

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. ERIC J. SMITH, AS)
COMMISSIONER OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 11-1774PL
)
KENNETH GRIFFIN,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On June 13, 2011, a formal administrative hearing was conducted by video teleconference in Tallahassee and Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bruce P. Taylor, Esquire
204 37th Avenue, Suite 190
St. Petersburg, Florida 33704

For Respondent: Emily Moore, Esquire
Florida Education Association
300 East Park Avenue
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues in this case are whether the allegations set forth in the Administrative Complaint filed by the Petitioner, Dr. Eric J. Smith, as Commissioner of Education, against the

Respondent, Kenneth Griffin, are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By an Administrative Complaint dated July 12, 2010, the Petitioner alleged that during January 2010, the Respondent conducted an inappropriate online conversation with a student. The Respondent denied the allegation and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of seven witnesses and had Exhibits 1, 2, and 4 through 7 admitted into evidence. The Respondent testified on his own behalf, presented the testimony of four witnesses, and had Exhibits identified as A, B, F, and G admitted into evidence. A Pre-hearing Stipulation filed by the parties was admitted as Administrative Law Judge's Exhibit 1.

A Transcript of the hearing was filed on July 21, 2011. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent held Florida Educator's Certificate No. 963010, covering the areas of educational leadership, middle grades integrated curriculum,

reading, and exceptional student education, valid through June 30, 2012.

2. At all times material to this case, the Respondent was employed as a reading teacher at Plant City High School (PCHS), a unit of the Hillsborough County School District.

3. On January 28, 2010, the Respondent engaged in an online conversation ("chat") on the "MySpace" social networking Internet site, with a 15-year-old high school student. At the time of the chat, the student was enrolled at another unit of the Hillsborough County School District.

4. The Respondent and student were acquainted because the student had previously been enrolled at PCHS and had participated in the PCHS cross-country track team, and the Respondent had been the team's coach.

5. During the chat with the student, the Respondent made reference to the student's physical appearance, to masturbation and the size of the student's penis, and to the student's girlfriend.

6. According to the log of the chat, the Respondent directed the student to clear the chat screen when the chat was completed.

7. The student's mother was able to monitor her son's online activities from her computer. After the chat was completed, the student's mother reviewed the interaction between

her son and the Respondent and printed the chat log screens. She immediately sent a MySpace message to the Respondent and voiced her displeasure with the nature of the interaction, but said she was not contacting school officials because she was concerned about her son being "humiliated" by the interaction. She told the Respondent to "leave my son alone!"

8. Upon his return from a social event later that evening, the Respondent received the mother's message. Shortly before 1:00 a.m., on January 29, 2010, the Respondent sent an email to the PCHS principal advising that he had received a message from an upset parent related to his chat with the student. He wrote "this has happened in the past, and I have changed my password a few times but hackers continue to hack my account." The Respondent denied that there had been anything "out of line" about the chat with the student.

9. A few hours later, the Respondent came to the PCHS principal's office upon his own volition and again advised the principal that a parent was upset about the chat, but, at that time, the Respondent claimed that the chat had actually been conducted between the student and an acquaintance of the Respondent.

10. The principal contacted a Hillsborough County School Board (School Board) official and advised of the situation. The

School Board initiated a review of the matter and obtained the printed chat logs from the student's mother.

11. On February 1, 2010, after meeting with School Board investigators, the Respondent resigned from his employment with the Hillsborough County School District. The Respondent asserted that he resigned because he was advised that the matter would become public if the School Board initiated disciplinary action and that he was further advised that he could resume his teaching career elsewhere.

12. The Respondent has acknowledged conducting a chat with the student, but has denied participating in any impropriety during the chat. The Respondent has asserted that an individual known only as "R.J." was in the Respondent's apartment and using the Respondent's computer during the time of the chat. According to the Respondent, the Respondent ran into R.J. who was hanging around the common area at the Respondent's apartment complex. The Respondent asserted that R.J. asked to use the Respondent's computer, that the Respondent allowed R.J. into the Respondent's apartment, and that the Respondent left R.J. at the computer while the Respondent went into his bedroom to dress for a social event. The Respondent testified that the student thereafter initiated the chat, that R.J. relayed the student's messages to the Respondent, and that the Respondent dictated responses to R.J. According to the Respondent, R.J. embellished

the Respondent's dictated responses with the inappropriate remarks, unbeknownst to the Respondent.

13. There is no credible evidence that anyone other than the Respondent participated in the chat with the student.

14. The nature of the chat was a matter of embarrassment for the student. At the hearing, the student testified that he previously regarded the Respondent as a mentor and that he felt "betrayed" by the chat. The student's father testified that he no longer trusted, and was uncomfortable with, the Respondent after the chat occurred.

15. Officials from PCHS and the Respondent testified that the incident caused a loss of trust in the Respondent. The PCHS principal testified that the inappropriate interaction with the student caused her to doubt the Respondent's judgment, and she observed that such incidents damage the reputation of the school and cause a general loss of respect for the school and for other teachers.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 & 120.57(1), Fla. Stat. (2010).^{1/}

17. In this case, the Petitioner is seeking to revoke the Respondent's teaching certification. License revocations are penal in nature. The Petitioner must demonstrate the

truthfulness of the allegations in the 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). In order to be "clear and convincing," the evidence must be "of such 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." See Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). In this case, the burden has been met. The evidence clearly and convincingly established that the Respondent participated in the chat referenced herein. The Respondent's testimony that another person was responsible for the inappropriate portions of the chat was not supported by credible evidence and has been rejected.

18. Section 1012.795(1), Florida Statutes, provides in relevant part as follows:

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.

19. The terms "gross immorality" and "an act involving moral turpitude" are not defined in chapter 1012. Florida Administrative Code Rule 6B-4.009, which applies to dismissal actions initiated by school boards against instructional personnel, provides guidance as to the meaning of the terms as

they are used in section 1012.795. Castor v. Lawless, Case No. 91-5289, 1992 Fla. Div. Admin. Hear. LEXIS 6107 (Fla. DOAH Feb. 13, 1992).

20. "Immorality" is defined by rule 6B-4.009(2) as follows:

Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

21. "Gross immorality" has been described as misconduct that is more egregious than mere "immorality." As stated in Brogan v. Mansfield, Case No. 96-0286, 1996 Fla. Div. Admin. Hear. LEXIS 3500 (Fla. DOAH Aug. 1, 1996):

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

22. "Moral turpitude" is defined by rule 6B-4.009(6) as follows:

Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the

act itself and not its prohibition by statute fixes the moral turpitude.

23. Moral turpitude has also been defined as anything done contrary to justice, honesty, principle or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated. State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660 (1933).

24. In determining whether any teacher is guilty of gross immorality or an act involving moral turpitude, it must be remembered that "[b]y virtue of their leadership capacity, teachers are traditionally held to a high moral standard in a community." Adams v. Prof'l Practices Council, 406 So. 2d 1170, 1171 (Fla. 1st DCA 1981).

25. The Respondent's online conversation with a student on January 28, 2010, was an act of serious misconduct and a flagrant breach of proper moral standards and, therefore, constituted an act of gross immorality. The conversation also was contrary to good morals and, therefore, constituted an act of moral turpitude. Accordingly, the Respondent has violated section 1012.795(1)(d).

26. The evidence establishes that the Respondent's chat with the student seriously reduced his effectiveness as an employee of the Hillsborough County School District. School

officials lost confidence and trust in the Respondent because of the chat. Accordingly, the Respondent has violated section 1012.795(1)(g).

27. The Petitioner has charged that the Respondent violated the Principles of Professional Conduct for the Education Profession as prescribed by State Board of Education rules. Such principles are set forth at Florida Administrative Code Rule 6B-1.006, which provides in relevant part 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.

* * *

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

28. The evidence establishes that the student previously thought of the Respondent as a mentor and that the chat embarrassed the student and caused the student to lose trust in

the Respondent. The Respondent has violated rule 6B-1.006(3)(a) and (e) and, accordingly, has violated section 1012.795(1)(j).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order revoking the Florida Educator's Certificate held by the Respondent.

DONE AND ENTERED this 8th day of September, 2011, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of September, 2011.

ENDNOTE

^{1/} References to Florida Statutes are to Florida Statutes (2010), unless otherwise stated.

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.