(2). Respondent allegedly engaged in conduct that was inconsistent with the standards of public conscience and good morals, and the conduct was sufficiently notorious to bring himself or the education profession into public disgrace or disrespect and impair his service in the community.

In Count III, the Amended Notice of Specific Charges alleges that Respondent violated School Board rule 6Gx13-4-1.09, which provides that all of Petitioner's employees are prohibited

from engaging in unacceptable relationships or communications with students. The rule defines such relationships or communications to include dating, sexual touching or behavior, making sexual or indecent propositions or comments, exploiting an employee-student relationship, or demonstrating any other behavior that lends an appearance of impropriety.

In Count IV, the Amended Notice of Specific Charges alleges that Respondent violated School Board rule 6Gx13-4A-1.21, which requires all of Petitioner's employees to conduct themselves, in their employment and in the community, so as to reflect credit upon themselves and the school system.

In Count V, the Amended Notice of Specific Charges alleges that Respondent violated School Board rule 6Gx13-4A-1.213, which requires Respondent to conform to the Code of Ethics.

At the hearing, Petitioner called four witnesses and offered into evidence ten exhibits: Petitioner Exhibits 1-3, 6-7, 10, 12, 13, 18, and 19. Respondent called one witness and did not offer into evidence any exhibits. All exhibits were admitted.

The court reporter filed the transcript on May 23, 2011. The parties filed their proposed recommended orders on June 29, 2011.

FINDINGS OF FACT

1. Petitioner first hired Respondent in January 1990 as a substitute teacher. In 1992, Petitioner changed Respondent's status to a permanent teacher.

2. Respondent began teaching at Miami Coral Park Senior High School in January 1996, but left from 2000 to 2004 to teach in Collier County. Upon return to Petitioner's school system for the 2004-05 school year, Respondent was assigned to a different high school, but later transferred to Coral Park when this school needed a basketball coach. In addition to coaching basketball during the 2008-09 school year, Respondent co-taught a math class.

3. One of Respondent's math students was J. V., who was born on April 10, 1991. She started attending Coral Park Senior High School mid-way through her sophomore year in 2008 after moving to Miami in August 2007. She turned 18 in the spring of her junior year and graduated from Coral Park on June 10, 2010. After graduating, J. V. enrolled in a local community college and published a novel that is sold by Barnes & Noble bookstores.

4. During the 2008-09 school year, J. V.'s contact with Respondent involved typical student-teacher interactions in the classroom, hallways, and other school settings. They had exchanged cell phone numbers and spoke on the phone once or twice per month and texted each other with the same frequency.

The record does not describe the nature of these communications, but the record fails to suggest any impropriety in the relationship during J. V.'s junior year.

5. During the 2009-10 school year, J. V. was not assigned to any of Respondent's classes, but she began to visit him in his classroom in the morning before school started. The frequency of these visits varied from zero to three times per week. During these visits, J. V. and Respondent talked about her family, her social life, and some of her medical issues, including the fact that she was being treated for depression. J. V. also told Respondent that she might have ovarian cancer, although she later learned that she merely had a cyst.

6. While attending Coral Park, J. V. was living with her aunt, who had become her legal guardian. J. V.'s relationship with her aunt was strained at times. J. V.'s mother was living in the Dominican Republic, and her father, with whom her mother did not wish her to live, resided in New York.

7. During the 2009-10 school year, J. V. and Respondent exchanged numerous cell phone calls and texts, at nearly all hours of the day and night. Although J. V. initiated most of the calls and texts and Respondent did not respond to all of her calls and texts, Respondent never asked her to stop calling and texting him.

8. Their relationship intensified in October or November of J. V.'s senior year. J. V. has testified that she and Respondent had sexual intercourse. Respondent testified that they did not. Neither witness is a model of veracity. J. V. embellished her story with dates that did not occur and was not perfectly clear in her recollection of the details of Respondent's condominium and tattoo. As noted below, Respondent repeatedly encouraged J. V. not to testify, to avoid being served with a subpoena, and, if served, to ignore the subpoena.

9. Regardless whether sexual intercourse took place, the relationship between J. V. and Respondent, by the end of 2009, became excessively intimate for what is appropriate between a teacher and a student and included some form of sexual activity. A series of texts from Respondent to J. V. in late March or early April 2010 reveal the intimacy that had arisen between them: "I wanted 2 jump u," "2 many eyes!," "Muah," "Im in da gym if u can pass by," "It would have been hard," and "I'l b here." The time devoted to remote communications between Respondent and J. V. provides some basis for assessing the nature of their relationship: from October 2009 through November 2010, Respondent and J. V. exchanged over 1600 texts and consumed over ten hours in phone conversations.

10. Without success, Respondent tried to explain the more incriminating of the texts sent in March or April 2010 from his

cell phone. Respondent testified that these texts were sent by an unauthorized user of his phone, probably a member of his basketball team. It is difficult to understand why a player would risk the wrath of his coach, but the absence of any response from J. V.--either to the principal or Respondent--following receipt of the first of these texts suggests that the relationship of Respondent and J. V. had already involved some form of sexual contact.

11. One also finds indirect proof of an intimate relationship in the conduct of Respondent following Petitioner's decision to initiate dismissal proceedings against him. To credit Respondent's version of events, for the sake of discussion, he was confronted by a student's accusations of sexual intimacy that were a total fabrication. His response was to encourage her to engage in more dishonesty, rather than merely to tell the truth. Even if Respondent's version of events concerning the lack of intimacy were credited--and it is not--his subsequent conduct, as amply documented by numerous texts discussed in detail below, constitutes a startling lack of honesty in professional dealings and disregard for the mental health of a former student.

12. Shortly after receiving an allegation that Respondent was engaged in a sexual relationship with J. V., on April 9, 2010, Petitioner removed Respondent from Coral Park and placed

him on alternative assignment in a district office. By letter dated April 9, 2010, Petitioner advised Respondent of the nature of the charges, including the initials of the student, and ordered Respondent not to have any contact with the complainant or witnesses with an intent to interfere with the investigation.

13. On April 10, 2010, Respondent and J. V. met at a club known as Mama Juana's; according to both of them, the meeting was by chance and little was said. However, ignoring the directive not to speak with witnesses, Respondent told J. V. that he was being investigated for having a relationship with her and showed her a letter from Petitioner that, supposedly, Respondent happened to have with him at the time of this chance meeting. There is insufficient evidence to find that Respondent and J. V. are lying about the circumstances leading up to the meeting or what was said during it.

14. By letter dated June 4, 2010, which was delivered to Respondent during a conference-for-the-record held on that date, Petitioner again ordered Respondent not to contact any of the parties involved in the investigation.

15. By letter dated August 25, 2010, Petitioner advised Respondent that the Superintendent would be recommending to the School Board, during its meeting of September 7, 2010, that it suspend Respondent without pay and initiate dismissal proceedings against him. By letter dated September 8, 2010,

Petitioner advised Respondent that the School Board had taken these actions.

16. Upon receipt of the September 8 letter, Respondent testified that he resumed communicating with J. V. who, by this time, had graduated from high school. In fact, Respondent had received a call from J. V. on September 5 and had spoken with her for 70 minutes until nearly midnight that night. On October 5, J. V. again called him, and they talked for 41 minutes. Other lengthy calls--each about 15 minutes--were initiated by J. V. on October 16, 2010, and January 6, 2011. However, there were few, if any, communications between Respondent and J. V. for five months following their meeting at Mama Juana's on April 10.

17. On September 11, 2010, Respondent texted J. V.: "I got suspended w/o pay. Basically fired!" J. V. replied, "Whoa! Wait, now what?! Hon?" After a couple of more exchanges, in which Respondent stated that he would have to go to trial, J. V. asked, "Is there anything that I can actually do to help you out?" Respondent's reply: "Of course. No matter what happens dont show up if they talk 2 u. Not even if they suebpena [sic] u. They cant do anything if [sic] 2 u dont go." J. V. replied, "Anything there is to do, I suppose, i'll do to help you out. I dont want you to stay in this mess. . . . I still care about you tons, I just wanted you to know that :p."

18. This is a remarkable exchange of texts. Respondent baldly asked J. V. to ignore a subpoena. J. V. scrupulously conditioned her willingness to help with "I suppose." Here, Respondent was asking J. V. to behave dishonorably, and J. V., his former student, displayed some misgivings, as she apparently was wrestling with her loyalty to Respondent and her desire to behave honorably. This is a repulsive perversion of the role of the educator. Although J. V. was no longer a student in Respondent's school, Respondent was still a member of the education profession, and, in his dealings with J. V. and Petitioner, he was continuing to deal with a matter that involved the discharge of his professional duties.

19. On September 18, 2010, Respondent initiated another series of texts, but these involved unremarkable matters, such as how J. V. liked college and a job that she had recently started.

20. On September 24, 2010, J. V. initiated a series of texts with "Hello lost :p." Respondent answered, "Hey, me? Cabrona since now u have a bf [boyfriend] u dont have time 4 me!" When J. V. texted that she was "not afraid of the dark, im just afraid of staying alone, period," Respondent responded, "I m not offering any services any more."

21. Respondent testified that he was referring to math services, but, given the circumstances, this explanation is

impossible to credit. On the other hand, the services were as likely those of a trusted counselor as of a sexual partner. The text of J. V., however, displays the vulnerability of Respondent's former student, even though nearly one year had passed since the intensification of their relationship to inappropriate levels.

22. The next day, Respondent renewed the texting exchange. J. V. texted that a certain singer "literally places you in my head." Respondent answered, "Thats a good place 2 b. I thought u didnt anymore." J. V. declaimed that she thinks too much, and Respondent answered, "Then why havent u let me c u [see you]?" J. V. replied, "Because i know that is all I am gonna be allowed to do, just see you. And I don't know if that's okay with you." Respondent responded, "It be nice 2 cu though. Even 4 a short while." J. V. agreed, and Respondent replied, "Since now u r da complicated 1 u let me know when." J. V. promised she would and quickly asked what Respondent was up to. Respondent texted, "Let me know if they try 2 get in cotact [sic] w/u? They should b setting a date 4 da hearing soon." Injecting the same element of doubt that she had raised when she offered, on September 11, to help Respondent, J. V. texted, "I seriously doubt that [they will get in contact with me]. But i'll let you know in case they do, i suppose (emphasis supplied)."

23. These texts lend support to the finding that the relationship between Respondent and J. V. was inappropriately intimate during her senior year. It appears that one of them broke if off, possibly over the objection of the other. J. V.'s second use of "I suppose" revealed again her ambivalence about the situation in which Respondent had placed her in asking her not to cooperate with Petitioner's prosecution of its case against him. As J. V. continued to wrestle with her loyalty toward Respondent and unwillingness to behave dishonorably, Respondent steadfastly toyed with her emotions, such as by saying that it felt good to be in her thoughts, and he did not think she thought of him anymore.

24. The next day, after midnight, Respondent renewed the text exchange again by texting, "143." He explained that this was beeper code for "i love you." J. V. replied with a beeper code consisting of the less-intense message, "thinking of you."

25. Except for a congratulatory text, probably for the publication of J. V.'s novel, the next text exchange took place on October 13, 2010, in which J. V. apologized for calling so late, but wanted to know if Respondent could meet her the following night. They agreed to meet instead after lunch on the following day. The following day, they agreed to postpone the meeting until the following week.

26. On October 15, 2010, the Administrative Law Judge issued a Notice of Hearing, setting the final hearing for January 26, 2011. As noted above, a lengthy telephone conversation between Respondent and J. V. took place the next day. On October 26, 2010, Respondent texted J. V.: "My lawyer friend said that 4 da subpoena they have 2 give it in ur hand. So if y dont answer the door if they show up, they cant leave it there. Nd if someone asks y if y r [J. V.] simply say no." As they exchanged texts about a basketball game that was being played, J. V. texted that she preferred baseball, and Respondent replied, "Bat nd balls huh?" J. V. answered "Lol [laughing out loud] :p silly!" She accused him, in Spanish, of a bad thought, and Respondent disingenuously asked, "What did i say?" Then he texted, "Lol."

27. This series of texts represent a remarkable confluence of Respondent's inducing J. V. to dishonesty and engaging in sexual teasing. The remark about a bat and ball was a reference to male genitalia. Surprisingly, Respondent did not deny the sexual connotation of this text, but somehow tried to dismiss it merely as a joking "sexual innuendo." The freedom that Respondent felt to engage in sexual innuendo with a former student betrayed the inappropriate intimacy of the relationship that they once shared--while she was still a student.

28. J. V. initiated a text exchange of Halloween greetings on October 31. On November 8, 2010, J. V. initiated another text exchange by asking how Respondent was doing. He asked how school, work, and her boyfriend were. J. V. typed that all were fine, and Respondent replied, "I m happy 4 u!" However, J. V. texted that there "are certain things that i have to deal with." Respondent texted her to call him.

29. On November 17, 2010, Respondent initiated another text exchange in which he again asked about work, school, and her boyfriend. J. V. replied that all was fine, but her father was in the hospital. The next day, J. V. texted Respondent: "I really have to speak to you but i'll do it after i get out of class:(im so sorry." When Respondent texted her to explain, J. V. responded, "Because im really placed against the wall." Respondent answered: "What do u mean. I m the 1 that has lost everything. Nothing could happen 2 u if u say nothing happened! What r u thinking about doing? Destroying my [rest of message lost]." J. V. replied, "Omg [Oh, my God]! Screw you for saying that as if you'd know me that little to ever think that's something i'd consider doing to you!" She added, "I'll call you once i get home, at 9." Respondent added that he was watching a football game in a bar and "This is killme though. Please let me know!" J. V. responded that, when Respondent had some time to call, he should do so.

30. With this text of apology, J. V. was informing Respondent that she had resolved the dilemma in which Respondent had placed her, and she had decided to tell the truth, rather than behave dishonorably. Casting his professional obligations aside, Respondent tried to dissuade her from telling the truth by turning the focus to himself and his need for her to lie and cover up. Obviously, Respondent's plea for J. V. to say that nothing happened implies that something happened. And the something had to be substantial--i.e., sexual contact, rather than merely excessive texting between a teacher and student--for Respondent to have felt the need to have J. V. conceal the truth.

31. The next day, Respondent initiated a text exchange by stating: "Sorry 4 my reaction but please put urself in my shoes 4 da past 7 mos. I've lost everything that i valued nr u r worried about ur fam finding out. Idk wh [sic]." J. V. did not respond to this text.

32. Obviously, this text was not an apology for asking J. V. to behave dishonorably. Instead, Respondent asked J. V. to identify with his situation. He was sorry merely for having lost his composure and possibly alienating J. V.

33. On November 26, 2010, J. V. initiated a text exchange about holiday shopping. The next day, evidently in response to a telephone call, Respondent texted: "I cant get mad at u. I m

just scared out of my mind about what the outcome could be! Thank you 4 assuring me." Three days later, Respondent texted birthday wishes to J. V.

34. On November 30, 2010, J. V. suggested that they get together and have lunch "one of these days." Respondent agreed, but no date was set. On December 1, 2010, J. V. texted Respondent, as well as a number of others, that her book was available for purchase, and he texted congratulations.

35. On December 14, 2010, J. V. texted a friend: "I'm alright most of the times lol. Having a bf has helped me a lot. I'm not alone anymore missing the teacher :("

36. What this text lacks in detail it makes up for in candor. It is the most direct evidence of the emotionally vulnerable condition of J. V. immediately after Respondent insisted that they stopped seeing each other in April 2010.

37. J. V. initiated the next text exchange on January 4, 2011, when she sent new year's greetings to Respondent. When she asked how he was doing, Respondent replied, "I m ok but getting very anxious over the hearing coming up soon!!" J. V. texted that no one had been in touch with her, but Respondent assured her that she would get something soon. He asked her, "Do you have any idea what you are going to do for the hearing?" J. V. answered, "I'm not gonna do anything." Respondent replied, "We'll talk before then."

38. On January 5, J. V. called or texted Respondent, who replied for her to call him that night. She texted that she would, and he responded, evidently in reference to a phone message, "What are you fuzzy about?" J. V. answered: "The lawyer that always calls from the school board called me not too long ago, that's all." When it became apparent that J. V. could talk then on the phone, the texts ended, evidently so Respondent and J. V. could talk on the phone. As noted above, a lengthy telephone conversation took place between Respondent and J. V. the next day.

39. Sometime during January 2011, J. V. and Respondent spoke by telephone, and Respondent warned her that the authorities would be able to retrieve her text messages. One may safely infer that Respondent was unaware previously of the availability of such data or the ability of Petitioner to supplement its pleadings to add as grounds for dismissal acts and omissions taking place after the initiation of the case against him.

CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding. §§ 120.569, 120.57(1), 1012.33(6)(a)2. Fla. Stat. (2010).

41. Petitioner is required to prove the material allegations by a preponderance of the evidence. Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

42. Section 1012.33(1)(a), Florida Statutes, provides that Respondent's contract shall authorize dismissal during the term of the contract for "just cause." Section 1012.33(1)(a) defines "just cause" to include "misconduct in office."

43. Florida Administrative Code Rule 6B-4.009(3) provides in relevant part:

> Misconduct in office is defined as a violation of the . . . Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

44. Rule 6B-1.006 provides in relevant part:

> (1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.
>
> * * *
>
> (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.
>
> * * *
>
> (h) Shall not exploit a relationship with a student for personal gain or advantage.
>
> * * *

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

45. Respondent committed two sets of acts of misconduct in office, either of which impaired his effectiveness in the school system. First, while J. V. was still a student at Coral Park, Respondent repeatedly engaged in an inappropriately intense emotional relationship and in a sexual relationship with a student. At minimum, this inappropriate relationship constituted a failure to make reasonable effort to protect the student from conditions harmful to the student's learning, mental health, and safety and constituted the exploitation of a student for personal gain or advantage.

46. Second, after J. V. had graduated from Coral Park, Respondent repeatedly failed to maintain honesty in all professional dealings. The inception of his dealings with J. V. were in the teacher-student relationship, and his conduct during the investigation and prosecution of the dismissal case also constituted professional dealings. As amply noted above, Respondent displayed no compunctions about inducing a reluctant former student to behave dishonorably in her dealings with Petitioner in order to save Respondent's job.

47. Based on these conclusions, it is unnecessary to address the remaining grounds cited by Petitioner for dismissal.

RECOMMENDATION

It is

RECOMMENDED that the School Board enter a final order dismissing Respondent from employment on the ground of misconduct in office.

DONE AND ENTERED this 3rd day of August, 2011, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 3rd day of August, 2011.

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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.