

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 12-0769TTS
)
WILLIE SPARROW,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on April 24, 2012, in Fort Myers, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Dodig, Jr., Esquire
School District of Lee County
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Fort Myers, Florida 33966

For Respondent: Robert J. Coleman, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

On January 5, 2012, the Lee County School Board (Petitioner) served a Petition for Termination of Employment (Petition) on Willie Sparrow (Respondent), a music teacher at Lehigh Senior High School (Lehigh). The Petition set forth allegations of improper conduct by Respondent, including inappropriate physical contacts with several female students. The Petition charged that this alleged misconduct constituted just cause to terminate Respondent's employment. Respondent timely requested an administrative hearing to contest the allegations in the Petition.

On February 27, 2012, the case was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing requested by Respondent.

The final hearing was scheduled for April 24, 2012. Before the hearing, the parties filed a Joint Prehearing Stipulation in which they stipulated to several facts and conclusions of law. The parties' stipulations have been incorporated herein to the extent relevant.

At the final hearing, Petitioner presented the testimony of Ranice Monroe and Craig Baker. Petitioner offered Exhibits 1 through 12, which were admitted in evidence. Included among these exhibits are the transcripts of depositions of four student

witnesses who are referred to in this Recommended Order by their initials: P.P., M.M., B.G., and C.R.

Respondent testified on his own behalf and also presented the testimony of J.V., Maria Velez, S.M., and Alinda Fay Masters. In addition, Respondent was allowed to proffer the testimony of James C. Givens; Respondent, subsequently, withdrew the proffer of Mr. Givens' testimony and, therefore, that testimony has not been considered.^{1/} Respondent offered Exhibits 1 through 10, which were admitted in evidence. Included among these exhibits are transcripts of depositions of two students: B.W. and C.C.

With regard to the depositions of the six teen-aged students, the parties were in agreement that the circumstances justified allowing all six students to testify by deposition in lieu of live testimony. Petitioner and Respondent jointly requested that the undersigned receive all six student depositions in evidence for all purposes pursuant to Florida Rule of Civil Procedure 1.330(3)(E), incorporated by reference in Florida Administrative Code Rule 28-106.206. Rule 1.330(3)(E) allows a deposition to be used by any party for any purpose, when there is a finding, "upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used[.]" Due to the sensitivity and

embarrassing subject matter of these students' testimony, the undersigned accepts the parties' agreement and finds that such circumstances exist here, and the interests of justice are served by considering the deposition testimony for all purposes in this proceeding.

The two-volume Transcript of the final hearing was filed on May 23, 2012. The parties filed a joint motion to extend the deadline for filing proposed recommended orders until June 13, 2012, which was granted. The parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this proceeding, Respondent was a music teacher at Lehigh. His primary areas of interest and teaching responsibility were vocals and keyboard, and he taught varying levels and types of chorus and piano/keyboard classes. Respondent also was very proactive in initiating and coordinating extra-curricular music programs and competitions for the benefit of his music students.

2. Respondent received a bachelor's degree in music education, with a choral emphasis, from Florida A & M University (FAMU) in 2002. He completed a summer master's program at the University of Florida and received his master's degree in music education in 2010. Respondent is a certified educator in music,

K through 12, meaning that he is qualified to teach music at all levels from kindergarten through 12th grade.

3. Respondent has been employed by Petitioner since August 5, 2002, but has only been at Lehigh since the 2008-2009 school year. Respondent was the choral director at Dunbar High School for three years; music teacher at Orange River Elementary for one year; and music teacher at Orangewood Elementary for two years. Respondent testified that these frequent transfers were his idea, and there was no evidence to the contrary. Respondent testified that he left Dunbar High School because that school's music program downsized, and the school wanted to hire a music teacher whose emphasis was on band, instead of chorus, so he requested a transfer elsewhere and Orange River Elementary was what was available. Respondent testified that things did not work out there between the administration and him, so he transferred to Orangewood Elementary. However, Respondent did not feel challenged teaching music to elementary school students, and so he requested a transfer to Lehigh when the music teaching position opened up. Respondent testified that he believes his talents are best used in a high school setting, where he can work with talented singers and pianists to prepare them for college and professional careers.

4. By all accounts, Respondent is a very talented musician. His performance evaluations show that he was generally considered

a satisfactory teacher throughout his years in Petitioner's employ; some areas needing improvement tended to balance out with other areas in which his performance was above average.

Petitioner's performance as a teacher is not in question in this proceeding.

5. Instead, what is in question in this proceeding is Respondent's conduct with several female students. This matter first came to Petitioner's attention when Douglas McKeever, assistant principal at Lehigh, contacted Petitioner's Department of Professional Standards and Equity (DPS), which is responsible for investigating allegations of misconduct by school district employees and making recommendations to the superintendent as to discipline. Mr. McKeever informed the DPS that he had received information regarding possible inappropriate physical contact by Respondent with several female students.

6. At DPS' direction, on November 3, 2011, Mr. McKeever conducted interviews of two students, P.P. and B.G., who alleged they were subjected to Respondent's inappropriate physical contacts, and one student, M.M., who was a witness to one student's encounter with Respondent. Mr. McKeever had these three students summarize what they told him in written statements. He provided this information to DPS.

7. The students' statements were reviewed by DPS, and based on the seriousness of the allegations, Respondent was suspended with pay and benefits on November 7, 2011.

8. Thereafter, the allegations were investigated by DPS' chief investigator, Craig Baker. Mr. Baker took the written statement of an additional student, C.R., who had been identified as someone who had allegedly been subjected to Respondent's inappropriate contacts, but who had not been present when Mr. McKeever conducted the initial student interviews. As part of his investigation, Mr. Baker made inquiries to identify any other alleged victims or witnesses.

9. After the investigation was completed, a pre-determination conference was held on December 7, 2011, at which Respondent was given an opportunity to present his side of the matters described in the student statements, which were provided to him. Respondent was represented by counsel at that conference.

10. The results of the investigation and pre-determination conference were then reviewed and discussed by the school district's chief human resources officer, the head of the DPS, other human resources staff, and counsel for the school district, to formulate a recommendation. The recommendation was to terminate Respondent. Respondent was informed of the recommendation and was advised that he was suspended without pay

or benefits, effective December 19, 2011, pending a final determination as to whether Respondent would be terminated.

11. The Petition for Termination of Employment sets forth the alleged conduct by Respondent on which Petitioner relies to establish the charges of misconduct in office and policy violations. The alleged misconduct involves three different students; the findings with respect to the allegations for each student are addressed in turn below.

P.P.

12. P.P. is a 15-year-old female. In the 2011-2012 school year, P.P. was in the tenth grade at Lehigh. Respondent testified that P.P. was "one of the best singers." As a ninth-grade freshman during the 2010-2011 school year, P.P. took Respondent's beginning chorus class. There were approximately 20, mostly-freshmen, students in this class, about three-quarters of whom were female.

13. During that first year in Respondent's chorus class, P.P. sometimes would feel like she was being watched and would notice Respondent staring at her. She also observed him "checking out" other girls. The manner in which P.P. saw Respondent looking at other girls gave her discomfort, because she thought Respondent should not be conducting himself that way.

14. As the 2010-2011 year progressed, when P.P. would get that feeling that she was being stared at, she would look up and

catch Respondent looking down the v-neck of her shirt; P.P. always wore v-neck style shirts and blouses. When P.P. looked up at Respondent, he would look away. This bothered her. Respondent denied ever trying to look down P.P.'s shirt or blouse; however, he specifically recalled that she would wear v-neck type shirts and blouses.

15. P.P. is a friendly, outgoing young lady, and as she acknowledged, it is not unheard of for her to hug a teacher. Respondent testified that while he may have hugged P.P. during her first year, there were not hugs every day, like the frequency of hugs between them in P.P.'s sophomore year. Consistent with that testimony, P.P. testified that when she began her sophomore year at Lehigh, she noticed a difference with Respondent. As she described it, she would get hugs from Respondent, but those hugs were not like other hugs. When Respondent hugged her when they were both standing, he would grab at a lower altitude than normal, considering he is taller than her, with his hands dropping down from her lower waist to the edge of her pants. These low-altitude hugs made P.P. feel uncomfortable.

16. The hugging between P.P. and Respondent took place in his office, in the big classroom at the piano or the projector, or at the classroom doorway. There were other students around most of these times, but not for those hugs taking place in Respondent's office.

17. P.P. described the hugs Respondent would give her in his office when he was seated and she was standing. According to P.P., Respondent would put his arm around her at a relaxed stance, "over my butt," instead of reaching his arm upward to account for their differing heights with him seated and her standing next to him. Then, when he would release back out of the hug, she would feel his hands brushing over her buttocks. Though the impropriety of these "hugs" is obvious from P.P.'s description of them, P.P. said that she was not sure if Respondent was "intentionally improperly touching" her.

18. Respondent freely admitted hugging P.P. and others. As Respondent put it, he is "a hugger." Though there was some disagreement as to whether Respondent always initiated the hugs with P.P. (as P.P. testified) or whether Respondent only sometimes initiated the hugs with P.P. (as Respondent admitted), it was clear that there was frequent hugging going on between P.P. and Respondent during the few months of P.P.'s sophomore year prior to Respondent's suspension in November. Additionally, though there was some disagreement as to where Respondent placed his arms and hands during all of these hugs, Respondent acknowledged that he could have made "coincidental contact" with lower waists, buttocks, or other parts while releasing from hugs.

19. P.P. described an incident that took place in October 2011, at school, in the evening after she attended a

performance of The Fantasticks. Respondent was also at school after hours, as were many others, because Respondent was coordinating an all-county music competition that took place on the same evening as The Fantasticks.

20. According to P.P., she had seen Respondent earlier that evening when she and others were milling about at intermission. There were concession stands set up by parents and other volunteers, but P.P. did not have any money. Respondent was walking by with some chips in his hands and asked P.P. if she was hungry. She said no, she was going home for dinner later. After the show, she left the "Black Box Theater," where The Fantasticks show was performed, and parted ways with her friend so she could go down the outside corridor to the parking lot where her grandmother was picking her up. P.P. ran into Respondent, and he again asked her if she was hungry and if she needed a ride home. She said that she had a ride and was going home to dinner. At that point, he hugged her in a way that she felt was even more out of the ordinary than his other hugs. He had his arms around her waist and then he moved his hands to her belt area and gripped her tightly. This hug lasted for five-to-ten seconds, until someone came out of another door and then he released her.

21. Respondent admitted the core facts of this encounter, but disputed some of the details. According to Respondent, he

was under the misimpression that P.P. had been helping him with the all-county music competition, which is why, he said, that he went up to her to hug her when he saw her leaving. Thus, he admitted to having initiated this hug, but claims it was a simple "thank-you" hug. Respondent denied any belt-gripping or tight grabbing. He thought that the hug lasted for more like two-to-three seconds, not five-to-ten seconds. Whether the hug lasted two, three, four, or five seconds, that is a long hug that could fairly be described as more of an embrace than the sort of split-second pat-hug that might be viewed as a handshake equivalent and that one could arguably accept as not beyond the bounds for a teacher.

22. Between the time of his pre-determination conference and the final hearing, Respondent added a few details that would have been material, but inexplicably were missing from his early version of events. One new detail added by Respondent at the final hearing, which he did not offer at the pre-determination conference was that there were a lot of other people around when he hugged P.P. on the evening of The Fantasticks. He admitted that this fact was important and had no explanation for why he would not have offered this information at the pre-determination conference. Moreover, despite offering the testimony of several supportive witnesses, including two who confirmed they were concession volunteers that evening, there was no witness to

testify that he or she was one of the "many people" around to see Respondent hugging P.P.

23. The other embellishment of this incident at the final hearing was Respondent's new claim that his hug with P.P. on the night of The Fantasticks was the last time they hugged, because he "told her that it wouldn't look appropriate."^{2/} Respondent testified that "it concerned me that P.P. would think it was more than--more to our interaction than was there." Respondent's only explanation for failing to mention this detail at his pre-determination conference was: "I thought about it, but I didn't think, you know, I needed to go into more detail. I would go into more detail here, if we had come to it."

24. Respondent's testimony, offering new details about this incident that he did not provide in December 2011, was not credible. It is not credible that Respondent would have held back material details at the pre-determination conference, which was his opportunity to tell his side of the story before the decision was made whether to initiate disciplinary action. Respondent's failure to provide what would have been material details at a point when those details may have affected the decision regarding disciplinary action, suggests that those new details are not true and were made up to bolster Respondent's story.

25. Respondent urges that P.P.'s allegations should not be believed, because she never told Respondent that she was uncomfortable with their hugs. Respondent suggests that if P.P. were truly uncomfortable after her freshman year, she never would have enrolled for advanced chorus for the 2011-2012 school year because his class is an elective.^{3/}

26. P.P. never told Respondent that she did not want him to hug her and never expressed her discomfort to him. P.P. explained that she felt like she was supposed to trust her teacher, and she would feel uncomfortable saying something to him because she would feel even more uncomfortable every time she saw him after that. Acknowledging, as Respondent does, that P.P. was one of the best singers at Lehigh, it is understandable that after her freshman year, P.P. would have enrolled in Respondent's advanced chorus class, despite her discomfort. While chorus may have been technically an elective, there were no other options besides taking Respondent's classes for talented singers wanting to pursue their area of interest and talent.

27. M.M., a 15-year-old female sophomore who was a friend of P.P.'s, was an eyewitness to one of Respondent's improper hugs with P.P. M.M. is a quiet, soft-spoken student who took Respondent's chorus classes as a freshman and as a sophomore. M.M. testified that she saw Respondent hug P.P. with his hand on her buttocks. She did not think much about that until, in

conversation with P.P. and B.G, P.P. was describing an incident outside the classroom when Respondent had pulled her close and grabbed her buttocks, when B.G. piped up that that had happened to her, too. That is when M.M. told P.P. and B.G. that she had seen Respondent hugging P.P. and grabbing her buttocks. M.M. also said that C.R., a senior, told M.M. that she also had something happen with Respondent.

28. After this discussion, M.M. went home and told her stepmother what P.P. and B.G. had said about Respondent, what M.M. had observed, and what C.R. had told her about Respondent. M.M.'s stepmother contacted Lehigh to report the matter. Immediately thereafter, on November 3, 2011, M.M., P.P., B.G., and C.R. were called down to the assistant principal's office. The assistant principal, Mr. McKeever, separately interviewed M.M., P.P., and B.G.; C.R. was not in the class when she was called. Mr. McKeever had the three girls write down what they told him in the interviews. The students were separated throughout this interview-statement process. M.M.'s written statement is consistent with her testimony, that she witnessed Respondent hugging P.P. in Respondent's office about two weeks earlier (i.e., approximately October 20, 2011), and that she saw "Mr. Sparrow growp [sic] P[.]'s butt while hugging her."^{4/}

29. M.M. testified that Respondent never hugged her or made any other overtures toward her. M.M. said that she and Respondent were not close at all.

30. In his pre-determination conference, Respondent characterized M.M. as "noble." By this, he meant that M.M. may have offered to support the allegations of P.P. and B.G. to help them out and be their friend after seeing the other students treating P.P. and B.G. badly after their allegations against Respondent came to light. However, M.M.'s statement came before any allegations against Respondent came to light; indeed, M.M. was the catalyst for the information coming to light by telling her stepmother, who reported the matter to the school.

31. Trying another tack to cast doubt on M.M.'s testimony, Respondent suggested that perhaps M.M. was just looking to share in the spotlight by testifying against him. He added that M.M. had academic troubles in his keyboard class and was not a very good student. However, M.M. transferred to a different school shortly after Respondent was suspended and was not at Lehigh any longer when she testified in this case. Respondent's attempts to discredit M.M. were ineffective.

B.G.

32. B.G. is a 15-year-old female, who was P.P.'s best friend and a fellow sophomore at Lehigh in the 2011-2012 school year.

33. From the first time B.G. met Respondent in her freshman year taking his beginning chorus class, B.G. observed that Respondent looked at girls in ways she thought were inappropriate for a teacher, such as "checking them out" when they turned away or staring at girls' chests when standing together talking.

34. B.G. did not discuss her observations with P.P. that year. However, she did tell her mother.

35. Besides B.G.'s observations of Respondent looking at female students inappropriately, there was nothing else about Respondent's conduct that caused B.G. concern that first year.

36. B.G. described an incident with Respondent occurring on October 31, 2011, that made her extremely uncomfortable. Since this incident was so recent at the time B.G. and the others were interviewed and wrote statements on November 3, 2011, B.G. was able to provide a very detailed description and repeated the same details in her testimony in this case. Respondent acknowledged the incident and admitted many of the details.

37. B.G. had to see Respondent after class to obtain a signed pass authorizing her absence from class a day or two earlier. The bell had rung, and B.G. was waiting at his office while he finished up with other students. After everyone else had left the classroom, Respondent went into his office and sat at his desk. B.G. stood in the doorway while he signed the pass.

38. Respondent then told B.G. to "come here," directing her to stand next to him while he remained seated. B.G. had a large book bag hanging from her right shoulder, and she stood next to Respondent's left side. Respondent then reached his arm under her book bag and touched her buttocks on the way to stretching his arm under her book bag to encircle her around her lower waist area. That made her very uncomfortable. She thought maybe Respondent touched her buttocks by accident; however, that was somewhat difficult to accept because as she made clear, "it was not a brush past. It was like reaching around and like touching as you're going."

39. Respondent, with his arm around B.G., started talking to her about a piano performance she had that morning at which she had gotten nervous. With Respondent's arm around B.G., he told her that she needed to get over that if she wanted to be a performer some day. Then Respondent retracted his arm, pulling it back under her book bag. This time, he "kind of grabbed as he went"--"it was pretty much a firm grasp all the way back around." This made her extremely uncomfortable and she did not know what to do, so she gave a nervous laugh. As she noted at that point, if it had been an accident, she would have expected him to quickly apologize and back away, but that did not happen. As she stated, "But if you think about it, most people, most teachers wouldn't hug a student anyways." Nonetheless, like P.P., B.G.

testified that she honestly could not say that Respondent's intention was to do something inappropriate.

40. B.G. left to go to her next class, but was preoccupied thinking about what had happened, worrying about what she was supposed to do, and talking to a boy sitting next to her about what had happened and what he thought she should do. She was concerned about whether she should report the incident to an administrator, because, as she put it, she did not want to ruin Respondent's life. B.G. told her mother about this incident that night or the next night. They discussed whether B.G. should report the incident and that it was a big deal that could ruin his life. B.G. also told M.M. about the incident and M.M. told her stepmother, who reported the matter to assistant principal McKeever, triggering the investigation that led to this proceeding.

41. Respondent acknowledged the October 31, 2011, encounter in his office, alone, with B.G. He admitted that he was the one who asked her to come stand next to him while he was seated and that he put his arm around her despite the fact that his arm would have been aligned with her hips and rear end. His rationale was that he thought she needed comforting while he talked with her about getting nervous at her piano performance. However, it was not as if she came to see him about the performance or said anything to indicate she was upset about it

when she came to his office--she just needed him to sign her absentee pass. Respondent initiated the proximity, then brought up the subject of the piano performance after he had already engaged B.G. in the "comfort" grip that did anything but comfort her.

42. At Respondent's pre-determination conference, he admitted that B.G.'s statement describing the setting was accurate, including the fact that he was seated at his desk and beckoned her to come stand next to him, the fact that she had a book bag on her shoulder, and the fact that he reached under her book bag to put his arm around her waist. While Respondent did not admit to having purposely grabbed or touched her buttocks, he admitted that he had to get his hand back, and in pulling his hand down from B.G.'s waist and out from under her book bag, he could have brushed or touched her buttocks. Indeed, it may have been physically impossible for Respondent to retrieve his arm from across B.G.'s body and under a large book bag without his hand sliding across her buttocks.

43. At the final hearing, four months after the pre-determination conference, Respondent modified his story regarding the October 31, 2011, incident with B.G. Respondent testified at hearing that he did not put his arm around B.G.'s waist; instead, he said that his hand was perhaps at the small of her back. Of course, from B.G.'s description, with which Respondent agreed at

the pre-determination conference, the small of B.G.'s back was probably covered by her book bag. Therefore, Respondent also changed the part of his story where he had agreed with B.G.'s description that Respondent snaked his arm under her book bag. At the final hearing, he claimed that he did not reach under the book bag, because he remembered that her book bag was on her left side. Respondent reiterated that "[i]f there was any incidental contact [with her buttocks], that's what it was, in passing."

44. Respondent's changed story was not credible. As described three days after the incident by B.G., confirmed in her testimony and confirmed in all salient respects by Respondent's admissions in the pre-determination conference, Respondent's physical contact with B.G. on October 31, 2011, was intentional and clearly inappropriate. Respondent's attempt to change the story supports the finding that he acted intentionally. Respondent attempted to eliminate the facts showing that he put himself in a position that virtually assured that his hand would have to slide across B.G.'s buttocks at least twice, once on the way out to the left side of her waist and once on the way back. Respondent's improper touching was distressing to B.G. and understandably so.

45. B.G. described one other time earlier in the 2011-2012 school year when Respondent touched her in a way that made her uncomfortable. This incident occurred while B.G. was sitting at

a piano practicing, alone, in one of the small piano practice rooms. Respondent came in and reached over her shoulders to put his hands on the keys, which he had done several times before, to demonstrate how to correctly play the piece she was practicing. In this position, his upper arms were touching her shoulders. After about ten seconds of demonstrating on the piano keys, he brought both arms back, and while doing so, his left hand touched the area of her chest right above her left breast and then continued up onto her shoulder. B.G. said that Respondent did not actually touch her breast, but it was close enough to make her feel uncomfortable, especially in such a small room with him standing right behind her and no one else there.

46. The door to the piano practice room was open, and Respondent's hand encounter with the area above B.G.'s left breast was witnessed by C.R., who had walked by and looked in the room because she was looking for Respondent.

47. B.G. told her mother about this incident in the piano practice room, but did not tell anyone else. B.G. did not mention this incident in her written statement, because her focus was on what she considered the more significant incident, when Respondent did not just come close to touching a private body part; he actually grabbed her buttocks, not once, but twice.

48. When asked if she had witnessed any conduct of Respondent's with another student that she considered

inappropriate, B.G. referred to the way he would always hug P.P. B.G. testified that she never saw Respondent hug other students. B.G. did not ever witness any inappropriate interaction between C.R. and Respondent, but C.R. told her about things.

49. Lehigh has been an uncomfortable place for B.G. since Respondent was suspended in November 2011. A group of students have banded together to support Respondent, even going so far as to discuss making up "Free Sparrow" tee-shirts to wear in protest of his suspension, but they abandoned that idea when Respondent told them that they could get in trouble if they did that. There has been a lot of animosity directed to the three girls--P.P., B.G., and C.R.--who gave the interviews and statements reporting incidents of Respondent's inappropriate conduct with each of them. B.G. testified that she and the others have been accused of lying, and she cannot understand why. Even though apparently everyone knows the details of what Respondent was accused of, B.G. has not discussed the details with others, and if asked by others about the details, she has denied them because she was told she should not discuss the subject with anyone.

C.R.

50. C.R. was a 17-year-old female senior at Lehigh for the 2011-2012 school year; by now, she has graduated. She was a vocal major and took many classes over the years in chorus and piano, which were her musical areas of interest.

51. C.R. did not attend Lehigh as a freshman, but has been there for three years and took Respondent's chorus and keyboard classes in each of her three years.

52. C.R. did not know P.P., B.G., or M.M. before her senior year, when they were in Respondent's advanced chorus class together. The three sophomore girls described C.R. as more of an acquaintance than a friend.

53. C.R. got along fine with Respondent and had no problems with him or his conduct in either her sophomore or junior years. By the end of those two years, C.R. had grown comfortable with Respondent, as he had been her music teacher for a while.

54. In C.R.'s senior year, she had four classes with Respondent: two different keyboard classes, AP music theory, and advanced chorus. According to Respondent, because C.R. had two keyboard classes, he often used her as his aide during the second keyboard class, because she had already learned what she needed to in the first class. Respondent would have C.R. do copying, run to the library, and clean his office.

55. Unlike in her first two years at Lehigh, in the first few months of her senior year, C.R. experienced numerous problems with Respondent, including improper physical contacts and inappropriate comments by Respondent.

56. C.R. described multiple encounters with Respondent while she was playing the piano or keyboard, either in the

private piano room or another practice room. At first, C.R. would be seated in a chair at the piano or keyboard playing, and Respondent, while standing, would reach one hand to the keys to show her the proper position and would rest his other hand on her chest area, below her shoulder and above her breast. When this first began in the early part of C.R.'s senior year, Respondent's "resting" hand would be towards the upper part of her chest, closer to the shoulder, but with each successive time, his hand went further and further down until it was resting on her breast. C.R. estimated that she was touched inappropriately this way by Respondent more than ten times in the first few months of the 2011-2012 school year until Respondent was suspended in November.

57. C.R. testified that about halfway through the progression of these keyboard incidents, she was walking by the door to the piano practice room and saw through the door that Respondent was engaged in a similar hand-to-chest area encounter with B.G. Afterwards, C.R. approached B.G. and told her that Respondent does the same thing to her. C.R. said she wanted B.G. to know that she needed to tell someone because she was only a sophomore.

58. When asked why C.R. did not tell Respondent to stop, she said, "I wouldn't know how to approach someone like that. I wouldn't, I wouldn't be able to tell you please don't touch my

breast. It would make me very uncomfortable. I would rather just suck it up and deal with it."

59. Respondent's description of his keyboard encounters was somewhat different than C.R.'s and B.G.'s descriptions, but he admitted key parts of those descriptions. Respondent explained that he frequently assisted his keyboard students while they are seated in a single chair at a piano or keyboard. Respondent chooses to remain standing, instead of pulling up another chair. Respondent emphatically denied standing behind his students; he claims to have always stood next to the playing student. However, Respondent admits that he would reach over the student (from the side) and lean over to the keyboard to demonstrate with one hand how to position the fingers on the keys. Respondent also admits that providing assistance this way puts him in a precarious position, so that he has to use his other hand to brace himself on the student's shoulder. Respondent said that he puts his hand "on their shoulder that's nearest me or on the shoulder that's on the opposite side of me," which means that Respondent would put an arm around the playing student, a strange way of bracing himself with his hand on their far shoulder.

60. Thus, Respondent admits regularly touching C.R. and B.G., and presumably all of his other keyboard students, with his hand braced on their shoulders for the duration of the piece the student is playing. The only part Respondent disputes is the

hand slippage from its shoulder perch down to the chest area in B.G.'s case, and still further down to the breast in C.R.'s case. However, C.R.'s and B.G.'s testimony was otherwise undisputed, and each of their stories was corroborative of the other's. Respondent's denial was not credible.

61. In addition to the keyboard encounters, on multiple occasions in the few months before Respondent was suspended, C.R. would go to see Respondent in his office and he would ask her to come stand by him when he was sitting at his desk. When C.R. complied, Respondent would wrap his arm around her waist and rub or stroke her buttocks and thigh, while showing her something on the computer or telling her something he wanted her to do. C.R. estimated that these office encounters occurred ten or 15 times, until C.R. started trying to avoid going to his office or ignore his requests to come stand next to him. C.R. also began leaving Respondent's classroom between classes, instead of just staying in the room where she also had her next class with Respondent. To avoid encounters with Respondent between classes, C.R. would wait in the bathroom until students for the next class would arrive, and then she would join them for her next class.

62. When asked whether she knew if Respondent intentionally touched her inappropriately, C.R. responded: "I think if a man touches you on your breast and on your hips and boob and your butt that he is being inappropriate."

63. Once again, Respondent admitted frequent encounters with C.R. in his office, because, after all, he put her to work cleaning it and running errands for him. In addition, Respondent admitted that he would make physical contact with C.R., putting his arm around her while she stood next to him when he was seated at his computer. Once again, Respondent's description of these encounters stopped a bit short of C.R.'s version. According to Respondent, he would reach his arm (awkwardly) around and upward so that he could pat C.R. on her back for emphasis as he showed her something on the computer or showed her paperwork that he wanted her to copy. Once again, Respondent testified that although it was possible that his hand had an accidental encounter with C.R.'s buttocks, any such accident was just that--accidental.

64. C.R. also described Respondent's inappropriate conduct one day in her AP music theory class, in the presence of four or five other students. On that day, any time C.R. had a question or needed help, Respondent made her hug him before she could ask her question. Respondent also kissed her forehead when she answered a question correctly. She found this behavior objectionable. Respondent did not address this aspect of C.R.'s testimony, which stands unrebutted.

65. C.R. also recounted her discomfort with Respondent's running brassiere commentaries. This string of incidents started

during homecoming week, when there was a celebrity dress-up day on which C.R. went to class wearing an outfit that featured a neon-colored bra. Respondent made a joking comment, saying something like, "C., why is your bra so bright?" C.R. did not take this comment in the wrong way, because Respondent said it jokingly.

66. What bothered C.R., however, was the progression of Respondent's brassiere comments and touchings that followed after that day. For example, when C.R. wore a low-cut or v-neck shirt, Respondent stood above her and looked down her shirt, and made comments such as, "I'm glad you're not wearing your neon bra today"; or "this bra is much nicer." Once when C.R.'s bra strap was showing, Respondent pushed the bra strap over and repeated one of the comments about the color of her bra. Respondent gave a slightly different story. He testified that after the neon bra joke, on another day when C.R.'s shirt had slipped and exposed her bra strap, he moved her shirt to cover up the bra strap, while commenting that he was glad she was not wearing the neon bra today. Respondent's version is almost as bad as C.R.'s description. Respondent has no business rearranging clothing of his female students in such a personal manner, nor commenting on their intimate apparel.

67. Respondent often gave nicknames to his students, naming them some kind of "smurf" that suited them, such as "good singer

smurf." C.R. described an encounter with Respondent that bothered her, when he pushed up the bottom part of her shirt in the back and said, "We should call you "love handle smurf."

68. Finally, C.R. described what she thought was the final incident with Respondent before his suspension. This incident occurred in the piano room. C.R. had gone in the room between classes when no one else was there. She was tired from soccer practice, so she moved several chairs together so they were touching. She laid down across the seats, which formed a kind of bench. Her shirt had ridden up so some of her waist was exposed, though she had a jacket on over it. Respondent came into the room, pushed up her jacket, and started rubbing her waist and sides. C.R. was uncomfortable so she jumped up, said she had to go do something, and walked out.

69. Respondent admitted that he found C.R. lying down as she had described. Respondent testified that he used his hands to rhythmically beat on her back as he told her to get up, that it was time to get to work. Respondent denied pushing up C.R.'s jacket and he denied that his hands made contact with her skin.

70. Respondent offered a new fact at the final hearing regarding this incident that he did not mention at the pre-determination conference. According to Respondent, after he had been beating on C.R.'s back, she commented, "oh, this feels better than my boyfriend. And at that point I stopped, because

that was an inappropriate statement, and that was not the nature of any of that. I left, and that was it." He later elaborated on why he stopped: "Because that was very inappropriate, and that was not--that was not my intention to make it--for her to compare me to her boyfriend or anything like that was way above-- I mean way crossed the line."

71. Respondent also offered his opinion that the reason why C.R. had said all these things about him was because he thinks she had a crush on him and was jealous, or felt threatened, when she saw Respondent touching B.G.'s chest while she was playing piano. This too was a new twist to Respondent's final hearing testimony that Respondent did not see fit to share at his pre-determination conference. No other testimony was offered to support Respondent's new theory; none of the witnesses testifying on Respondent's behalf were even asked if they knew about C.R.'s supposed crush on Respondent. Respondent's unsupported speculation lacks credibility, in part because C.R. was not the one to report Respondent to the school administrators; in fact, she was the last of his victims to give a statement.

General Defenses

72. An overall theme of Respondent's attempt to refute the allegations against him was that the three young ladies misunderstood his intentions, which were not sexual in nature. Respondent attempted to prove that B.G., P.P., and C.R. were

impressionable and that each of them was influenced to embellish what happened because of the stories that each of them told about Respondent. This effort was ineffective. Respondent, having admitted the core facts of each of the young ladies' allegations, was not credible in his denials of some of the details, as found above. Respondent's admission of serial "accidents" suggests that the incidents were no accident at all.

73. Respondent also attempted to cast doubt on the allegations of the three young ladies by emphasizing the visibility of his office from the classroom and the partial visibility of the classroom and the piano and keyboard practice rooms from the hall, through window panels on the tops of the doorways. Respondent also attempted to suggest that there were always students in these areas. While the testimony established that most of Respondent's inner office would be visible to persons in the classroom, the testimony also established that there were times when Respondent would be in his office with a student and no one else around. The same is true with respect to the piano and keyboard rooms--the testimony established that these rooms may have been at least somewhat visible, but others were not always around. All of the student witnesses, including the four witnesses who attempted to support Respondent with their testimony, confirmed this fact; each of them had, on occasion, been alone with Respondent.

74. The witnesses testifying in support of Respondent think highly of him as a teacher and do not believe the allegations against him. However, their testimony lacked substance to refute the allegations in any respect. For example, all of Respondent's student witnesses admitted that they were not always with B.G., P.P., M.M., and C.R. when those four girls were in Respondent's presence. All but one of Respondent's student witnesses said that they would be surprised to hear Respondent describe himself as a hugger. One student witness never saw Respondent hug any student; another student witness said that Respondent hugged everyone.

75. The shame of it is that Respondent has been a very good and talented teacher. Indeed, after he was suspended, each of the young ladies who made statements against Respondent stated publicly that they wished he was still teaching because he was such a good teacher (and also because they did not think much of his replacement). But each of these young ladies made clear that they were speaking only of teaching ability, and if he had actually come back to teach them, they would have felt very uncomfortable because of his misconduct and because they spoke up against him.

Prior Notice

76. Respondent makes much of the fact that the three students whose allegations are the predicate for the charge of

misconduct never complained to him about his conduct, so that he could change his conduct to address their concerns.

77. Under the circumstances found above, notice should not have been required for Respondent to realize that serial "accidents" in which his hands found themselves on the buttocks of female students and other "accidents" in which his bracing hand slipped from shoulder perches downward in the direction of the breasts of female students, was improper conduct on his part.

78. Moreover, Respondent admitted that he was indeed on notice about Lehigh's concern with him breaching body boundaries with female students. Respondent testified that he met with Lehigh Assistant Principal Niki Carthan sometime during the 2010-2011 school year, about a student complaint. Ms. Carthan informed Respondent that a student had complained to another teacher that Respondent made her feel uncomfortable. That teacher reported the complaint to Ms. Carthan, who spoke with Respondent about it.

79. The student who had complained was a senior who was going to apply to FAMU, where Respondent attended. Respondent invited the student to his office to pull up her application essays on his computer. According to Respondent, the student was sitting down at his computer, and he reached around her for the mouse which was on the other side of her. He claims he did not touch her, but he acknowledged that by the nature of him reaching

around her to click on the mouse that was on her other side and "being in close proximity to her looking at the computer screen, it might have made her uneasy"

80. Respondent testified that Ms. Carthan warned him to be more careful and that he needed to be "very cognizant of your spacing" when it came to students.

81. Rather than heeding Ms. Carthan's warning, Respondent was plainly less careful, not more careful. He did not learn his lesson from his close encounter that violated body space boundaries and made the FAMU-bound student uneasy enough to complain during the 2010-2011 school year. Instead, that too-close encounter in 2010-2011 progressed to numerous incidents of improper physical contacts by Respondent, with actual touching of private body parts, making three different young ladies very uncomfortable, fearful, and anxious about encounters with the one teacher who could teach them the music they loved.

CONCLUSIONS OF LAW

82. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2011).^{5/}

83. In this proceeding, Petitioner seeks to terminate Respondent's employment. Petitioner bears the burden of proof, and the standard of proof is by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476, 477 (Fla. 2d

DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990).

84. Pursuant to section 1012.33(1)(a), Florida Statutes, "just cause" is the standard established for termination of instructional personnel. That is the same standard set forth in the applicable Collective Bargaining Agreement. "Just cause" is described in section 1012.33(1)(a), in pertinent part, as follows:

Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, . . . gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

85. Petitioner has charged Respondent with committing acts that constitute misconduct in office, as defined by Florida Administrative Code Rule 6A-5.056(3) (formerly rule 6B-4.009(3)).^{6/} That rule provides:

Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C. and 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.

86. Rule 6B-1.001, incorporated into the rule definition of "misconduct in office," sets forth the Code of Ethics of the Education Profession in Florida, as follows:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.

(3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

87. The Petition also alleges that Respondent's misconduct violated Petitioner's promulgated policies 5.02 and 5.29. In policy 5.02, petitioner has adopted its own professional standards which are similar to rule 6B-1.001. This policy establishes "high standards and expectations for [Petitioner's] faculty and staff, including: . . . (2) Dedication to high ethical standards[; and] (3) Establishment of high standards in educational practice." The policy warns that "[a]n employee's

failure to meet the above standards and expectations may result in discipline, up to and including termination of employment."

88. Policy 5.29, regarding complaints against employees, provides in paragraph (1) that "[a]ll employees are expected to exemplify conduct that is lawful and professional and contributes to a positive learning environment for students."

89. Petitioner proved that Respondent's conduct constituted misconduct in office as defined in rule 6A-5.056 and that such misconduct also violated Petitioner's policies 5.02(2) and (3) and 5.29(1). The common thread of these three rules is that teachers are held to high ethical standards and their conduct must be beyond reproach, particularly when dealing in the school setting with students whose care has been entrusted to the teachers. A teacher falls below that high ethical bar by failing to exemplify professionalism at all times in dealings with students, so as to foster a positive learning environment for students. Respondent's conduct failed to live up to the ethical and professional standards expected of, and imposed on, teachers.

90. A teacher's ineffectiveness in a school system may be inferred from the teacher's misconduct. See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127, 128-129 (Fla. 2d DCA 2000) (ineffectiveness patent and obvious from the misconduct). The misconduct in this case involves Respondent's inappropriate touching of students and inappropriate comments to students,

making the students anxious and fearful of being with Respondent. Yet because of Respondent's authoritative position as their teacher, these students believed they were supposed to trust him and did not think they could talk to him about their discomfort with his liberties. As in Walker, supra, the impairment of Respondent's effectiveness as a teacher in this school system is "patent and obvious." As in Brevard Cnty. Sch. Bd. v. Gary, Case No. 03-4052 (Fla. DOAH June 24, 2004), "This misconduct goes to the very heart of a teacher's relationship to his students. As such, it can be inferred that such conduct impairs [Respondent's] effectiveness in the [Lee] County School system." RO at 13, ¶27.

91. Respondent argues in his defense that his admitted frequent physical contact with the three students, whose statements gave rise to this proceeding, was misunderstood by them in that he did not intend anything sexual. However, it is Respondent who misunderstands. Respondent admittedly and repeatedly put himself in situations in which there was at least a high likelihood, if not a certainty, that a blatantly improper "accidental" encounter would result between Respondent's hand and a young lady's buttocks or between Respondent's hand and the slippery slope southward from a young lady's shoulder.

92. Respondent admitted to this conduct. He admitted that from his seated position at his desk, he would encourage ladies to stand next to him, and he would reach his arm around them.

Even if, as he tried to demonstrate, he reached out (at buttocks level) and then strained his arm to reach up and grasp them around their waist, Respondent conceded that at some point he would have to retract his arm, and the hand would, as a matter of physics and gravity, "accidentally" graze the buttocks on its way back where it belonged. This happened too many times to accept Respondent's claim of "accidents."

93. Respondent also admitted that rather than sit next to his keyboard students on a bench or another chair pulled up to the keyboard where he could demonstrate the proper positioning of fingers on the keys, Respondent would stand next to the seated students, reach one hand to the keyboard, and "brace" himself by placing his other hand on their shoulders. This was apparently such a precarious position--since Respondent was worried that he needed to brace himself--that it was easy and common for Respondent's bracing hand to slip forward and down.

94. In a disciplinary case against a band director's teaching certificate, which was similar factually to this case, then-Hearing Officer Charles C. Adams concluded as follows in language that is equally applicable here:

The Respondent's improper physical contact with his students was a breach of his obligation to the public and to his students. By engaging in such improper conduct, the Respondent eroded his students' confidence in him, placing his students in fear and eroding the faith and trust of his

students, their parents and the
administration.

State, Dep't of Educ., Educ. Practices Comm'n, and Betty Castor
as Comm'r of Educ. v. Edward M. Haley, Case No. 87-0092 (Fla.
DOAH Feb. 1, 1988; Fla. EPC April 5, 1988), RO at 5, ¶ 37.

95. There is "just cause" to terminate Respondent's
employment, within the meaning of section 1012.33(1)(a).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of
Law, it is RECOMMENDED that Petitioner, Lee County School Board,
enter a final order terminating Respondent, Willie Sparrow's,
employment.

DONE AND ENTERED this 18th day of July, 2012, in
Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of July, 2012.

ENDNOTES

^{1/} Mr. Givens is the pastor at Respondent's church, and his proffered testimony addressed his observations of Respondent in the church setting. However, Mr. Givens has no knowledge of any facts relevant to the allegations in the Petition, and none of his observations of Respondent occurred at school or in connection with school-related functions. At the beginning of the final hearing, Petitioner submitted a motion in limine to keep out such general character testimony, because Respondent's general character is not at issue; rather, the Petition alleges specific conduct that is at issue. Petitioner's objection to Mr. Givens' testimony was sustained, but Respondent was allowed to proffer Mr. Givens' testimony, and because the motion in limine was filed too late for Respondent to respond before hearing, the parties were invited to brief the issue in their proposed recommended orders. Instead of arguing the point further, Respondent's proposed recommended order concedes the correctness of Petitioner's motion in limine, and, accordingly, Respondent withdrew the proffer of Mr. Given's testimony.

^{2/} Respondent also gave a different explanation for stopping hugs with P.P. shortly before he was suspended. He claimed that it "struck" him that their hugs had gotten to be a "Mr. Sparrow likes me better than the rest of you kids kind of thing, a show-off thing" for P.P., and that is when he stopped "with hugging her and her hugging me and everything else." However, according to B.W. and S.M., both of whom testified on Respondent's behalf, P.P. frequently would hug Respondent, and there was no change in the way P.P. interacted with Respondent up to the time when he was suspended.

^{3/} Respondent also points to a field trip taken near the end of P.P.'s freshman year, the 2010-2011 school year, as evidence that P.P. was not being honest about her discomfort. Respondent and several adult chaperones each drove vans with students to Busch Gardens. P.P. and her best friend, B.G., were passengers in Respondent's van, along with four other students. P.P. testified that she and B.G. ended up in Respondent's van because no other van had two open seats to accommodate both of them and they did not want to be split up. By all accounts, nothing inappropriate occurred during this field trip. However, neither the fact that P.P. and B.G. rode in Respondent's van because no other van could accommodate them, nor the fact that there was no misconduct during this trip, undermine P.P.'s testimony of her discomfort with Respondent in her freshman year, much less her testimony of

Respondent's improper physical contacts with her in the first few months of her sophomore year.

^{4/} M.M. clarified in her testimony that the word she meant to use in her written statement was "grope." She backtracked just a bit from the written statement, while confirming that she observed Respondent's hand on P.P.'s buttocks. M.M. testified that while she guessed that what she saw was "sort of like, oh, groping, . . . I really just saw his hand there [on her buttocks]." M.M. also agreed with a question by Respondent's counsel that asked whether it was conceivable that Respondent's hand was on P.P.'s buttocks by accident.

^{5/} All statutory references are to the Florida Statutes (2011), the law in effect when the hearing took place. It is noted that the events giving rise to this disciplinary action occurred, at least in part, when the 2010 statutes were still in effect; however, between 2010 and 2011, there were no material changes to the statutory and rule provisions relied on in the charges against Respondent.

^{6/} The Petition for Termination of Employment, which serves as the administrative complaint in this case, charges Respondent with engaging in acts that constitute misconduct in office as defined by rule 6B-4.009(3). The rule quoted herein is the same substantive rule that was in effect at all times pertinent to this proceeding. Without amendment, the rule was transferred and reassigned a different rule number, 6A-5.065. The renumbered rule was very recently amended, effective July 8, 2012. The newly amended rule, which contains a new and substantially broader definition of "misconduct in office," is not applicable to Respondent's prior conduct.

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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.