

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-10687PL  
 )  
RANDALL WORLEY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 6, 2011, in Inverness, Florida, before W. David Watkins, a duly-designated Administrative Law Judge of the Florida Division of Administrative Hearings.

APPEARANCE

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

For Respondent: Anthony D. Demma, Esquire  
Meyer and Brooks, P.A.  
Post Office Box 1547  
Tallahassee, Florida 32302

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<sup>1/</sup>, and Florida Administrative Code Rules 6B-

1.006(3)(a), (e), (h) and (5)(a), and if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On October 18, 2010, Petitioner, Dr. Eric J. Smith, issued an Administrative Complaint against Respondent, Randall Worley ("Respondent"), seeking to impose certain sanctions. Respondent timely filed an Election of Rights form requesting a formal administrative hearing.

The Administrative Complaint and Election of Rights form were forwarded to the Division of Administrative Hearings ("DOAH") on December 16, 2010. On February 11, 2011, Petitioner filed a motion to amend the Administrative Complaint. The motion was granted.

At the final hearing, Petitioner called six witnesses: Tammy Everhart, Thomas Tobin, David Roland, Teresa Royal, Sandra Himmel, and Christina Messer. Petitioner's Exhibits 1 through 10 were admitted into evidence.

Respondent called one witnesses: Shannon Justice. Respondent's Exhibit 1 was admitted into evidence.

The parties advised the undersigned that a transcript would be ordered of the final hearing. Upon request, the parties were given 20 days from the date the transcript was filed at DOAH to submit proposed recommended orders. The transcript was filed at DOAH on April 21, 2011. On April 27, 2011, Respondent filed an

unopposed motion to extend until May 24, 2011, the time for the parties to file their proposed recommended orders. That motion was granted. On May 24, 2011, both parties timely submitted Proposed Recommended Orders, which have been given due consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### Background

1. Respondent holds Florida Educator's Certificate 940141, covering the area of Middle Grades Integrated Curriculum, which was valid through June 30, 2013.

2. At all times pertinent to the allegations in the Amended Administrative Complaint in this case, Respondent was employed as a Mathematics Teacher at Citrus High School ("CHS") in the Citrus County School District ("District").

3. Respondent worked as a teacher at CHS from approximately 2005 until his resignation in 2009. The allegations in the Amended Administrative Complaint revolve around Respondent's relationship with Jillian Messer ("Ms. Messer"), who graduated from CHS in June 2009. Respondent was Ms. Messer's math teacher in her freshman year, but did not teach her in any subsequent years. Ms. Messer turned 18 years old on April 17, 2009, approximately six weeks prior to her graduation.

4. Beginning in March 2009, Respondent, who has custody of his two young sons, needed an occasional babysitter to accommodate his out-of-town football coaching duties. He sought a recommendation from a co-worker, Shannon Justice ("Ms. Justice"), a guidance clerk at CHS at the time, about a babysitter he might use. Ms. Justice, who used Ms. Messer as a babysitter for her daughter, checked with Ms. Messer to see if she would be amenable to sitting for Respondent's children from time to time. Ms. Messer informed Ms. Justice that Respondent could contact her to set up sitting arrangements.

5. Between March, 2009 and May, 2009, Ms. Messer babysat Respondent's two boys on approximately five occasions. Ms. Messer continued to provide babysitting services to Ms. Justice during the spring of 2009 as well.

6. Ms. Messer's last day of testing as a CHS senior was on Friday, May 29, 2009, and her last day of classes was June 1, 2009. However, notwithstanding the completion of exams and classes, Ms. Messer remained a CHS student until she received her diploma from the District superintendent of schools and was declared a graduate on the evening of June 2, 2009.

#### Genesis of the Complaint

7. Tammy Everhart ("Ms. Everhart") was a guidance office colleague of Ms. Justice's during the 2008-2009 school year. The two women were cordial in the workplace, but were not close

friends. Ms. Justice became wary of Ms. Everhart during the 2008-2009 school year because she often found her too interested in the personal lives of her colleagues.

8. In May, 2009, a week before the CHS graduation ceremony, Ms. Justice allegedly told Ms. Everhart that Respondent and Ms. Messer were "seeing each other" and "dating outside the county." According to Ms. Everhart, Ms. Justice also told her that the relationship between Respondent and Ms. Messer was "O.K." because Ms. Messer was 18 years old and "she (Ms. Messer) planned on remaining a virgin." Ms. Everhart asked Ms. Justice to report this information to the school administration. There is no indication that Ms. Justice did so.

9. About two weeks later, Ms. Everhart told her husband about her conversation with Ms. Justice regarding Respondent and Ms. Messer. Ms. Everhart's husband is a District school administrator and was aware that any inappropriate relationship between a teacher and a student must be reported to a school district administrator. On the following school day, Ms. Everhart reported her concerns to Assistant Principal Linda Connors, who then reported it to the school principal, Leigh Ann Bradshaw. Principal Bradshaw contacted the District office and an investigation was then initiated by the Superintendent.

10. At hearing, Ms. Justice denied having spoken to Ms. Everhart about Respondent's dating or planning to date

Ms. Messer. Ms. Justice and Respondent had spoken at times during the spring of 2009 about his dating relationship with a woman from the Clearwater area, and it is possible Ms. Everhart overheard some parts of those conversations and mistakenly assumed it was Ms. Messer whom Respondent was dating away from Inverness.

#### The District's Investigation

11. At a preliminary interview conducted in the early afternoon of June 17, 2009, Respondent was questioned by the District's Director of Human Resources, David Roland, and Policy Compliance Officer, Teresa Royal. The interview concerned whether or not Respondent was involved in a romantic relationship with Ms. Messer, and whether he had communicated with others about such a relationship. There was no record of the precise questions asked during the interview, or of Respondent's precise answers. During this interview, Respondent told the investigators that he had spoken with Ms. Messer five or six times, and that those conversations related to Ms. Messer babysitting his children. During the course of this interview Respondent acknowledged that Ms. Justice had sent him some pictures of her daughter's birthday party, and that Ms. Messer may have been in one of the pictures. He added that the pictures were of kids in the pool and other group pictures.

12. Toward the end of the June 17th interview, Respondent confirmed the existence of e-mails between him and Ms. Justice that included references to the possibility of Respondent developing a dating relationship with Ms. Messer after she graduated. Respondent was not presented or confronted with those e-mails during the June 17th meeting. Although there is some evidence that Respondent did not initially acknowledge the existence of the e-mails when asked about them, it does not appear that he attempted to hide the existence of the e-mails between him and Ms. Justice.

13. During the initial interview of June 17, 2009, and again in written form during a second interview held later that same afternoon, Mr. Roland and/or Ms. Royal cautioned Respondent against communicating with others about the subject matter of the investigation; however, he was not prohibited from speaking with Ms. Messer or Ms. Justice about unrelated matters. The "Notice of Investigation" memorandum Respondent signed during the second interview that afternoon specifically prohibits only discussions "regarding the matter under investigation."

14. Ms. Royal also interviewed Ms. Messer on June 17, 2009. During that interview Ms. Messer denied that there was an inappropriate relationship with Respondent.

The Pool Party and Photograph of Messer

15. On Sunday, May 31, 2009, Ms. Justice invited 45-50 people to her home for a pool party to celebrate her daughter's birthday. Respondent, his children, several other children, Ms. Messer, and many adult friends and CHS work colleagues attended this afternoon party. Ms. Messer was invited both because Ms. Justice's daughter adored her babysitter, and to assist Ms. Justice before and after the party. Ms. Messer arrived at, and left, the party alone.

16. Most of the guests wore swimsuits during the pool party and Ms. Justice took pictures of children, including Respondent's sons, and some of the adult guests, including Ms. Messer, who was wearing a bikini. On June 2, 2009, Ms. Justice forwarded several party pictures, mostly of his sons, to Respondent's school e-mail address as attachments to an e-mail with the subject line "Pictures from Party." One of these photographs was of Ms. Messer in the bikini she wore during the pool party. Although Ms. Messer is clad in a bikini, the photograph itself is unremarkable, and portrays a young female appropriately attired for a pool party. Other children are visible in the background of the photo.

The E-Mails between Respondent and Justice

17. Between June 1, 2009, and June 5, 2009, Respondent and Ms. Justice exchanged a series of e-mails that included subject



matter related to the possibility that he and Ms. Messer might consider starting a dating relationship in the future. In an e-mail dated June 2, 2009, Ms. Justice specifically noted that Respondent and Ms. Messer had not yet had enough time to spend together to have discussed the possibility of future dating:

Sent= Tues. 6/2/09 @ 1:00pm  
To: Randall Worley  
From: Shannon Justice

**Ok. I am back you sound so negative about yourself. I know that we are always so hard on ourselves but you are not destined for singlehood you will find someone someday and don't think JM is out of the question you haven't ever had enough time to be with her or even discuss dating.**

18. Two days later, on June 4, 2009, a series of e-mails between Respondent and Ms. Justice indicate that Respondent and Ms. Messer had recently discussed the possibility of a future dating relationship. This is the first time Respondent mentioned to Ms. Justice having spoken to Ms. Messer at all about dating, and the first time Respondent and Ms. Messer discussed the possibility of dating in the future. The full text of those June 4, 2009, e-mails follows:

Sent = Thurs. 6/4/09 @ 8:44 am  
To = Shannon Justice  
From = Randall Worley

**So yeah I have been talking to JM lately. She is not sure what parents would say.**

\* \* \*

Sent = Thurs. 6/4/09 @ 8:48 am  
To = Randall Worley  
From = Shannon Justice

Have you been texting or talking. So she is definitely interested??? I don't think her parents would actually mind I think maybe you all should date a while then find out where that leads before talking about parents. That is just from experience. We dated almost 4 months before my parents ever knew. Then they never met Kevin's parents till our rehearsal dinner.

\* \* \*

Sent = Thurs. 6/4/09 @ 8:55 am  
To = Shannon Justice  
From = Randall Worley

As far as she goes, yes she is interested. But I don't think she wants to not tell them. It would be hard for us to date without them knowing wouldn't it? And funny story, I apparently had her mom in my car graduation night and didn't know it. Well yesterday her mom was talking to the family about how this nice sweet guy was her driver and that I was pretty cute. So she was like that's coach Worley. That's funny. And we have been doing both texting and talking.

\* \* \*

Sent = Thurs. 6/4/09 @ 9:26 am  
To = Randall Worley  
From = Shannon Justice

As far as JM my opinion is go for it. You guys have similar thing in common and plenty to talk about with regards to her parents you can play it off. It isn't that hard you guys can really do it if you want. That is funny about her mom thinking you were cute buy (but?) cuteness only goes so far right???

\* \* \*

Sent = Thurs. 6/4/09 @ 9:32 am  
To = Shannon Justice  
From = Randall Worley

**Ain't that the truth. And yes we never have enough to talk about. We are always talking and laughing and all that. We have fun together. I talked to my mom and uncle about it last night. They were totally cool with it too. I think JM just need some reassurance about it. That where maybe you come into play right.**

\* \* \*

Sent = Thurs. 6/4/09 @ 9:43 am  
To = Randall Worley  
From = Shannon Justice

**Of course I have always talked good about you to her. I will keep it up. I think she may babysit sometime next week she is suppose to call me tonight about watching sissy next week. I will help the most I can so do you still have her on your mind all the time?**

\* \* \*

Sent = Thurs. 6/4/09 @ 9:46 am  
To = Shannon Justice  
From = Randall Worley

**As a matter of fact I do. It is crazy. It has been 2 years since I have been with anyone and even the few girls that I have dated I didn't think about like this. I don't know if this is good or not??**

\* \* \*

Sent = Thurs. 6/4/09 @ 10:44 am  
To = Randall Worley  
From = Shannon Justice

**Well maybe she is special to you and you may have feelings for her that you didn't know**

**you did. It may be a really great thing for  
the both of you.**

\* \* \*

Sent = Thurs. 6/4/09 @ 10:51 am  
To = Shannon Justice  
From = Randall Worley

**Seriously. I can't get her out of my head.  
I don't think that I have really felt like  
this in a very very very very long time. It  
is scary because of the feeling itself but  
also because of the circumstance. I don't  
really know if I should feel this way?**

\* \* \*

Sent = Thurs. 6/4/09 @ 11:49 am  
To = Randall Worley  
From = Shannon Justice

**You are crazy for her. That is good.**

\* \* \*

Sent = Thurs. 6/4/09 @ 2:26 pm  
To = Shannon Justice  
From = Randall Worley

**No kidding. This is soooooooo not good. I  
don't like this feeling at all.**

\* \* \*

Sent = Thurs. 6/4/09 @ 2:29 pm  
To = Randall Worley  
From = Shannon Justice

**Have you talked to her today?**

\* \* \*

Sent = Thurs. 6/4/09 @ 2:43 pm  
To = Shannon Justice  
From = Randall Worley

**Yes I have. We should probably talk when you get a chance. So call me sometime. When you leaving work?**

Telephone Records of Calls between Respondent and Messer

19. Telephone records received in evidence (over the hearsay objection of Respondent)<sup>2/</sup> indicate that there were 89 telephonic communications between Respondent and Ms. Messer between March 3, 2009 and June 18, 2009. The records also reflect that phone conversations did take place between Respondent and Ms. Messer on June 17, 2009. However, there is no evidence as to the subject matter of those communications, nor credible evidence that they spoke about anything related to the investigation.

20. Another interview with Respondent was conducted by Ms. Royal on July 8, 2009. At that time Respondent again acknowledged having received the e-mailed photograph of Ms. Messer in a bikini.

Publicity Regarding the Investigation

21. The only area newspaper article written about the allegations against Respondent appeared on August 19, 2009, in the Citrus County Chronicle. The impetus for the article appears to be the filing of the formal complaint against Respondent, and his subsequent resignation. The article did not name Ms. Messer as an involved party, but included her anonymous statement to the effect that nothing unprofessional happened

between her and Respondent, and quoted District officials to the effect that there was no evidence of sexual harassment or of Respondent expressing his feelings to the student. At hearing, Superintendent Himmel testified about the generic impact of negative teacher articles upon some in the community. On cross-examination, Ms. Himmel did not rule out re-hiring Respondent as a teacher if he is cleared of wrongdoing in this matter.

#### Lack of Direct Evidence of a Relationship

22. During the District's interviews with him, to the extent Respondent's recollection of the number, duration, and subject matter of every phone conversation he had with Ms. Messer between March and June 2009, was limited or inaccurate, such limitations reasonably appear to be the result of the passage of time, and not purposeful deception. There is no evidence that Respondent and Ms. Messer ever discussed dating, or any inappropriate subject, during any telephone, text, or in-person communications between them while she was a student.

23. Although Respondent and Ms. Messer spoke on the phone from time to time about babysitting concerns and logistics, and apparently on other occasions about Ms. Messer's college aspirations, scholarship opportunities, college selection, and related matters, there is no direct evidence of what they specifically spoke about. At hearing, no witness testified to

having personal knowledge of such conversations, and both Respondent and Ms. Messer denied to District officials that they ever engaged in any discussions about dating or about any inappropriate matters prior to her June 2, 2009, graduation date.

24. Although Ms. Messer and Respondent occasionally saw each other outside the school setting through babysitting-related interactions, the record lacks any credible evidence that they ever dated or engaged in any inappropriate physical contact. Further, Respondent, Ms. Messer, and Shannon Justice, all have specifically and consistently denied that there was any physical, romantic, dating, or sexual relationship between Respondent and Ms. Messer at any time.

25. Although the telephone records introduced by Petitioner establish that Respondent and Ms. Messer spoke frequently, there is insufficient competent substantial evidence to establish that the subject matter of the conversations was inappropriate, or that the two were involved in a prohibited teacher/student relationship prior to Ms. Messer's graduation on June 2, 2009.<sup>3/</sup>

26. By letter dated July 28, 2009, Respondent was informed of his suspension from employment with the District, and that his termination would be recommended to the school board.

Respondent resigned his teaching position with the District effective August 11, 2009.

CONCLUSIONS OF LAW

27. 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. (2010).

28. This disciplinary action is a penal proceeding in which Petitioner seeks to permanently revoke Respondent's teaching certificate. Petitioner bears the burden of proof to demonstrate the allegations in the Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

29. 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).



30. Subsection 1012.795(1), Florida Statutes, provides:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for a period of time not to exceed 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 a period of time not to exceed 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 order of the court, of any person found to have a delinquent child support obligation; or may impose any other penalty provided by law, provided it can be shown that 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.

\* \* \*

31. Section 1012.795, Florida Statutes, does not define "gross immorality" and "moral turpitude." Instructive in defining the terms "immorality" and "moral turpitude" in subsection 1012.795(1)(c) are the rules relating to disciplinary actions which may be taken by school districts. Florida Administrative Code Rules 6B-4.009(2) and 6B-4.009(6) provide:

(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.

32. Florida Administrative Code Rule 6B-1.006 provides:

(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.

(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.

33. The Amended Administrative Complaint alleges that the Respondent's conduct violated subsection 1012.795(1)(d), (g) and (j), Florida Statutes, and Florida Administrative Code Rule 6B-1.006(3)(a), (e), (h) and (5)(a) cited above. The factual allegations in the Amended Administrative Complaint include the following:

Material Allegations

3. During March 2009 and continuing for the remainder of the school year, Respondent engaged in appropriate conduct with J.M., an eighteen-year-old female student, in that he and J.M. began a romantic relationship prior to her graduation from the school where Respondent was employed.

4. On June 17, 2009, and July 9, 2009, during preliminary and official interviews by the Citrus County School District, Respondent stated that he and J.M. spoke with each other five or six times. Telephone records show that between March 8, 2009, and June 18, 2009, Respondent and J.M.

had a total of 89 phone conversations totaling over 15 hours.

5. During interviews with Respondent by the Citrus County School District, respondent stated on two separate occasions that he had never dated or discussed dating J.M.. Email records show that Respondent and a coworker exchanged emails in which Respondent expressed interest in dating J.M.

6. On June 17, 2009, Respondent was given a written directive not to contact J.M.. Respondent contacted J.M. after the directive was issued to him.

7. Respondent and J.M. exchanged over 80 telephone calls/text messages between March 3, 2009, and June 18, 2009. Account information indicates that the calls varied in length from one to 96 minutes and occurred during the day, night, and early morning hours, totaling over 15 hours.

8. As a result of a school district investigation in to allegations of inappropriate conduct which found probable cause, Respondent was suspended without pay and recommended for termination. Respondent resigned his position effective August 11, 2009.

9. The school district's investigation and Respondent's subsequent resignation were reported in the local media.

34. The Amended Administrative Complaint alleges the following seven statutory and rule violations:

STATUTE VIOLATIONS

COUNT 1: The Respondent is in violation of section 1012.795(1) (d), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral

turpitude as defined by rule of the State Board of Education.

COUNT 2: The Respondent is in violation of section 1012.795(1)(g), Florida Statutes, in that Respondent has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

COUNT 3: The Respondent is in violation of section 1012.795(1)(j), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

RULE VIOLATIONS

COUNT 4: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), Florida Administrative Code, in that Respondent has failed to make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

COUNT 5: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(e), Florida Administrative Code, in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

COUNT 6: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(h), Florida Administrative Code, in that Respondent has exploited a relationship with a student for personal gain or advantage.

COUNT 7: The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(5)(a), Florida Administrative Code, in

that Respondent has failed to maintain honesty in all professional dealings.

35. Counts 1 through 6 hinge upon the existence of an inappropriate teacher/student relationship prior to Ms. Messer's graduation on June 2, 2009. Petitioner argues that an inappropriate romantic relationship should be inferred based upon the substance of the emails exchanged between Respondent and Ms. Justice from June 1, 2009, through June 5, 2009, as well as from the phone records showing numerous telephone conversations between Respondent and Ms. Messer between March and June 2009.

36. The facts of this case do not support the inference urged by Petitioner. To the contrary, Petitioner has failed to establish by a preponderance of the evidence, much less clear and convincing evidence, that an inappropriate relationship existed between Respondent and Ms. Messer while she was a student at CHS.

37. Petitioner presented no non-hearsay testimony or persuasive documentary evidence of an improper relationship of any kind between Respondent and Ms. Messer. And although neither Respondent nor Ms. Messer testified at hearing, throughout Petitioner's investigation both parties consistently denied the existence of a physical relationship, a dating

relationship, or of any romantic communications or overtures during Ms. Messer's tenure as a CHS student.

38. The CHS employee that brought the alleged relationship to the attention of school officials, Ms. Everhart, had no personal knowledge of an actual romantic relationship between Respondent and Ms. Messer. Rather, Ms. Everhart claimed only that Ms. Justice told her in late May, 2009 that such a relationship existed. At hearing, Ms. Justice denied making such a statement, and further denied that she was even aware of any consideration of a dating relationship as of the time Everhart says she (Justice) told her Respondent and Ms. Messer had been dating outside of Inverness. Further, Ms. Justice plausibly explained that Ms. Everhart may have overheard and misunderstood her discussions with Respondent, undoubtedly the result of Ms. Everhart hearing only Ms. Justice's side of the phone conversation.

39. The telephone records presented as evidence of a romantic relationship create nothing more than a basis for speculation about inappropriate things Respondent and Ms. Messer might have discussed. However, since the record is wholly devoid of evidence of what Respondent and Ms. Messer actually talked about during any call, such concerns are both uncorroborated and inadequate to support a finding of an

improper relationship under the clear and convincing evidentiary burden of proof.<sup>4/</sup>

40. As to the e-mail communications between Respondent and Ms. Justice (that for the first time made mention of the possibility of a future dating relationship after Ms. Messer's graduation), Ms. Messer was not a party to those e-mails. More importantly, Ms. Messer was, by any account, a graduate prior to any discussion about the possibility of a dating relationship as reflected in the e-mails. There is no competent substantial evidence that Respondent and Ms. Messer had previously either broached the subject of dating, or actually dated, prior to June 2, 2009. Moreover, this record does not include evidence of any actual dating or sexual relationship after June 3, 2009, the existence of which might support an inference that dating was discussed before June 2, 2009, and that a pre-graduation decision had been made to date after Ms. Messer graduated.

41. In sum, this record fails to contain clear and convincing evidence that Respondent engaged in any prohibited conduct involving Ms. Messer or any other student. Accordingly, Petitioner has failed to carry its burden of proof with respect to Counts 1 through 6 of the Amended Administrative Complaint.<sup>5/</sup>

42. Count 7 charges that Respondent failed to honestly respond to the District's questions during the investigative interviews conducted on June 17, 2009. Specifically, at hearing



Policy Compliance Officer Royal testified that Respondent did not accurately identify the number of phone conversations he had with Ms. Messer between March 2009, and June 2009, and that he did not adequately explain to her what he and Ms. Messer talked about during some of their extended phone calls.

43. While investigators may often be suspicious when they feel they are not receiving the full cooperation of an interviewee, it is not surprising that Respondent would have had less than total recall of particular phone conversations with Ms. Messer in March, April, and May 2009. By the time the interviews took place in June, several months had passed, and the young teacher was undoubtedly nervous in the face of his employer's inquisition. There is, additionally, a significant difference between being a bit tight-lipped in the face of a suspicious inquiry, and providing affirmatively false information. The phone records introduced at hearing were not provided to Respondent during his interviews of June 17, 2009. As such, his imprecise and inaccurate recollection about phone communications with Ms. Messer over a period of 3-4 months (in the absence of records to help jog his memory) is inadequate to clearly and convincingly support a finding of intentional dishonesty.

44. The other aspect of the charge of failure to maintain honesty in all professional dealings centers on communications

Respondent and Ms. Messer had on June 17, 2009, as reflected in the telephone records. Petitioner asserts that Respondent contacted Ms. Messer (presumably to discuss the investigation) after being given a directive not to contact her.

45. The Notice of Investigation provided to Respondent on June 17, 2009, stated:

"You are directed not to engage the complainant, or any student witness, or any other witness, and/or peers in any conversation regarding the matter under investigation."  
(emphasis added).

46. Mr. Roland, who was present at both of the interviews on June 17, 2009, testified that although he did not specifically recall the words spoken to Respondent in this regard, his best recollection was that the statement prohibited talking to any individuals about the investigation or its substance, rather than totally prohibiting all contact with Ms. Messer or Ms. Justice about unrelated subjects. There is no evidence in this record as to what Respondent and Ms. Messer talked about on June 17, 2009. While it may have been poor judgment on Respondent's part to communicate at all with Ms. Messer during the pendency of the investigation, there is no factual basis to conclude that the directive not to discuss the "matter under investigation" was violated by Respondent.

47. Petitioner has failed to prove the statutory and rule violations alleged in the Amended Administrative Complaint by clear and convincing evidence. To the contrary, the allegations brought against respondent were based upon uncorroborated hearsay, speculation, surmise and suspicion, and therefore cannot be sustained.<sup>6/</sup> Tenbroeck v. Castor, 640 So. 2d 164, 167 (Fla. 1st DCA 1994).

WHEREFORE, it is recommended that a Final Order be entered dismissing the Amended Administrative Complaint.

DONE AND ENTERED this 26th day of July, 2011, in Tallahassee, Leon County, Florida.



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W. DAVID WATKINS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of July, 2011.

## ENDNOTES

<sup>1/</sup> All statutory references in this Recommended Order are to the 2008 version of the Florida Statutes in effect at the time of the alleged violations, with the exception of the jurisdictional reference contained in the Conclusions of Law.

<sup>2/</sup> Section 120.57(1), Florida Statutes (2010), provides in relevant part:

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Although hearsay, the telephone records at issue were admitted in evidence for the potential purpose of supplementing or explaining other evidence. Notwithstanding their limited probative value, they were nevertheless considered in the totality of Petitioner's evidence inviting an inference of an inappropriate relationship.

<sup>3/</sup> According to the testimony of Christina Messer, Jillian's mother, the two enjoy a very close relationship. However, throughout this ordeal Jillian has continued to assure her mother that she and Mr. Worley did not have an inappropriate relationship.

<sup>4/</sup> A review of the telephone records reflects that the vast majority of the calls were initiated by Ms. Messer, not by Respondent.

<sup>5/</sup> With respect to Count 2, Petitioner argues that Respondent's effectiveness as a teacher was compromised by the August 2009, newspaper article reporting on the District's investigation of the alleged relationship. While Respondent's effectiveness as a teacher may well have been compromised by the article, it was not Respondent's conduct which led to the article, but rather the District's investigation of allegations against Respondent which ultimately were not proven.

<sup>6/</sup> *Fac et aliquid operis, ut semper te diabolus inveniat occupatum.*

~St. Jerome, Letters

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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.