

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GERARD ROBINSON, AS )  
COMMISSIONER OF EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 12-2481PL  
 )  
RODERIC ANDERY GADSON, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Ft. Myers and Tallahassee, Florida, on January 11, 2013, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioner: Dean Johnson, Esquire  
Brooks, LeBoeuf, Bennett,  
Foster and Gwartney, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether Respondent committed the violations alleged in the Administrative Complaint, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On or about March 5, 2012, Petitioner, Gerard Robinson, in his capacity as Commissioner of Education (Petitioner), filed an Administrative Complaint against Respondent, Roderic Andery Gadson (Respondent). Respondent timely filed his request for administrative hearing, and on July 17, 2012, the matter was referred to the Division of Administrative Hearings (DOAH) for a disputed fact hearing. The disputed fact hearing was held on January 11, 2013.

During the final hearing, Petitioner offered the testimony of David P. LaRosa. Respondent did not appear for the final hearing. Petitioner's Exhibits 1 through 7 were admitted into evidence.

A Transcript of the proceeding was filed with DOAH on January 24, 2012. Neither party filed a proposed recommended order.

FINDINGS OF FACT

1. During all times relevant hereto, Petitioner served as head of the Florida Department of Education, the state agency charged with the responsibility of investigating and prosecuting complaints of violations of section 1012.795, Florida Statutes (2010),<sup>1/</sup> against teachers holding Florida educator's certificates.

2. Respondent holds Florida Educator's Certificate 801726, covering the area of general science, which is valid through June 30, 2013. No evidence was presented indicating that Respondent was previously the subject of disciplinary action by either Petitioner or the School District of Lee County, Florida (School Board).

3. During the 2010-2011 school year, Respondent, who was then employed by the School Board, told female Lee County students E.B. and A.C. that they were "hot." On or about April 20, 2011, Respondent sent a text message to female student E.B. that read, "This is Rod, you are so hot, all I can do is smile when I see you. This is our secret, don't tell anyone. This is my personal number." Respondent's reference to the female students as being "hot" was intended to convey to the students that Respondent found them to be sexually attractive.

4. On April 21, 2011, witnesses reported to Mr. LaRosa, principal of Fort Myers High School, that a text message that they considered inappropriate was seen by them on student E.B.'s cell phone. The text message was allegedly sent to E.B. by Respondent.

5. Soon after receiving the complaint, Mr. LaRosa contacted Respondent and met with him to discuss the allegations. Respondent prepared a written statement and admitted therein to his "exercise of poor judgment." According to Respondent's

written statement, his only intention, as to the allegations, "was to encourage and compliment [the] two young ladies."

Contrary to his declaration of pure motives, had Respondent's intentions been benign, then he certainly would not have told E.B. that "This is our secret, don't tell anyone."

6. On April 21, 2011, Respondent was suspended with pay pending the outcome of the School Board's investigation of the allegations. On April 29, 2011, Respondent tendered to the School Board his notice of resignation from employment.

#### CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012).

8. Petitioner seeks disciplinary action against the Florida Educator Certificate held by Respondent. Petitioner, therefore, has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

9. Section 1012.795(1) provides, in relevant part, as follows:

- (1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3)

for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

\* \* \*

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

\* \* \*

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

A. Gross Immorality/Moral Turpitude

10. In Count One of the Administrative Complaint, Petitioner alleges that Respondent is "in violation of section 1012.795(1)(d), Florida Statutes, in that Respondent [is] guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education."

11. No rule defines the term "gross immorality." However, Florida Administrative Code Rule 6A-5.056(2) contains the following definition of the term immorality:

(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.

12. "Gross immorality" has been defined to mean an act of misconduct that is serious, rather than minor in nature; it is a flagrant disregard of proper moral standards. See Educ. Practices Comm'n v. Knox, 3 FALR 1373-A (Fla. Dep't of Educ. 1981); and Frank T. Brogan v. Eston Mansfield, Case No. 96-0286 (Fla. DOAH Aug. 1, 1996; Fla. DOE/EPC Oct. 18, 1996).

13. Petitioner proved by clear and convincing evidence that Respondent's sexually suggestive comments, and his related request to the student that she refrain from telling anyone about his overtures, rose to the level of gross immorality.

B. Misconduct and the Principles of Professional Conduct

14. Counts Two, Three, Four, and Five of the Administrative Complaint allege collectively that Respondent violated the Principles of Professional Conduct for the Education Profession in Florida, as set forth in Florida Administrative Code Rule 6B-1.006(3) (a) and (h), and the violation of the same was so severe that it seriously reduced his effectiveness as an employee of the School Board within the meaning of section 1012.795(1)(g).

15. Rule 6B-1.006 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.

\* \* \*

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

16. Petitioner established by clear and convincing evidence that Respondent, in making sexually suggestive comments to students E.B. and A.C., violated rule 6B-1.006(3) (a).

17. Also, Respondent's statement to student E.B. that she is "hot" was more than a benign, inappropriate comment. Respondent paired the reference to E.B. being hot with a request that she keep his interest in her a "secret." Respondent also provided E.B. with his personal phone number. These acts establish that Respondent was attempting to cultivate, in an abhorrent sense, an illicit relationship with E.B. in furtherance of his prurient interest in the student. Petitioner established by clear and convincing evidence that Respondent's actions violated rule 6B-1.006(3)(h).

18. As previously noted, section 1012.795(1)(g) provides for discipline against an individual's educator certificate in instances where the individual's effectiveness as a school board employee has been seriously compromised by the individual's conduct. Given the nature and seriousness of Respondent's conduct, it is reasonable to infer, as contemplated by section 1012.795(1)(g), that Respondent's effectiveness as an employee of the School Board has been seriously impaired. See Walker v. Highlands Cnty. Sch. Bd., 752 So. 2d 127 (Fla. 2nd DCA 2000); and Purvis v. Marion Cnty. Sch. Bd., 766 So. 2d 492 (Fla. 5th DCA 2000) (reduced effectiveness may be inferred from the nature and seriousness of the conduct). Petitioner has met its burden.



C. Penalty

19. In the Administrative Complaint, Petitioner generically "recommends that the Education Practices Commission impose an appropriate sanction against Respondent's educator's certificate. . . ." Petitioner did not file a proposed recommended order and otherwise does not make a specific recommendation regarding the appropriate sanction against Respondent's educator's certificate. Given the circumstances present in the instant matter, it is reasonable that Respondent's educator's certificate be suspended for a period of one year, followed by one year of probation. The Education Practices Commission shall establish the terms and conditions for both the suspension and probation. In making this recommendation, the undersigned considered the Disciplinary Guidelines set forth in Florida Administrative Code Rule 6B-11.007.

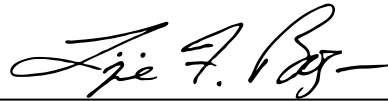
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Education Practices Commission enter a final order finding Respondent guilty of the violations alleged in Counts One, Two, Three, Four, and Five of the Administrative Complaint.

It is further RECOMMENDED that the final order suspend Respondent's Florida educator's certificate for a period of one year, to be followed by a one-year period of probation. The

terms and conditions of Respondent's suspension and probation shall be established by the Education Practices Commission.

DONE AND ENTERED this 14th day of February, 2013, in Tallahassee, Leon County, Florida.



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LINZIE F. BOGAN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of February, 2013.

ENDNOTE

<sup>1/</sup> Unless otherwise indicated, all rule and statutory references are to the (2010) versions, which were in effect at the time of the alleged misconduct.

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.