

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
LAKESIDE, CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

PATRICK WELCH, a Certificated Employee,

Respondent.

OAH No. 2010031179

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (the commission), at Lakeside, California on June 14, 15 and 16, 2010.

The Commission members who heard this matter were Administrative Law Judge (ALJ) Roy W. Hewitt, Judi Heitz, and Barbara Wooley.

Christopher D. Keeler, Esq. and Leslie A. Reed, Esq. of Fagen, Friedman & Fulfroost LLP represented the Lakeside Union School District (the district).

Patrick Welch (respondent) was present throughout the hearing and was represented by Fern M. Steiner, Esq. of Tosdal, Smith, Steiner & Wax.

Oral and documentary evidence was received and the matter was submitted on June 16, 2010.

The commission members deliberated on June 16, 2010 and reached a decision.

FACTUAL FINDINGS

1. At all relevant times, respondent was acting in the capacity of a certificated employee of the district employed in the position of a Science Teacher teaching 7th and 8th Grade students at Tierra del Sol Middle School.¹ Respondent was employed by the district for approximately nine years prior to being placed on administrative leave during October of 2009.

¹ Respondent also taught computer skills to 6th grade students on occasion.

2. On February 12, 2010, the district's Superintendent served a Notice of Intent to Immediately Suspend Without Pay, Intent to Dismiss, and Statement of Charges on respondent. That same date respondent was suspended without pay.

3. On February 19, 2010, respondent timely filed his Request for Hearing and Notice of Special Defenses.

4. On March 3, 2010, the district's Superintendent filed an Accusation against respondent alleging two causes for termination: Immoral Conduct, pursuant to Education Code section 44932, subdivision (a)(1); and, Evident Unfitness, pursuant to Education Code section 44932, subdivision (a)(5). The instant hearing before the commission ensued.

5. Respondent believes that he was and is serving the best interests of his students who are "at risk," due to lack of father figures in their family environment, by being their "academic father." He also believes that physical touching of students (e.g. hugging, patting on the back or shoulder, etc.) is beneficial to both the emotional well being and the educational progress of his students. However, as the hearing progressed it became clear that respondent has not grasped the concept of student/teacher boundaries. In his efforts to be a good "father" and friend to the students he was supposed to teach, respondent himself became a kid again. In this Peter Pan type state respondent crossed the boundaries of sound teaching and engaged in conduct that led to the present dismissal action. That conduct is described in Findings 6 through 23, below.²

6. During the 2008-2009 School Year, respondent frequently took pictures of a 7th grade female student (A.F.) in class. A.F. was sometimes uncomfortable with respondent taking pictures of her.

7. During the 2008-2009 School Year, respondent's actions caused a 7th grade female student (P.L.) to believe that he was looking down her blouse during a science lab. That same school year, respondent allowed P.L. to take a make-up test. During the make-up test, respondent took pictures of P.L. and his actions made P.L. uncomfortable and led her to believe that respondent had taken pictures "down her shirt/blouse."

8. Respondent typically allowed his female student aides to lie down on tables and listen to ipods after class.

9. During the 2009-2010 School Year, respondent took pictures of C.L., a female 8th grade student, while she was lying on a table listening to an ipod.

10. Respondent took pictures of female students' backs while they were writing on the whiteboard during class. Often, the students did not know their pictures were being taken.

² The Factual Findings track to order of the allegations contained in the Dismissal Accusation (Exh. 3).

11. Respondent took pictures of female students' backs while they stood on chairs and wrote on the whiteboard during class. Often, the students did not know their pictures were being taken.

12. During the 2009-2010 School Year, respondent asked C.L., who was now in the 8th grade, to sit on his lap. Respondent then took pictures of her while she sat on his lap. Additionally, respondent had a small stuffed animal (a tiger) displayed in the classroom that he named after C.L.

13. During the 2009-2010 School Year, on one occasion, respondent asked C.L. to show him her naval/"belly button" ring. When the 8th grade female student lifted her blouse and exposed her abdominal area respondent took a picture of her torso and naval.

14. Respondent frequently acted in an unduly intimate manner toward female students, often causing them to feel uncomfortable.

15. Respondent frequently hugged female students and if they did not give him a hug when expected (usually at the beginning and end of the class while the students were entering and leaving the classroom), respondent requested a hug by stating something to the effect of, "where are you going – Where's my hug?"

16. After school hours respondent allowed female student assistants to stay in the classroom with him and allowed them to lie on tables.

17. Sometimes, when female students requested a drink of water, respondent stood behind them and poured water from a small water bottle into their mouths like a "waterfall" as they leaned their heads back and opened their mouths. On one occasion during the 2009-2010 School Year, respondent lightly pulled on a female student's hair to get her to lean her head back so he could "waterfall" the water into her open mouth.

18. On one occasion during the 2009-2010 School Year, respondent overheard one student call another student a "dildo." Respondent then mentioned something to one of the 8th grade female student's (A.O.) about the word. A.O. recalled that respondent said something to the effect of, "You want a dildo for your birthday, don't you?"

19. On one occasion during the 2009-2010 School Year, respondent hugged A.O. and in the process pushed her head against his crotch area. Respondent then said something about wanting to make his wife jealous.

20. On one occasion during the 2009-2010 School Year, respondent traced with his finger the rhinestone logo on the buttocks area of A.O.'s sweat pants and told her he had a similar image tattooed on his upper right arm.

21. On one occasion during the 2009-2010 School Year, respondent saw some writing on the exposed, upper portion, of A.O.'s chest. Respondent pointed to the writing, touched the area of A.O.'s chest with his finger and asked A.O., "What is this?"

22. When respondent became aware of the investigation that ultimately led to the charges that form the bases of the instant proceedings, he approached one of the complaining female students (D.S.) and told her to stop spreading rumors. Respondent then threatened D.S. by stating something to the effect of, “How would you like it if I said you were sleeping with Mr. Shields [a teacher]?”

23. During respondent’s employment with the district, both before and during the incidents that form the bases for the instant action, other teachers and at least one administrator, warned respondent about the potential consequences of his lack of professionalism during certain interactions with female students. In fact, on one occasion, respondent himself counseled a female teacher about the potential dangers of being alone in a classroom with students of the opposite sex. Nonetheless, respondent continued to act in disregard of the warnings. Instead, it appears that over time, his conduct evolved to the point where he inappropriately touched female students. The commission members are well aware of how the resulting publicity created an avalanche of further allegations against respondent. Once the publicity started, it is only natural that students who initially felt uneasy about respondent’s conduct came to believe that respondent’s conduct toward them was driven by some hidden agenda/sexual motivation. Consequently, the commission members found that some of the allegations could reasonably have been based on misperceptions. Therefore, except as specifically found in Findings 6 through 22, above, the remaining allegations of the Accusation were not deemed proven by a preponderance of the evidence.

24. Respondent’s actions, as described in Findings 6 through 22, above, are examples that demonstrate his failure to appreciate the sanctity of student/teacher boundaries. Two of the commission member found that respondent’s most egregious transgressions – excessive hugging, suggestive comments, “waterfalling” water into female students’ mouths, touching a female student’s buttocks while tracing a logo on her clothing and touching some writing on her chest, having female students sit on his lap, having a student lift her blouse so he could photograph her belly button ring, and having students lie about on table tops – constituted immoral conduct within the meaning of Education Code section 44932, subdivision (a)(1). Those two commission members also found that respondent’s boundary violations with female students evidenced a present evident unfitness to teach in the district within the meaning of Education Code section 44932, subdivision (a)(5).

LEGAL CONCLUSIONS

1. The Accusation filed against respondent alleges two causes for termination: The first cause is “Immoral Conduct [*Educ. Code*, § 44932(a)(1)];” and the second cause is “Evident Unfitness [*Educ. Code*, § 44932(a)(5)].”

2. By vote of 2 to 1, the commission members found and concluded that respondent’s conduct as described in Findings 6 through 22, constituted immoral conduct individually and in the aggregate and that respondent’s conduct as described in Findings 6 through 22, constituted evident unfitness to teach in the district, especially in view of

respondent's knowledge of the consequences of his actions and his persistent boundary violations in the face of that knowledge. Consequently, respondent's termination was warranted pursuant to Education Code section 44932, subdivisions (a)(1) and (a)(5).

3. The commission members considered the findings in their entirety and the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (the *Morrison* factors) in assessing respondent's fitness to teach. The commission members agreed by vote of 2 to 1 that respondent's conduct over time reveals that he has a character flaw that makes him unfit to teach within the meaning of Education Code section 44932, subdivisions (a)(1) and (a)(5). Respondent has not been able to recognize and adhere to proper student/teacher boundaries. He has been warned numerous times in the past about the possible consequences of his boundary violations and has, to date, exhibited that he is incapable of modifying his behavior over time and there is little or no doubt that without proper counseling, his inappropriate conduct will continue. There were no extenuating circumstances justifying respondent's misconduct. The allegations against respondent and respondent's inappropriate interactions with female students were widely known among parents, students, faculty and the general public. Respondent's conduct impaired the relationships among students and teachers and disrupted the educational environment/process. There were no valid "motives" for respondent's conduct which is why the two commission members concluded that his conduct resulted from some type of character flaw. Finally, respondent's conduct was frequent, escalating in severity, and recent. The district was left with no choice but to dismiss respondent. Respondent's immediate dismissal was necessary to protect the health and safety of the students, faculty, staff, administrators and respondent.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's dismissal is upheld.

DATED: July ____, 2010

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings
Commission Member

JUDI HEITZ
Curriculum Specialist
Teacher
Commission Member

Dissent of Barbara J. Wooley

I dissent to the Commission's conclusion that cause exists for the dismissal of Patrick Welch within the meaning of Education Code Section 44932(a)(1) "Immoral Conduct" and (a)(5) "Evident Unfitness to teach."

Factual Findings:

I concur with the Factual Findings 1, 2, 3, 4, 9, 10, 11, 21 and 24.

Factual Finding 5:

While I agree with Finding 5 in most part; I disagree with the characterization of Patrick Welch in that he 'became a kid again. In this Peter Pan type state respondent crossed the boundaries of sound teaching and engaged in conduct that led to the present dismissal action." I did not read or hear any evidence to support the idea that Welch did not behave as an adult. While I agree that Welch pushed the boundary in an effort to build and maintain strong relationships with students, I do not believe that Welch "crossed the boundaries of sound teaching." All witnesses testified that Welch was a good teacher and that students learned in his classes.

Factual Findings 6 & 7:

I agree with the finding that Patrick Welch took pictures of 7th grade student (A.F), I do not agree with the characterization that he "frequently" took pictures nor do I believe that, in retrospect, A.F. was uncomfortable with the photographs. The evidence does not show that there are any more photos of A.F. than of other students. In a similar vein, I do not believe that student (P.L.) believed that Welch "looked down her blouse during a science lab" last year, nor that Welch's taking pictures made P.L. uncomfortable at any time. P.L. states in her written statement (dated 10/23/09): "Last year in worm dissections I thought he looked down my shirt. But then people said that I could be overreacting. That he could of been looking at the worm. I calmed down and thought about it." The photo taken of P.L. during the dissection lab clearly depicts a student involved in a science activity, taken from a standing position. Furthermore, I find it hard to believe that A.F. and P.L. were so uncomfortable in 7th grade that, at the end of their 7th grade year, they would write in Welch's yearbook and on whiteboards: "you are the bombest teacher! I hope you teach my class next year! (Heart) Alicia" and "I love you! I will miss you over the summer (heart) always Paige."

Factual Finding 8 & 16:

While I agree with the fact that Welch "allowed his female student aides to lie down on tables and listen to ipods after class", I disagree with the connotation that "female student aides" or females in general were purposefully selected and given special permission to lie on tables. All students were welcome in his classroom after school, as proven by the photo of (M.S.). Nor do I feel that allowing students to lie down on tables is beyond the scope of normal behavior.

Factual Finding 12:

I agree with the finding that Welch had a small stuffed animal and named it after C.L. I fail to see how that is beyond the scope of normal behavior. From the testimony, I did not find that it was proven that Welch asked C.L. to sit on her lap or whether C.L. took it upon herself to “plop” in his lap, as Welch testified.

Factual Finding 13:

I did not find it proven that the respondent “asked C.L. to show him her naval/”belly button” ring.” I find it more than likely that C.L. proudly announced that she had a “belly button” ring and then, without provocation, lifted her blouse to show Welch, as Welch testified. Welch explained that he has a history of photographing new jewelry and other student achievements. Taking a picture of the new decoration would be expected by C.L.

Finding 14:

I find finding 14 too vague to be meaningful. I do not feel that it was proved that the respondent “frequently acted in an unduly intimate manner.”

Finding 15:

I agree that it was proven that the respondent “frequently hugged female students,” I think is important to note that he did not single out female students, he also hugged, high-fived and fist-bumped male students. It was charged that Welch would sometimes request a hug “by stating something to the effect of, “where are you going – Where’s my hug?”” Welch explained that he knew his students well and that if a student did not behave normally (i.e. hugged or high-fived as usual) then he would know that there was something wrong with the student and would probe a little deeper to see what was wrong. An example Welch gave was a boy who did not behave normally; when pressed by Welch, the boy told Welch that his father had died the previous day. No other teacher had ascertained this fact.

Finding 17:

It was proven that the respondent “stood behind them (girls) and poured water from a small water bottle into their mouths like a “waterfall.” I disagree with the characterization that Welch did this “frequently.” I found his explanation that after recess or PE, students often want to go get a drink of water during class. Frequently, when one student is allowed to go get a drink of water, many other students request to leave the room to get a drink of water. Welch’s method for avoiding a mass exodus out of his classroom for students who do not have their own water bottles is to use his own bottle of water to share water, without sharing germs, with several students. There was also testimony that a PE teacher had used the same method.

Findings 18, 19 & 20:

While the accusations stated in these findings are the most serious, I find that they are also the least believable. First, on 10/28/09 A.O. made a statement to Officer Jason Rouse

regarding an incident on 10/13 or 10/14. A.O. stated “Mr. Welch pointed to a design on A.O.’s sweatpants band that was slightly above her buttocks in the center of the small of her back, and asked “What’s that?” Mr. Welch’s finger made contact with the waist band of her pants when he pointed at the design.” Later, Detective K. Jones interviewed A.O. During this statement, A.O. stated that she “was wearing some sweatpants which has a symbol of a heart with wings on them. A.O. said this symbol was located on her “butt.” Welch lifted her shirt and asked what was on her butt. A.O. said Welch touched her butt and she “twitched.” A.O. asked Welch what he was doing. Welch said he had the same symbol tattooed on his arm. Welch lifted his sleeve and showed A.O. the tattoo. Later, during the hearing (8 months later), A.O. testified that Welch told her to turn around so he could see the sweatpants with the heart with wings. She pulled up her shirt and he traced it with his fingers on her butt. He then showed her his tattoo on his arm. There is a big difference between A.O.’s original statement and the statements made later. Additionally, in response to Findings 18 and 19, A.O. did not say anything about these accusations in her original statement. Detective Jones pointed out that “upon reviewing A.O.’s statement with Detective Rouse, there was nothing mentioned about the “dildo” comment, hugging close to the crotch, or asking her to be flirtatious with him.” I believe A.O.’s original statement, made within days of the alleged incident, and do not believe the later more elaborate and out-of-character accusations made against the respondent up to 8 months later.

Finding 22:

It was proven that Welch “stated something to the effect of, “How would you like it if I said you were sleeping with Mr. Shields [a teacher]?”” However, I firmly believe that Welch had not “threatened” D.S. Middle school students often have a hard time empathizing with others. It sometimes becomes necessary for a teacher to point out to a student when what they are saying or what they are doing can be interpreted differently than what the student really means. I believe that Welch was literally pointing out to D.S. rumors are hurtful and that D.S. would find it hurtful if someone spread rumors about her. I do not believe that Welch was threatening that he would spread a rumor if D.S. did not stop. In my teaching, I have found that I often have to ask a student to rephrase a statement they have made because, while I knew what they meant, the way they said it was inappropriate or rude. These are called “teachable moments.” The instruction provided during some of these “teachable moments” is much more valuable than some of the content curriculum that teachers are required to teach.

Finding 23:

I concur that it was proven that “other teachers and at least one administrator, warned respondent about the potential consequences of his lack of professionalism during certain interactions with female students.” However, Welch was never formally verbally reprimanded, written up, or put on any kind of improvement plan. Each person who testified that they “warned” Welch made it very clear that they did not believe that he was doing anything criminal or immoral, instead they were warning him that his actions might be “misconstrued.” Each person’s testimony showed that they were giving Welch advice. Much as we are given advice by our dentists to floss every day or our doctors to exercise and

cut back on salt. Each teacher who testified also stated that they too hugged students even though they knew that it could be misconstrued.

I disagree with the finding that “it appears that over time, his conduct evolved to the point where he inappropriately touched female students.” As I stated in Finding 20, I do not believe that the respondent “traced it (the heart with wings) with his fingers on her butt.” If this incident did not occur as the finding states, then the idea that Welch has “evolved to a point where he inappropriately touched female students” is unsubstantiated. And, in my opinion, if this incident cannot be substantiated, then the accusation of “immoral conduct” (Ed. Code, § 44932, subd. (a)(1)) is unproven.

Legal Conclusions:

Cause for dismissal is found when there is a preponderance of evidence to support the accusations. I feel that the vast majority of the allegations brought by the district were petty, irrelevant and/or unsubstantiated. Of the original 30 charges brought by the district, the Commission agreed to immediately disallow 18 of them. One such accusation made by the district was that Welch had a lot of photos of students on his wall and implied that this was somehow immoral. A year earlier, the Principal (McDuffie) praised Welch in his Teacher Evaluation (11/6/08) for the same thing: “Mr. Welch has various science related posters and personal pictures (Washington D.C, etc.) on the walls that make the classroom interesting and student-centered.” Other accusations included the charge that Welch only had female teacher assistants and that he only gave snacks to female student; both of which were proven untrue.

The vast majority of the evidence was provided by written police reports or student notes and verbal testimony. Not only were there contradictions from one student’s to another student’s stories, there were also contradictions between an individual student’s story from the original police statement(s) to their testimony 8 months later.

The investigation into Patrick Welch began with a single incident in his classroom regarding a photo that may or may not have been taken. The testimony surrounding this incident was contradictory. According to the police report (K. Jones), “Detective Rouse told me (T.C.’s) recollection of the incident was slightly different from (D.S.’s) recollection. According to (T.C.), she told Detective Rouse, D.S. took the camera off of Welch’s desk without his knowledge . . . Detective Rouse then interviewed D.S. and was told she never took the camera off his desk, but observed the photos as they were being taken in the view finder.” Later in the report, K. Jones writes “D.S. asked Welch if she could see his camera because she wanted to take a picture of her and T.C. Welch gave her the camera and she reviewed the photographs. D.S. said that she saw one picture of T.C. on the camera.” At one point, D.S. said she saw three photos of T.C., then she said she saw two photos of T.C., then she said she saw one photo of T.C. Jones also pointed out contradictions in T.C.’s story too: “T.C. described the picture of C.L. as showing the back of her thighs to the top of her buttocks. The rest of C.L.’s body was not visible in the picture.” However, “upon reviewing Rouse’s statement of T.C., she told him the picture of C.L. was of her entire body while she was erasing a chalkboard. This seems to contradict with what T.C. told me during the interview.” I already went into the contradictions in A.O.’s story in Findings 18-20.

Because of all of the contradictions in the students' statements and testimony, I do not find that there is a preponderance of evidence to support the accusation of "immoral conduct." I believe that it is more likely that the girls became angry with the respondent and wanted to get back at him for some real or imagined slight, as would not be out of character for adolescent girls. Both D.S. and T.C. reported that the respondent told them that he "liked (M.S.) better" than them. A written statement by another student, K.G. provides a reason why T.C. might be angry: "T.C. was passing out tests but Mr. Welch got mad because she passed out the wrong test. T got yelled at and she got mad." D.S. has at least two reasons to want to fabricate a story against the respondent. First, if his testimony is to be believed, Welch scolded D.S. for spreading rumors, angering D.S. Second, D.S.'s mother is suing the district. It was brought up during the cross-examination of the Principal that D.S.'s mother said that it would be better for her suit if the hearing went against Mr. Welch. An email (exhibit RRR) dated 10/24/09 from a mother of an uninvolved student states that her son was told that "the girl that turned him in "hates" him and would do anything to get rid of him."

I further disagree with the conclusion of "Evident Unfitness." A ruling of "Evident Unfitness to Teach" requires that the respondent has an innate character flaw that cannot be remediated that makes him unfit to teach. The two commissioners who determined the "unfitness" of Mr. Welch both agreed, as stated in Legal Conclusion #3, that with counseling, he could go back into the classroom. The implication of that position is that the respondent does not possess an innate character flaw that cannot be changed. Furthermore, while he was advised that his actions may be "misconstrued," Welch was never formally disciplined, either verbally or in writing. Having never been given more than advice by his co-workers and Principal, Welch was never given the impetus to modify his behavior. I believe that had Welch been formally instructed to change specific behaviors, he would have. I further believe that he now knows where to draw the line and that he will do so in the future. In addition, all prosecution and defense witnesses agreed on one thing; Mr. Welch was a very good teacher and his students learned a lot in his classroom. I do not believe that Welch should be considered "unfit to teach." I do concur that some of his behaviors could be misinterpreted and/or mischaracterized and that Welch needs to modify those behaviors. I also believe that he is capable of modifying such behaviors.

DATED: _____

BARBARA WOOLEY
State Council Representative
Cupertino Education Association
Commission Member