

STATE OF NORTH CAROLINA
COUNTY OF MARTIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 EDC 11864

Dwayne White,)
Petitioner,)
)
vs.)
)
North Carolina Department of Public)
Instruction, North Carolina State Board of)
Education,)
Respondent.)

DECISION

This matter came on for hearing before Administrative Law Judge Beecher R. Gray on May 25, 2012, in Williamston, North Carolina. Respondent filed a proposed decision on June 29, 2012. Petitioner filed proposed additions to that proposed decision on June 29, 2012.

APPEARANCES

For Petitioner: Joy Rhyne Webb, Esq.
Merritt Flebotte Wilson Webb and Caruso
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For Respondent: Tiffany Y. Lucas, Esq.
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FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Petitioner was a North Carolina-licensed teacher employed by Beaufort County Public Schools during the 2010-2011 school year. Petitioner has taught high school in North Carolina for 18 years.
3. On April 8, 2011, Respondent received notice from Beaufort County Schools concerning allegations of an inappropriate relationship between Petitioner and an 18 year-old exceptional student ("D.M.") at the high school where Petitioner taught. The student was considered an "early graduate" who had finished attending regular classes at the school on January 18, 2011, but who still had certain requirements to fulfill prior to graduating in June 2011. Furthermore, the student still was involved with certain on-campus activities at the high school, such as attending the prom. On March 15, 2011, the

student's mother contacted the administration of the high school with her concerns about Petitioner and her daughter. That same day, an interview was held with the local board attorney for Beaufort County Schools, Principal Rick Anderson, and Petitioner. At that meeting, Petitioner admitted to, among other things, texting the student messages about having sex and sending her nude pictures of himself. Immediately after the interview, Petitioner resigned his teaching position.

4. Petitioner was called in to be interviewed by the Superintendent's Ethics Committee in July 2011. The Superintendent's Ethics Committee is made up of professional educators appointed by Superintendent June Atkinson to, among other things, follow up on inquiries made concerning a teacher's fitness to teach in the State of North Carolina. Petitioner was interviewed by members of the Committee and admitted that he had exchanged sexually graphic text messages with a student; Petitioner, however, believed that the student was considered an early graduate and not a "student" as of January 18, 2011. Petitioner indicated to the Committee that his communications with her did not cross the line into sexually explicit until January 19, 2011.
5. The Ethics Committee recommended to Superintendent Atkinson that Petitioner's license be revoked because of Petitioner's unethical and lascivious conduct, including the exchange of highly sexual text messages with a student.
6. Petitioner admitted at the hearing that he continued to exchange text messages of a sexual and/or romantic nature with student D.M. even after questions arose in his mind about whether she was considered a student at the high school. He also admitted that he met student D.M. at a local retail establishment in person on two occasions after they began communicating via text and phone but before she graduated from high school.
7. Petitioner did not engage in an intimate physical relationship with student D.M. Petitioner stated that he made a mistake in allowing the relationship to continue and apologized for his actions to the State Board of Education a few days after he met with the Superintendent's Ethics Advisory Committee, as demonstrated by Respondent's Exhibit 6. Jonibel Willis, a member of the Superintendent's Ethics Advisory Committee at the time of this hearing and at the time of its meeting with Petitioner, testified that she had not seen Respondent's Exhibit 6, Petitioner's letter of apology to the Committee, until this hearing and expressed regret that the Committee did not have this letter before it when considering Petitioner's case. She found the letter to be self-reflective, expressing ownership of the conduct and accepting personal responsibility. She expressed no opinion as to what recommendation the Committee would have made had the Committee been privy to Petitioner's letter, admitted as Respondent's Exhibit 6.
8. The State Board of Education may revoke or deny a teaching license for any illegal, unethical, or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)

9. There is no dispute here that during the 2010- 2011 school year, Petitioner exchanged sexually explicit text messages, including pictures, with a female student he met while he was a teacher at the high school where the female student attended and was planning to (and in fact did) graduate from in June 2011. The only issue is whether such conduct bears an adverse relationship to the continuing ability of Petitioner to be an effective teacher.
10. Teachers are required in this State, both by Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as positive role models for children. 16 N.C.A.C. 6C.0602(b)(2); Faulkner v. New Bern-Craven Board of Education, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)
11. As our Supreme Court observed in Faulkner:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

12. In this case, inquiry has been made into Petitioner's fitness to hold a teaching license in light of certain illegal, unethical, and/or lascivious conduct engaged in by Petitioner. Petitioner has admitted to the conduct for which the inquiry into his fitness to hold a teaching license was based. Teachers in this State are expected to be role models for their students. Parents are entitled to have their children entrusted to individuals of the highest moral character. Persons engaged in the conduct admitted to by Petitioner simply do not meet the threshold requirement demanded by communities and parents for the school teachers we expect to be examples for our children.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. Petitioner has the burden of proof to demonstrate by a preponderance of the evidence that the State Board of Education erred in initiating revocation of his North Carolina teaching license. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E.2d 272 (1988)
2. The conduct in which Petitioner admittedly engaged fails to adhere to the high standards of moral behavior demanded of teachers in this State, and there is an adverse relationship between Petitioner's conduct and his ability to perform his duties in a professionally effective manner.

3. Respondent did not act arbitrarily or capriciously in revoking Petitioner's license to teach in North Carolina.
4. Respondent has not unlawfully deprived Petitioner of any property to which he is entitled.

Based on the foregoing, the undersigned makes the following:

DECISION

Based upon the evidence, Respondent has sufficient grounds to revoke Petitioner's North Carolina teaching license. Based upon the full evidence produced in this case, including evidence in mitigation of Petitioner's actions, it is recommended that the State Board of Education consider--in its discretion--a revocation of Petitioner's teaching license with the revocation suspended for two (2) years, during which period Petitioner is required to complete to the satisfaction of the State Board--and as a condition of reinstatement of his teaching license--remedial professional ethics training and not engage in further unethical or lascivious behavior.

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Public Instruction.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 18th day of July, 2012.

Beecher R. Gray
Administrative Law Judge