

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

DEPARTMENT OF EDUCATION,	:	
Petitioner	:	
	:	
	:	
v.	:	PSPC Docket No. DI-00-21
	:	
JOSEPH CORRADO	:	
Respondent	:	

PROPOSED DECISION AND ORDER

History:

In August 1999 the South Butler County School District (District) received complaints concerning the conduct of Respondent during the 1998-1999 school year. The District initiated a dismissal action against the Respondent. In May 2000 an arbitrator found that the District had just cause to dismiss Respondent. Respondent resigned June 14, 2000.

After investigation the Department of Education (Department) initiated hearing procedures under §2070.13 of the Act of December 14, 1989, P.L. 612, No. 71 (24 P.S. § 2070.13) (Act). On August 4, 2000 a Notice of Charges was sent to Respondent by the Department. On the same date the Department filed a request for discipline with the Professional Standards and Practices Commission (Commission). Respondent filed an Answer to the Notice of Charges on August 31, 2000, received by the Commission on September 11, 2000. Spencer A. Manthorpe, Esquire was appointed hearing officer in the matter on September 21, 2000. A Motion For Summary Judgment or Judgment on the Pleadings was filed May 1, 2001 and denied under 1 Pa Code §35.180 on May 10, 2001. A hearing was held in the matter on May 22-23, 2001.

Findings of Fact:

1. Respondent was issued an Instructional I teaching certificate endorsed in the area of Elementary in September 1995.
2. During the 1998-1999 school year Respondent was teaching 4th grade in the Winfield Elementary School, South Butler County School District.

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Professional Standards and
Practices Commission

3. He was ██████'s teacher.
4. ██████ was 10 years old.
5. During the 1998-1999 school year Respondent attempted to develop an inappropriate relationship with ██████.
6. He repeatedly showed favoritism towards ██████.
7. He told her she was his favorite student.
8. He told her a number of times she looked pretty.
9. He would rub her back and touch her shoulders.
10. He would hug her and kiss her on the forehead when they were alone.
11. He asked her if she had had her period.
12. Respondent arranged to be alone with ██████ by taking her out of class, keeping her in during recess, taking her to the art room and driving her home from school.
13. When she was out sick he went to her home and gave her the test she missed.
14. When ██████ forgot her homework or glasses he would take them to her at home.
15. Respondent gave her his home phone number and directed her to memorize it, telling her he would test her on it.
16. He gave small gifts of food to ██████ on a daily basis including yogurt and M&Ms.
17. Other gifts of a Dalmatian puppy stuffed animal, hair clips and candy gummy rings were also given during this period.
18. Respondent gave gifts of two books to ██████.
19. Respondent took some of his students to the Zoo.
20. Only certain students were invited including ██████ and her friend ██████.
21. He told ██████ and ██████ the trip was planned especially for them.
22. He took 3 female students to the movies including ██████ and ██████.
23. While the trips were not school trips pre-approved by his superiors they did include chaperones.
24. In May 1999 Respondent organized a trip to the Carnegie Science Center, Gateway Clipper and a Pirates baseball game.
25. He told ██████ the trip was especially for her.
26. Each student had to pay \$15.00 except for ██████.

27. Later in summer 1999 Respondent and his wife took [REDACTED] and her sister to an amusement park.
28. When alone with [REDACTED] he told her he still cared for her very much.
29. [REDACTED] was invited to sleep over at a friend's for the friend's birthday.
30. [REDACTED] forgot the present for the friend and they returned to the school to get it.
31. Respondent was in the classroom when [REDACTED] went in alone.
32. He hugged her and kissed her on the forehead.
33. Having learned that [REDACTED] was staying overnight at her friend's he called the house and talked to the girls about non-school matters.
34. If [REDACTED] would ask Respondent about a question on a test Respondent would often give her the answer rather than explain the question.
35. Respondent had a classroom raffle for a stuffed Panda Bear.
36. He told [REDACTED] in advance she would win it.
37. He arranged the contest so she did win.
38. Respondent had a second raffle in which students drew names of states with the winner the one who matched a designated state.
39. He gave [REDACTED] the slip with the winning state on it but she put it in the can and picked another.
40. In a third contest involving drawing straws he pointed to the one to pick.
41. Several of Respondent's students complained to their mothers about his favoritism of Renee.
42. By letter of February 24, 1999 one student's mother complained to the Principal of Winfield Elementary School about Respondent's favoritism.
43. The letter complained about the favoritism to [REDACTED], telephoning female students at home, rubbing girls' arms, giving gifts to one in particular and taking certain female students on trips that were kept secret from the rest of the class.
44. At the end of February 1999 the Principal held a meeting with Respondent to discuss the letter.
45. Respondent was told he could lose his job if the behavior described in the letter continued.
46. Respondent was ordered by the Principal not to be alone with students.

47. Subsequent to the warning Respondent drove ██████ home alone in his car several times.
48. He drove a longer way to her house than was needed.
49. He also drove ██████ and another female student to a track meet.
50. Two students confronted Respondent about his favoritism and he promised to stop it, but did not
51. During the winter and spring of 1998-1999 Respondent told ██████ several times he loved her.
52. He would ask her if she loved him and she would say "yes".
53. Respondent would tell her to say "I love you Joe".
54. One time alone in the car Respondent told ██████ that he loved her more than his wife.
55. He then told her if she were 18 he would marry her.
56. Around the end of April 1999 ██████ told Respondent she did not love him.
57. Respondent told her he would no longer put treats in her locker and that she broke his heart and he would have to regain his composure.
58. Respondent also told ██████ to keep their relationship secret or he would lose his job and that he would not have planned the May field trip if he had known.
59. During the school year and continuing into the summer of 1999 Respondent developed a relationship with ██████'s father.
60. Respondent would visit the father's machine shop ostensibly on business and plan bike rides and ATF rides with the family.
61. He would be invited to dinner with the family and together with his wife would meet socially with ██████'s parents.
62. In August 1999 ██████'s parents undertook to get their younger daughter placed in Respondent's class.
63. When ██████ found out about her sister she told her mother about Respondent's behavior.
64. ██████'s parents terminated all relations with Respondent.
65. ██████'s parents removed their daughters from Winfield Elementary School.

66. South Butler School District brought a dismissal action against Respondent because of his behavior.
67. An arbitrator found in May of 2000 that the District had just cause to dismiss Respondent.
68. Respondent resigned on June 14, 2000.

Conclusions of Law:

1. The Teacher certification Law (Act of December 12, 1973, P.L. 397 as amended, 24 P.S. §2070.1-§2070.18) provides that the Commission shall discipline any professional educator found guilty of immorality, incompetency, intemperance, or negligence. at §2070.5 (a)(11)
2. The Department has proved by a preponderance of substantial credible evidence that Respondent engaged in inappropriate physical and verbal contact with a student for an extended period of time.
3. The inappropriate physical and verbal contact was conduct that was offensive to the morals of the South Butler School District community.
4. The inappropriate physical and verbal contact between teacher and student was conduct that set a bad example for the youth of the community.
5. Respondent's conduct constituted immorality under the Act.
6. Respondent's actions of inappropriate physical and verbal contact, favoritism, gifts, and unwanted attentions both before and after he was warned about them, showed loss of self-control and self-restraint.
7. Respondent's conduct constituted intemperance under the Act.
8. Respondent's gifts, inappropriate physical and verbal contact, amorous advances, inappropriate comments and unwanted attentions were intentional, malicious and unnecessary and caused psychological pain in ████████ her friends and family.
9. Respondent's conduct constituted cruelty under the Act.
10. Respondent was not deprived of due process of law pursuant to any of the three alleged failures of procedural due process complained of in his Motion For Judgment on the Pleadings or Summary Judgment denied on May 10, 2001.
11. Respondent was not denied procedural due process of law by the testimony and evidence concerning specific activities not enumerated in the Notice of Charges,

which specifically allowed for including other actions and was not limited to the inappropriate conduct specifically listed.

12. Respondent's certification should be revoked.

Discussion:

Respondent raised three constitutional due process arguments in his Motion that have been previously denied. He raises a fourth argument in his brief. While a minor failure of notice was made by the Department in one instance that error did not amount to a denial of due process.

One allegation of due process denial concerns the mixing of prosecutorial and judicial functions. Due process is denied allegedly because the Chairman of the Commission is also a member of the State Board of Education, the Commission gets free space from the Department and the Governor's Office of General Counsel provides legal advice to the Commission. While this forum does not decide constitutional questions it is not clear or persuasive from the allegations how the prosecutorial and judicial functions are mixed. The listed reasons do not show any connection between the prosecutorial function in the Office of Chief Counsel of the Department and the judicial function of the Chairman of the Commission.

Respondent also argued in his motion that the Complaint was not timely. The complaint presumably being the complaints filed by the Department and [REDACTED] parents filed July 21, 2000. The Act, in §2070.9(a), provides that proceedings to discipline shall be initiated by the filing of a complaint with the Department by any interested party within one year of the occurrence of any alleged action "*or from the date of its discovery....*". (Emphasis supplied) The complaints were filed with the Department July 21, 2000 alleging actions within the 1998-1999 school year revealed by [REDACTED] statement to her parents August 17, 1999. Timeliness is not an issue.

In his brief Respondent raises the due process issue of approximately 13 new charges that were first raised at the hearing. The brief is not clear just what those charges were but some activities are mentioned such as the zoo trip, the home test, glasses, or the movie visit. From the evidence it is clear that what Respondent calls charges are background activities to substantiate the charge of favoritism. The Department does not claim that any of the actions are chargeable offenses. The Department provided evidence of these activities to show favoritism, which was the charge. The record below before the arbitrator is not in the record in this action. Therefore it is not known if these activities were in evidence before the arbitrator. It is known however that the record before the arbitrator was used extensively to cross-examine the witnesses for the Department. There appeared to be no surprises in the evidence about the trips some of which are in this record as citations to the arbitrator's record. They were all well known to both parties and were not charges that he took them on trips but that he showed favoritism and inappropriate behavior by the trips.

Finally Respondent raises the due process argument that he was not served with the complaints filed under §2070.9(a) by the Department and ██████'s parents. This is true. There is no requirement on the Department to serve a copy of the complaint on the Respondent. The Department is required to notify the educator and complaining party under §2070.9(f)(2) of the sufficiency of the complaint. There is obviously no need to serve the complainant with the complaint since they filed it and complainant and educator are treated the same by § (f)(2) of the Act. In addition as to the educator, under §2070.10 complaints are confidential until discipline is ordered, thus could not be revealed to Respondent at that time.

It must be kept in mind that the Act was amended during this period and some numbers changed and sections were relocated. In this case the school board having already acted the Department proceeded under new §2070.12 and initiated hearing procedures. Under §2070.13 it then filed and served Notice of Charges. Respondent was not denied due process for failure of the Department to serve him with a complaint, as there was no requirement to do so. The most he was deprived of was a notice of the sufficiency of the complaint and he got that with the service of the Notice of Charges.

This case rests mainly on the credibility of the witnesses. The Department's case rests for the most part on the testimony of five young women who were 10 years old when the events they testified about occurred. They were twelve and a half when they testified on this record. They were also emotional and upset. The testimony was repetitive and corroborating. The girls and their testimony were credible.

All the girls testified to favoritism shown by Respondent to ██████. Two testified they confronted Respondent about it and he promised to stop, but did not. Two told their mothers about it and the mothers testified to the favoritism and one wrote the principal. Two corroborated ██████'s testimony about being taken out in the hall alone. They, of course, could not corroborate ██████'s testimony that she was being told out there that she looked pretty. Two corroborated ██████'s testimony about being in the classroom alone with Respondent during recess with the door closed. Again they could not corroborate what was said. Three corroborated ██████'s testimony about gifts of M&M's and yogurt. Two corroborated ██████'s testimony about being touched and one testified about Respondent with his arm around ██████'s shoulders whispering in her ear during a test.

As expected no one was along on the rides home, in the classroom or art room with Respondent and ██████ nor were they out in the hall during class to hear what was said. The truth of what was said to ██████ in situations when she was intentionally separated from witness' can be found only in her testimony. One friend's mother, Mrs. ██████, testified that ██████ was relieved when she offered to take her home and distressed when Respondent intervened and insisted he do it. The same mother was so concerned about Respondent's relations with the girls she sat between them in the movies.

██████'s honesty is apparent in her testimony in part because of the details she relates. Her testimony about the visit to the art room (Nt. 112) is a good example. If she were making it up she would just say he told her he loved her. Here she tells how he got her alone and told her. ██████'s demeanor and personality show that she is not one to make up Respondent telling her he loves her more than his wife. She did not make up his insistence that she tell him she loved him or that if she were 18 he would marry her. Ten year olds don't think like that and don't know the legal age of 18. You could tell from her testimony that she did not make up Respondent's insistence that she memorize his phone number and that she would be tested on it. When she told Respondent she did not love him she testified he told her no more treats, that she broke his heart, that he had to regain his composure, to keep it a secret or he would lose his job and that he wouldn't have planned the field trip for her if he had known. Now a 10 year old, even one with an imagination, would not think up all those statements from her scorned lover.

██████ would not be led in her testimony either by the Department's or the Respondent's attorney. When she testified about being told by Respondent that she would win the panda bear raffle she was asked if Respondent made it so she would win, Renee's response was "I won it". When counsel said Respondent drove her home from school she corrected counsel by telling him Respondent drove her home from after school classes. (Nt. 119) When on cross counsel misstated her answer as being the beginning of January she corrected him to the end of January. (Nt. 154) Or when she explained that January came right after Christmas. (Nt. 145) Actually Pages 143 to 154 of the record will illustrate ██████'s composure and meticulous honesty on cross. She admits she "messed up" at one time and stands corrected when her testimony differs another time. When asked if any one else could corroborate Respondent was putting treats in her locker ██████ testified that a girl asked her why Respondent was putting things in her locker. While ██████ was upset and cried during her testimony she was articulate and clearly stated her answers.

Respondent denied everything that happened in private and explained away everything that was corroborated. His demeanor was evasive and calculated and his testimony was not credible. He denied giving ██████ yogurt (except once in the lunchroom) or candy, which others clearly saw him do and testified about. There were no explanations as to why he sought to be alone with ██████ so often or why he would drive ██████ home when she had a friend's mother offering to do so. Respondent says he didn't know ██████ was to be at ██████'s birthday party but both ██████ and ██████ say he did. Respondent claims he was asked to the party by ██████. But it is clear from ██████, ██████ and ██████'s mother that there was no party. Yet he called and asked for ██████ after speaking to ██████.

There were attempts at impeachment of all the witnesses by the record in the arbitration case. Those attempts did not succeed. They just made the young witnesses more credible. It was obvious they were not coached nor had they studied the transcript before testifying. Their Testimony was clearly their recollection not refreshed memory. They admitted making mistakes or messing up as ██████ called it.

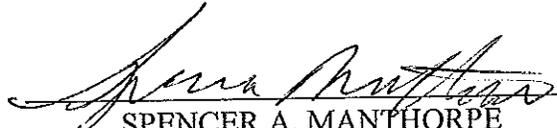
Explanations about why Respondent insinuated himself into ██████'s household are weak and in retrospect insidious. ██████'s father found him dishonest even before ██████'s revelations. Her father appeared unable to understand why he had this new best friend.

There is too much evidence from too many sources to explain away by saying none of this ever happened. Respondent's actions were inappropriate improper conduct by a teacher. His expressions of love, comments about how pretty ██████ was, questions about her period, numerous gifts of yogurt, candy, toys and books, obvious favoritism and his hugging, forehead kisses and touching were all far beyond any relationship proper for a teacher and student. It is clear from the testimony of two of the mothers, ██████ father and the principal that Respondent's actions offended the morals of the community. In fact Respondent himself admits that if a teacher did the acts complained of in the Order to Show Cause it would be unprofessional and the teacher should lose his license. The fact that his actions caused two of his students to complain to him shows the bad example he was setting. The fact his actions continued after the warnings by two students and the principal show his lack of control over his emotions and actions. That his actions caused great anxiety in ██████ was apparent from her testimony and that of Mrs. ██████. The revelations caused great anxiety in ██████ family, who took their daughters out of school until Respondent was gone.

The inappropriate physical and verbal contact of a romantic nature with ██████ amounted to immorality as defined in the Act. See *Keating v. Board of School Directors of the Riverside School District*, 513 A.2d 547 (Pa Commw. 1986) The actions offended the morals of the community and set a bad example for ██████ and her friends. The aforesaid actions which continued in the face of the complaints of ██████'s friends and the orders of the principal show loss of self control and self-restraint amounting to intemperance under the Act. See *Belasco v. Board of Public Education of the School District of Pittsburgh*, 486 A.2d 538, 541 (Pa Commw. 1985) The above actions were intentional, malicious and unnecessary and inflicted psychological pain on ██████ and her friends. See *Bovino v. Board of School Directors of Indiana Area School District*, 377 A.2d 1284, 1288 (Pa Commw. 1977)

PROPOSED ORDER:

It is proposed that the Commission enter an order denying Respondent's Motions for Summary Judgment or Judgment on the Pleadings and revoking Respondent's Instructional I Teaching Certificate endorsed in the area of Elementary.


SPENCER A. MANTHORPE
HEARING EXAMINER

NOTE: UNLESS EXCEPTIONS ARE FILED WITH THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION WITHIN THIRTY (30) DAYS OF THE MAILING DATE SHOWN ABOVE, THIS PROPOSED DECISION AND ORDER WILL BECOME FINAL. 24 P.S. § 2070.14

DATE MAILED: January 30, 2002