

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DUVAL COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) CASE NO. 90-4566
)
RITA E. STRAUSS,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, this cause on for formal proceeding before P. Michael Ruff, duly-designated Hearing Officer of the Division of Administrative Hearings, in Jacksonville, Florida.

APPEARANCES

FOR PETITIONER: Cheryl R. Peek, Esq.
Assistant Counsel
Office of General Counsel
421 West Church Street
Towncentre, Suite 715
Jacksonville, FL 32202

FOR RESPONDENT: David A. Hertz, Esq.
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, FL 32216

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Respondent should be dismissed from her employment with the Petitioner agency for alleged violations of the Duval County Teacher Tenure Act (Chapter 21197, Laws of Florida, 1941, as amended by Chapter 70-671, 72-576, and 81-372, Laws of Florida). Specifically, it is alleged that the Respondent should be dismissed from her employment duties for alleged "professional incompetence", "refusal or inexcusable failure to discharge the duties of her employment", "insubordination or physical or mental incapacity to perform the duties of employment", and "immoral character or conduct".

PRELIMINARY STATEMENT

This cause arose upon the advice to the Respondent by the Petitioner's superintendent, by letter dated September 12, 1990, that the Respondent would be discharged from her position as a guidance counsellor for the Petitioner, Duval County School Board ("Board"). The four (4) charges alleged in that letter were later incorporated in the Amended Notice of Proposed Dismissal, which raised the issues referenced in the above-captioned Statement of Issues. The Respondent

was thus advised that the Board proposed to discharge her for alleged professional incompetency, as set forth in Section 4(3) of the Duval County Teacher Tenure Act ("Act"); for alleged refusal or inexcusable failure to discharge her duties, as set forth in Section 4(c) of the Act; for alleged insubordination or physical or mental incapacity to perform her duties, as set forth in Section 4(a) of the Act; and for alleged immoral character or conduct, as set forth in Section 4(a) of the Act.

The cause became ripe for hearing and was originally set for hearing on November 30, 1990. Prior to the scheduled hearing, it developed that the Respondent had a serious medical condition requiring hospitalization and an extensive recovery period. Consequently, the case was abated and was ultimately heard on August 28, 1991.

The cause came on for hearing as noticed. The Petitioner presented 35 exhibits, Exhibits A-II, all of which were admitted into evidence, without objection. The Petitioner adduced the testimony of witnesses, Selinda J. Keyes, Sarah Cunningham Harper, Mirta Martinez, Carolyn Bishop Stone, Mildred H. Marshall, and Susan Van Brunt Joseph. The Respondent cross-examined the Petitioner's witnesses; however, she presented no witnesses or exhibits. After the hearing, the parties obtained a transcript of the proceeding and agreed upon an extended briefing schedule, concomitantly waiving the requirements of Rule 28-5.402, Florida Administrative Code. Thereafter, proposed findings of fact and conclusions of law in the form of Proposed Recommended Orders were filed by the parties. The proposed findings of fact in those pleadings are treated in this Recommended Order and, again, specifically, in the Appendix attached hereto and incorporated by reference herein.

FINDINGS OF FACT

1. The Respondent, Rita E. Strauss, is a certificated and tenured teacher pursuant to the pertinent provisions of the Act cited above. The Respondent has been in the employ of the Board at all times pertinent hereto. Her most recent school assignments have been to Long Branch Sixth Grade Center and Holiday Hills Elementary School, in Duval County, Florida.

2. The Board is, for purposes of this proceeding, an agency of the State of Florida charged, as pertinent hereto, with regulating and enforcing the Teacher Employment and Practice Standards embodied in the Act cited above.

3. Elementary school counsellors situated as the Respondent are responsible for counselling students and consulting with parents and teachers regarding progress problems and potential problems and related matters concerning counselled students or students recommended for counselling. Counsellors must coordinate counselling-related special services with the Board's staff and other county agencies and parents. Counselling activities involve counselling individual students and small groups of students, as well as providing guidance for students in the classroom situation. A guidance counsellor is also charged with being the organizational agent at the school for the Child Study Team ("CST"). The counsellor's duties are specifically set forth in Exhibit B in evidence, the job description for elementary school counsellors of the Board.

4. Counsellors are allowed to select their own guidance materials. They are not limited by the Board, except that materials must be appropriate for the age level of students to which the materials are presented. The specific duties of a counsellor vary from one school to the other depending upon the particular

need of the school, its students, and the principal's direction concerning the emphasis of the counselling effort. It is important that counsellors spend a certain amount of time with students in the counselling effort. Florida law mandates that counsellors spend 75% of their time in direct contact with students. This time must be documented through logs required to be kept by guidance counsellors. Classroom guidance is also a valid and required part of an elementary counsellor's role. Guidance counsellors are not considered to be performing their job adequately if classroom guidance sessions are not conducted. They are expected to know how to make a classroom guidance schedule and are expected to be able to and carry out the organization of a planned program which they must disseminate to all instructional and other pertinent staff members in the school so that teachers and administrators are aware of their present and proposed counselling activities.

5. The CST is a committee involved in placing students in special education programs. This involves testing, parental contact, and consideration of and carrying out of "interventions" and observations. This is considered by the Board to be an important part of a counsellor's job, as well as the individual counselling, small group counselling, and classroom guidance. All of these duties are included in Exhibit B, a counsellor's job description.

6. Ms. Selinda Keyes was the Principal at Long Branch Sixth Grade Center from 1984 through 1989. She had been an employee of the Board since 1972. She holds a bachelor's degree, as well as a master's degree and is certified in guidance, as well as in educational leadership. In addition to her other experience with the Board, she served as an elementary school guidance counsellor, herself, for five years. Ms. Keyes first came into contact with the Respondent in 1984, when Ms. Keyes began her principalship at Long Branch. The Respondent was already serving as a guidance counsellor at that school when Ms. Keyes arrived.

7. A guidance counsellor's duties at Long Branch included gathering materials for the CST, helping in the articulation of students, setting up individual counselling sessions, assisting teachers, having interventions for students, assisting the parents in helping students with problems, and assisting the students, themselves.

8. Between 1984 and 1988, Ms. Keyes noted a decline in performance level from the Respondent. In August of 1988, on the Respondent's annual evaluation, Ms. Keyes evaluated the Respondent as performing inadequately. Ms. Keyes met with the Respondent at the beginning of the 1988-89 school year to review specific improvements that Ms. Keyes expected the Respondent to make during the upcoming year. Exhibit E in evidence encompasses the recommendations which Ms. Keyes made to the Respondent in this regard. Among other items, Ms. Keyes felt that the Respondent needed to communicate in an appropriate and professional manner to administrators and other school personnel. Ms. Keyes also recommended that the Respondent do a better job at maintaining accurate written records and in maintaining positive professional relations and interactions with school personnel at all times, which had been an observed problem in the past. Ms. Keyes met with the Respondent once again on September 9, 1988 to reiterate the areas of the Respondent's performance which needed improvement and to give her a written memorandum concerning the need for these improvements and detailing what the improvements were to be.

9. In spite of these conferences and written directives, which included the requirement of better preparation for the activities and operations of the CST, Ms. Keyes observed that on September 20, 1988, when she met with the

Respondent, that the Respondent was not yet prepared for the CST activity scheduled for September. Ms. Keyes met with the Respondent on September 21, 1988 to discuss the Respondent's inappropriate methods of communications with teachers. During that conversation, the Respondent became extremely angry and told Ms. Keyes to "get off her back" and that Ms. Keyes was making her "sick". Shortly thereafter, the Respondent went to Ms. Keyes' office unannounced, slammed the door in a hostile manner, and addressed Ms. Keyes by saying "kiss my butt". She then threatened Ms. Keyes by saying "I will sue you. Just go ahead and fire me and I will sue you and I will start a company".

10. The CST met on September 27, 1988. The Respondent was unprepared for the meeting and did not have the correct documents prepared to present to the CST despite Ms. Keyes' multiple efforts to see that that duty was performed.

11. On September 28, 1988, Ms. Keyes telephoned the Respondent to find out why she had not attended the school's open house the evening before. During this conversation, the Respondent told Ms. Keyes that she did not want to hear anything that Ms. Keyes had to say and hung up the telephone on Ms. Keyes. A few minutes, the Respondent stormed into Ms. Keyes' office and slammed the door. Standing in front of Ms. Keyes' desk, the Respondent turned sideways, pointed to her posterior, and told Ms. Keyes to "kiss my butt". The Respondent was quite angry and left Ms. Keyes' office, slamming the door behind her, and then opened the door and stated "hit me, hit me, just go ahead and hit me".

12. Ms. Keyes then arranged to meet with the Respondent on October 3, 1988 to discuss the Respondent's unprofessional and erratic behavior of September 28, 1988. Ms. Keyes presented the Respondent with a memorandum dated September 28, 1988 regarding the Respondent's inappropriate behavior. See Exhibit F in evidence. The memorandum warned the Respondent that her demonstrated lack of respect for authority and display of hostility was considered insubordination and would not be tolerated. The Respondent refused to sign a receipt for the memorandum and, instead, retorted that she would not read it and did not want to hear it. The Respondent then stated "go ahead and hit me, hit me, and I will hit you back". The Respondent then stormed out of Ms. Keyes' office, once again, slamming the door behind her.

13. Because of the continuing nature of this sort of behavior, Ms. Keyes, on October 5, 1988, arranged for the Respondent to meet with Ray Bailey, the Director of Personnel for the Board. When Ms. Keyes met with the Respondent to arrange the meeting, the Respondent told Ms. Keyes that there was no sense in talking with Mr. Bailey because she had not done anything wrong. The Respondent then stated that she was "just going to lie because he was a friend of Ms. Keyes and that she was not going to tell the truth". The Respondent continued by saying "I will sue you, just fire me and I will sue you and get money and just be able to sit at home". During this same meeting, Ms. Keyes brought to the Respondent's attention that she had given inaccurate information to a student's mother regarding the CST.

14. On October 7, 1988, Ms. Keyes inquired of the Respondent to see if she had kept the appointment with Mr. Bailey. The Respondent had not done so and had, thus, refused to follow Ms. Keyes' direction in this regard. During this same meeting, Ms. Keyes, again, gave the Respondent guidance on how she should improve her performance. On that same day, Ms. Keyes also counselled with the Respondent regarding her claimed illness. Ms. Keyes, once again, encouraged the Respondent to get medical attention if she felt that she needed it.

15. From October, 1988 through January, 1989, Ms. Keyes observed no improvement in the Respondent's poor performance, including her failure to keep an adequate daily log of her activities, after being directed to do so by Ms. Keyes. On January 10, 1989, Ms. Keyes met with the Respondent, once again, to determine if she had done required follow-up work regarding a student named Jovan Scott, which the Respondent had not done. This resulted in the student being denied required mental health services for some two weeks.

16. On January 26, 1989, Ms. Keyes observed the classroom guidance session conducted by the Respondent. In that session, the students were observed to be noisy, not listening to the presentation, and not keeping on task. When Ms. Keyes later discussed the poor guidance session with the Respondent, the Respondent explained that the class went poorly because the "kids were bad" and they would not listen because they were "bad". The Respondent also stated that she was in a "bad" school and that the children were "bad kids", they were too old, and that she needed to work with younger kids in a better school.

17. On January 31, 1989, Ms. Keyes met with the Respondent to evaluate the Respondent's performance as a guidance counsellor for the 1988-89 school year at the Long Branch School. Exhibit G in evidence reflects the inadequate performance of the Respondent. Among other things, Ms. Keyes instructed the Respondent to improve her demeanor toward teachers, to show concern for students and parents, to present and maintain accurate CST records, to keep an adequate daily log, to attend counsellor workshops, and to assist in sharing the total responsibility of the school toward the students. Also, on this date, Ms. Keyes inquired of the Respondent concerning whether she had been attending the Board's "in service" training sessions for guidance counsellors, as she was required to do. The Respondent indicated that she did not attend those meetings because she knew all of the material and that there was no need for her to go.

18. Ms. Keyes observed other poor performance examples on the part of the Respondent during the 1988-89 school year, which included the Respondent's failure to give adequate information to teachers, her refusal to use a variety of counselling techniques, and her inability to communicate and relate to students, as well as the failure to adequately develop and convey information to students. Her individual counselling techniques were inadequate. She would see individual students for an excessive period of time, as much as two or three hours. In that time period, she would allow them to play with toys or other materials in the classroom and would send them on errands instead of conducting counselling as she was supposed to do. During the 1988-89 school year, Ms. Keyes observed numerous classroom guidance sessions run by the Respondent. In those sessions, she observed that the students consistently failed to pay attention or stay on task. The Respondent would praise them inappropriately for inappropriate behavior and was observed to be unable to control their behavior.

19. In collecting information for the CST, as she was charged to do, the Respondent would discourage teachers from requesting testing for students, saying "it's a lot on me, I have a lot to do, don't refer this child". Despite the Respondent's discouragement of referrals, approximately 80 students were processed through the CST concerning counselling during that school year. On the average, one out of every ten "packets" concerning students for the CST would be incomplete. The Respondent was responsible for preparing these packets. It was her duty to make sure that the information in the packets was complete. Throughout that school year, the Respondent frequently forgot or failed to observe deadlines and other important dates which she was required to observe. The Respondent failed to complete important assignments which she had

concerning her other duties. She was observed to be unable to select and effectively direct the activities of teachers regarding testing, the SAT program, and concerning the EST and CST packets.

20. In summary, it was established, through Ms. Keyes testimony, which was unrefuted, that the Respondent was an ineffective guidance counsellor during the 1988-89 school year at the Long Branch School. Her final performance evaluation or review for that school year reflected her poor performance by her receiving an unsatisfactory rating.

21. The Respondent's job duties', while she was at the Long Branch School, included ordering the standard achievement tests ("SAT") for the school. She was never authorized, however, to order a first-grade SAT. Ms. Keyes discovered, however, that on April 25, 1989, the Respondent had in her possession the answer key and student manual to a Form E first-grade SAT. The next day, on April 26, 1989, Ms. Keyes discovered that the Respondent also had a teachers manual for the first-grade SAT. When questioned by Ms. Keyes as to why she had these materials in her possession, the Respondent stated that she had ordered them "just in case". Ms. Keyes questioned the other teachers and confirmed that no one else had requested a first-grade SAT.

22. Ms. Mirta Martinez is employed as a first-grade teacher at Parkwood Heights Elementary School. Carl Strauss is the Respondent's son. Ms. Martinez was Carl's first-grade teacher during that 1988-89 school year. During the 1988-89 school year, Carl had done poorly academically; and Ms. Martinez had sent scholarship warnings home to his parents, Mr. and Mrs. Strauss, as well as a letter indicating that he might be retained in the first grade the following year. The Form E SAT was given by Ms. Martinez to her class on April 24, 1989. Carl Strauss' performance was much better than Ms. Martinez expected, judging from his prior academic performance in her class. On April 25, 1989, Ms. Martinez noticed Carl sitting in the front of the classroom. As she gave the test, she noticed that he was going ahead of her and answering questions which she had not yet read aloud to the class. When she cautioned him that he should slow down, he said that the test was easy and that he knew all of the answers. Indeed, Carl did very well on the Form E SAT he took on those dates. He scored in the 58th percentile, which was much better than his classroom performance would indicate he could do. Later, he was given a Form F SAT, which is of the same difficulty level, is designed for first graders and tests the same information but simply with different questions. On this test, Carl did much worse. He scored in the 37th percentile, which performance was consistent with that to be expected, judging from his past classroom academic work. A drop of 20 percentile points is unusual in SAT scores from one test to the next. Students usually have fairly constant scores on the various areas tested throughout their school career, with perhaps as much as a 10 percentile point differential at most.

23. This situation was brought to the attention of the appropriate supervisory personnel with the Board; and ultimately, the Respondent was disciplined by the Florida Department of Education, Education Practices Commission, which found that she had supplied her son with answers to the first-grade SAT in question. After making this determination, the Education Practices Commission reprimanded the Respondent with an official letter of reprimand, in evidence as Exhibit GG.

24. Dr. Sarah Cunningham Harper holds a bachelor's degree from the University of Central Florida in psychology. She has a master's degree from the University of Central Florida in counselling and a doctorate from Nova

University in educational leadership. She testified on behalf of the Board in this proceeding. Her experience includes classroom teaching, as well as guidance counselling for eight years. She then became a resource counsellor for the Board and was later promoted to be a supervisor for guidance counsellors for the Board. She provided resources for guidance counsellors, giving them materials they needed in order to adequately perform their duties.

25. Dr. Harper first met the Respondent at Long Branch School in September, 1988. She met with the Respondent and Ms. Keyes, together, and later with the Respondent alone. Dr. Harper reviewed the resources available to the Respondent and gave her additional suggestions regarding material she might use in her duties. Dr. Harper further arranged specific training for the Respondent, involving meeting with two other guidance counsellors to get ideas as to how a guidance counsellor could effectively operate in the classroom. Further, Dr. Harper gave the Respondent suggestions on how to feel better about her duties and employment situation and referred her to Suni Peterson, with the Employee Assistance Program of the Board. She also suggested that if the Respondent was feeling physically ill, she should consider taking sick leave. Dr. Harper documented this meeting with the Respondent and sent her a copy of the document outlining recommendations for improvement.

26. Dr. Harper also encouraged the Respondent to attend the Professional Staff Development Program which the Board furnished for guidance counsellors. These workshops were held once a month. In the 1988-89 school year, 37 hours of in-service training was, thus, offered to guidance counsellors. The Respondent apparently never attended any of these sessions. Dr. Harper never saw her attend nor did she sign in at any of the workshop sessions, which would indicate her attendance if she had done so. Dr. Harper then followed up on the matter to see if the Respondent had met with either Ms. Cobb or Ms. Converse, the guidance counsellors whom she had suggested that the Respondent meet with to obtain ideas about more effective counselling operations in the classroom. The Respondent had never met with Ms. Converse and did not meet with Ms. Cobb until the second semester of the 1988-89 school year.

27. Exhibit J in evidence reflects Dr. Harper's attempts to help the Respondent. This included the day the Respondent spent observing another elementary guidance counsellor and arranging for a district-level counsellor to work with the Respondent.

28. Dr. Harper met with the Respondent again in January of 1989. At that time, Dr. Harper reviewed what the Respondent had accomplished from September, 1988 through January, 1989. Dr. Harper found that the Respondent's log was totally disorganized and that she had no organized calendar nor documentation of student counselling. At this meeting, the Respondent continued to complain about Long Branch, stating that the school was making her ill and that she was being unfairly treated by Ms. Keyes. Dr. Harper, once again, encouraged the Respondent to take time off if she felt it to be necessary. Dr. Harper also reminded the Respondent to be a "team member" since that was an important part of the functions of a guidance counsellor.

29. In a letter dated April 25, 1989, the Respondent was notified that since she had received an unsatisfactory evaluation, she had a right to transfer to another facility. She was also put on notice that her employment with the Board would be terminated if her performance did not rise to a satisfactory level within the next school year. See Exhibit C in evidence.

30. Consequently, in the 1989-90 school year, the Respondent was transferred to Holiday Hill Elementary School ("Holiday Hill"). It is a smaller elementary school, with approximately 500 students.

31. At the beginning of that school year, Dr. Harper met with the Respondent and Ms. Marshall, the Principal of Holiday Hill, to discuss the guidance program at that school. Exhibit K in evidence demonstrates the counselling duties that the Respondent was expected to accomplish at Holiday Hill. That evidence is unrefuted and is accepted. The Respondent was to present classroom guidance lessons from 2:00 p.m. to 3:15 p.m. each day, to supervise the Student Council, to supervise the Star Student Program, to organize Career Days, to attend all CST meetings, to counsel individual students, to be prepared for grief counselling for students, and to counsel with students and bus drivers regarding "bus referrals". Both Dr. Harper and the Respondent agreed that these were legitimate guidance counsellor functions.

32. Dr. Harper was convinced that Holiday Hill had made a commitment to have a strong guidance program and that this was a good opportunity for the Respondent to use her talents and to show her skills as a counsellor. Dr. Harper inspected the facilities that the Respondent was to use and determined them to be adequate.

33. Dr. Harper stressed to the Respondent that she was to attend in-service training during the 1989-90 school year. However, at the very next in-service training, which started at 8:00 a.m., the Respondent did not arrive until 9:30 a.m. and indicated that she wished to leave at 10:30 a.m. Toward the end of September, 1989, Dr. Harper went to Holiday Hill to check on the Respondent's progress. Once again, the Respondent complained about her situation at that school and about a lack of supplies. The Respondent also complained that she had to do cafeteria duty. Dr. Harper pointed out to her that this would be a good opportunity for her to visit with students. Dr. Harper also conversed with the Respondent about meeting with Marianne O'Donnell, another counsellor, to receive training from her on the use of a guidance tool known as "Penelope Mouse". Dr. Harper, at this September meeting, asked the Respondent if she had prepared a classroom schedule. The Respondent stated that Ms. Marshall had not approved the schedule which the Respondent had presented to her and that it was being revised. The school had already been in session for five weeks at that point.

34. Exhibits Z and DD, in evidence, represent guidance activities which the Respondent presented to kindergarten students at Holiday Hill during the 1989-90 school year. Dr. Harper found that Exhibit Z was not an appropriate counselling activity for a kindergarten-age student. The level of the material in that Exhibit is beyond a kindergarten-age student's comprehension level. It was inappropriate even as a coloring tool because the designs to be colored by the student were too complicated for a kindergarten student. Dr. Harper also established that Exhibit DD was an inappropriate counselling tool for kindergarten or first-grade students. The "Seals Guidance Program" was a supplementary guidance program and should not be used alone.

35. Dr. Harper also reviewed a counselling session that the Respondent described concerning a student whose mother was an alcoholic. Dr. Harper established that the Respondent's counselling technique for such a situation was inappropriate. Dr. Harper also established that it is inappropriate to have a student sit in an individual guidance counselling session and not converse with the student. A counselling session should be a learning situation and involve an exchange of ideas between the counsellor and the student, with both persons

conversing and interacting together. Dr. Harper established that it is inappropriate to use counselling as a gossip session and that it is inappropriate to keep an individual in a counseling session for one or more hours. An individual counselling session should last no longer than 30-35 minutes. The Respondent conducted counselling sessions in the inappropriate manner described above by Dr. Harper.

36. Ms. Carolyn Bishop Stone is employed by the Board and has been for 22 years. She is Supervisor of Guidance Services. Ms. Stone assumed this position when Dr. Harper left the Board. Ms. Stone's experience includes elementary school teaching and elementary school guidance. She has a bachelor of science degree in elementary education and master of art's degree in counselling, with a specialty in school psychology. Ms. Stone is presently a doctoral student in educational leadership. She serves as a resource person for guidance counsellors for the Board.

37. Ms. Stone first met the Respondent on January 23, 1990 because her Principal, Mildred Marshall, had indicated that there were some problems with the Respondent's performance. Ms. Stone arranged with the Respondent to observe a classroom guidance session conducted by the Respondent. The Respondent selected a kindergarten class guidance session to be observed by Ms. Stone on January 25, 1990.

38. In observing this classroom guidance session, Ms. Stone noted that the Respondent used no management techniques to get the kindergarten students focused on the lesson. It took five minutes to get the class under control, and the Respondent then began the lesson by using a handwritten 8"x10" piece of paper on which she had written the term "citizenship" and included a definition of "citizenship", which apparently came from a dictionary. It was in small print and written in crayon and trailed off the paper and was not legible to the students because it was not large enough for them to see at the distance at which it was presented to them. There were too many words on the paper and it was beyond the language level of kindergarten students.

39. Ms. Stone observed that the lesson taught by the Respondent was above their readiness or comprehension level. According to Ms. Stone, the lesson deteriorated from the beginning. The Respondent spoke in a soft monotone, and the students clearly were not understanding the lesson and were not maintaining their attention. The Respondent did not demonstrate that she knew how to keep the students' attention. The Respondent failed to give the students a response to their own statements or expressed ideas concerning the lesson material nor to enlarge on what the students were saying in order to make the lesson more understandable.

40. This verbal part of the session took only a few moments. The remainder of the lesson consisted of handing out an 8"x10" "ditto sheet", with 12 seals on it, which the students used as a design for coloring. This was shown to be inappropriate for this age level since the items on the page were too small for them to be able to color with their level of eye/hand coordination and manual dexterity. The Respondent failed to explain to the students how the seals related to the concept of "citizenship". At that point, Ms. Stone circulated through the class and spoke to some students, which confirmed her suspicion that the children did not understand what the lesson was about. There was approximately five minutes of attempted teaching of the lesson and 20 minutes of coloring. In Ms. Stone's view, as one highly trained in appropriate guidance counselling and teaching techniques, the classroom guidance session which she observed conducted by the Respondent was totally inadequate.

41. This was especially disturbing to Ms. Stone considering that the Respondent had had 10 or 11 years of counselling experience at that point. After the classroom session was over, Ms. Stone counselled the Respondent concerning the observed weaknesses in her lesson and presentation. Ms. Stone also pointed out some resources available to the Respondent to improve her performance. Ms. Stone further informed the Respondent that she would be willing to visit the Respondent again and to help her in any way. Ms. Stone followed up on this offer with a letter reiterating that willingness to help the Respondent. Ms. Stone also informed the Respondent that developmental guidance books at the guidance office were available for her use. Lastly, Ms. Stone offered Ms. Strauss another guidance counsellor to assist her in improving her counselling techniques. She never took advantage of this offer. Indeed, the Respondent never contacted Ms. Stone for any further assistance. Ms. Stone never visited the Respondent at Holiday Hill after that meeting since she made it clear that she was available to her any time she needed assistance. Ms. Stone did not want the Respondent to perceive that any of her actions constituted harassment; therefore, instead of repeatedly going to visit with the her, she simply left the door open for the Respondent to meet with her or seek assistance any time the Respondent felt it necessary. However, Ms. Strauss never requested any further assistance from Ms. Stone.

42. Mildred Marshall has been the Principal of Holiday Hill for 18 years. Before becoming a principal, she was a teacher for 12 years in the elementary school system. She has both a bachelor of art's degree and a master of science degree. She has been employed by the Board for a total of 39 years. The Respondent was assigned to Holiday Hill for the 1989-90 school year, with Ms. Marshall being aware of her less-than-satisfactory evaluation concerning her performance the year before at Long Branch. Being mindful of this, Ms. Marshall promulgated a list of duties which she expected the Respondent to perform while at Holiday Hill. Exhibit K in evidence is the written list which Ms. Marshall gave to the Respondent before the school year started. The list included, among other duties, supervising the Student Council, checking fifth grade cumulative folders at the end of the year, counselling with individuals, counselling with students who were receiving bus referrals, working with the Star Student Program, giving grief counselling to students, and counselling bus drivers about bus referrals. Ms. Marshall informed the Respondent that she expected her to improve in those areas of her duties and responsibilities which had been rated unsatisfactory the previous year. This memorandum constituted Ms. Marshall's plan of assistance for the Respondent for that ensuing school year. Exhibit M in evidence reflects that Ms. Marshall had reviewed each item of the July 3rd memorandum with the Respondent. The Respondent appeared to understand Ms. Marshall's directions to her during this conference.

43. Upon the commencement of that school year, Ms. Marshall immediately had problems with the Respondent's performance, particularly involving her failing to schedule classroom guidance sessions and failing to go to classrooms to conduct guidance sessions. The Respondent was expected to counsel 15 classes on a rotating basis. The classroom teachers relied on the Respondent coming to the classroom and reserved portions of their days for her lessons. However, the Respondent failed to set up a teaching schedule for these classroom guidance sessions. Although Ms. Marshall informed the Respondent that she needed to be in the classrooms between 2:00 p.m. and 3:15 p.m., after six weeks of the school year had passed, as shown by the October 8th memorandum to the Respondent from Ms. Marshall (Exhibit O in evidence), the Respondent still had not formulated a classroom guidance schedule.

44. On September 27, 1989, Ms. Marshall gave a memorandum to the Respondent (Exhibit N in evidence) admonishing her about her failure to submit a log to Ms. Marshall concerning how she spent her time and enumerating the children she had counselled. Additionally, before the school year started, Ms. Marshall had informed the Respondent that she needed to personally inform Ms. Marshall of any absences. In spite of this, the Respondent continued to be absent and not to report to Ms. Marshall of her intent to be absent.

45. In October, 1989, Ms. Marshall gave the Respondent an early evaluation which reflected that her performance was unsatisfactory and declining. Ms. Marshall and the Respondent met on November 1, 1989. In that meeting, Ms. Marshall pointed out to the Respondent the problems she was having with the Respondent regarding her failure to conduct classroom guidance sessions, her unnotified absences, her missed in-service guidance training sessions, and her failure to attend the "planning day". Ms. Marshall informed the Respondent that she was not meeting the needs of the teachers and students at the school. From August until November of 1989, the Respondent had still not inaugurated and followed a classroom guidance schedule. Exhibit R in evidence, for example, reflects the problems that a kindergarten teacher was having in getting the Respondent to come to her classroom for guidance sessions. By November 2, 1989, the Respondent had still not gone to Ms. Dees' classroom for any guidance sessions. When Ms. Marshall counselled the Respondent about this, the Respondent continued to have excuses such as "I didn't know I was supposed to be there" or "I was on my way there". The very next week, the Respondent missed a classroom guidance session scheduled for Ms. Dees' class.

46. Exhibits T and V in evidence reflect the November 30th classroom guidance session, which Ms. Marshall observed the Respondent give. Ms. Marshall observed that the Respondent was ineffectual in getting control of the students and getting them to be quiet so they could get the benefit of her lesson. This was to be a lesson where children used crayons; however, one entire table of students had no crayons, and it took her a substantial period of time to notice that. The Respondent did not gain the students' attention and constantly had to admonish them to stop talking. It was not an effective guidance session. The Respondent indiscriminately praised students for inappropriate responses and screamed at the children to "quit talking!". The children ignored this approach and continued to talk and were off task and out of control during this classroom guidance session. The elementary teachers at Holiday Hill complained about the fact that when they came into their classrooms after one of the Respondent's guidance sessions, the children were out of control.

47. Additionally, the Respondent was unable to effectively operate the Student Council Program, which was one of her duties. During 1989-90, a child in the Student Council Program appeared to be running the program instead of the Respondent. The Respondent also was ineffective in operating the Star Student Program. The Respondent complained that working with Student Council and conducting the Star Student Program was not a part of her counselling job, in her view. Consequently, Ms. Marshall relieved her of those responsibilities and encouraged the Respondent to make a career change if she felt that that would be helpful.

48. The Respondent used a room for her counselling activities, where the extended day-care material, such as toys, "Play Doh" and the like, were kept. Instead of counselling, she allowed her counselling students to play with toys and other supplies. She also allowed students to return to their classrooms unescorted. This caused disruption when the children would run up and down the hall and posed a potential risk to the students, themselves, since many of them

were emotionally handicapped. The Respondent continued to fail to escort children back to their classrooms, as reflected by Exhibit Y in evidence. The Respondent, on occasion, would leave children alone and unsupervised in her classroom while she went to eat lunch. It is never appropriate to leave a student unattended at the elementary level, especially without telling the next-door teacher to supervise the children. The Respondent was observed, on those occasions when she would escort children to her counselling session, to go to the door of the teacher's classroom and just yell across the room to get the child to come with her. In so doing, she would disrupt the teacher's lesson.

49. Finally, these problems culminated in a written warning issued to the Respondent from Ms. Marshall in evidence as Exhibit X. Ms. Marshall thereby informed the Respondent that she would get an unsatisfactory evaluation for the 1989-90 school year unless her performance improved.

50. Ms. Marshall observed a number of classroom guidance sessions conducted by the Respondent. In those sessions, the Respondent never had control of the classroom, failed to communicate effectively with the children, was unable to integrate the lesson to the group as a whole, and was unable to adjust the guidance lesson to the correct learning level of the students. Exhibit Z in evidence is a communication from a kindergarten teacher regarding an inappropriate counselling lesson which the Respondent had given to her kindergarten students. Ms. Marshall had informed the Respondent on a number of occasions that other more appropriate counselling materials were available for her use. This included a "DUSO kit" with puppets. Ms. Marshall encouraged the Respondent to use the media center, as well, and to use some of the other materials available. The Respondent never incorporated any other counselling materials or plans suggested to her into her counselling lessons. In the Respondent's end-of-the-year evaluation given on February 14, 1990, she was rated unsatisfactory.

51. From mid August, 1989 to April, 1990, when the Respondent left Holiday Hill, she was able to accomplish only one of the expectations she was told to accomplish at the beginning of that school year. This was the educational evaluation of children in the school. The Respondent failed to coordinate or organize a Career Day, so that none was held at Holiday Hill during the 1989-90 school year, in spite of the fact that prior to the beginning of the school year, she had been informed that that was one of her duties. Her performance on the CST was also poor. Her observations concerning students was very topical and shallow and, consequently, was not helpful or effective. She also failed to give grief counselling, to handle school bus referrals or to counsel bus drivers concerning referrals during the 1989-90 school year, although that was part of her duties. She failed to use the "seals program" appropriately and effectively. It was designed to be a part of her counselling program and not the total emphasis of the program. Additionally, during the 1989-90 school year, the Respondent, in handling a child abuse case, called the Department of Health and Rehabilitative Services and reported the child abuse, the child and parent, and the home address to the Department. In fact, she reported the wrong child and the wrong parent and wrong home address to HRS. The parent who was falsely reported understandably was extremely upset. When questioned about this incident, the Respondent indicated simply that "Well, the rolodex flipped" as the reason for giving the wrong name, address and telephone number to HRS.

52. Ms. Susan Joseph is an elementary school teacher at Holiday Hill. She has been there 11 years and employed with the Board for 17 years. She was a primary resource teacher during the 1989-90 school year. She holds a bachelor of science degree and a master of science degree in elementary and early

childhood education. She first met the Respondent during that school year. They shared a room at Holiday Hill. The room was a regular-size classroom, approximately 30' by 30', with a sink, water fountain, and bookshelves. It was divided in half by a tall bookcase and "cubbies" or compartments for the students to place their materials and books in. Since this divider did not extend either to the ceiling or to the back wall of the room, Ms. Joseph could observe what was occurring on the Respondent's side of the classroom.

53. Ms. Joseph observed that the small group counselling sessions conducted by the Respondent were frequently out of control. They were noisy and disruptive, with children running around the room, pushing, shoving, and shouting. The Respondent had no control of her students. Ms. Joseph would go to the Respondent's side of the classroom and take control of her students. Because of the Respondent's inability to control her students, Ms. Joseph began scheduling her time with her students at a time other than during the Respondent's small-group counselling sessions. The Respondent's disciplinary measures generally consisted of loudly and ineffectively shouting "shut up, shut up, or you will have to go back".

54. Ms. Joseph also observed that the Respondent's general technique in small group counselling sessions was to write the lesson on the chalkboard in cursive writing. This is inappropriate since cursive writing is not taught to the students until the third grade in Duval County. The students involved had not yet achieved the third-grade level. The Respondent's technique would be to read the objective on the board, then hand out drawing paper, and have the students "draw the topic". After the students finished drawing, the class would become disruptive. The Respondent was observed to use the same "methods whether the children were in kindergarten or in fifth grade. This is inappropriate because of the different levels of learning for elementary school children. Ms. Joseph never observed the Respondent conduct a discussion session with the children that would integrate the lesson she had written on the chalkboard so that they could comprehend it.

55. Ms. Joseph also observed an inappropriate lesson, whereby the Respondent asked second-grade students to draw a picture of what their last wish would be if they were going to die in a few days. In Ms. Joseph's experience, this is an inappropriate topic unless there has been a death and grief therapy is going on. This session and the group of students involved was not undergoing grief therapy. The only follow-up discussion concerning this topic was when one of the students asked what they would die of, and the Respondent informed them "cancer" or "AIDS" as an example. The Respondent simply never communicated any counselling concept to the students with regard to this session and topic.

56. Ms. Joseph also observed the Respondent allowing her counselling students to play with extended day-care materials during counselling sessions, including coloring books, lego toys, and play doh. This was allowed to occur instead of counselling being delivered to the students. The Respondent would simply sit at her desk on these occasions while the students, individually, played with the toys. No counselling took place during these sessions. Ms. Joseph also observed the Respondent accuse students of lying or stealing paper. She found these interactions between the Respondent and her students inappropriate.

57. Ms. Joseph observed some individual counselling sessions conducted by the Respondent. These counselling sessions amounted to no more than a gossip session, with discussions about their weekend plans or talking about other students and their mothers or other students' attire. In particular individual

counselling sessions, Ms. Joseph observed the Respondent sitting at her desk doing nothing while the children were playing with extended day-care materials, which had no relationship to the counselling session, and engaging in no dialogue between herself and her students. In particular, Ms. Joseph recalled a student, Sarah Williams, engage in individual counselling sessions with the Respondent. Sarah, a third-grade student, came in for three or four days consecutively for four to five hours each day. Sarah would run errands for the Respondent, write on the chalkboard, play with materials, or just gossip with the Respondent. Ms. Joseph informed Ms. Strauss at the time that she felt that this was inappropriate as a counselling method.

58. Near the end of September, 1989, when Ms. Joseph attempted to help the Respondent devise a classroom guidance schedule, she found that she did not understand it, after Ms. Joseph explained it to her. Consequently, at times when the Respondent was scheduled to be in the classroom, she did not arrive and could not be found. Ms. Joseph also observed the Respondent leave students unattended in the classroom. Ms. Strauss did not inform Ms. Joseph at the time that she would be out of the classroom on these occasions.

59. In summary, from September, 1989 through April, 1990, Ms. Joseph, in effect, witnessed disorganized, disruptive and ineffective counselling performance from the Respondent. The Respondent had little control of her students and was unable to conduct an effective guidance lesson with either small groups or individuals.

CONCLUSIONS OF LAW

60. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes (1989).

61. The Petitioner herein seeks to dismiss the Respondent for cause, as that is defined in the Act, cited hereinabove. The Act provides that teachers employed by the Board may be discharged or demoted for the following reasons:

Section 4. Causes for the discharge or the demotion of a teacher shall be:
(a) immoral character or conduct,
insubordination or physical or mental incapacity to perform the duties of the employment....
(c)...refusal or inexcusable failure to discharge the duties of such employment....
(e) professional incompetency as a teacher...

62. It is the Petitioner's burden to prove, by a preponderance of the evidence, that the Respondent is guilty of the charges alleged. See, Ferris v. Turlington, 510 So.2d 292, 294, n.2 (Fla. 1987). While the standard of proof in a license revocation case is clear and convincing evidence, the termination of employment only requires proof by a preponderance of the evidence. Ferris v. Austin, 487 So.2d 1163 (Fla. 5th DCA 1986); South Florida Water Management District v. Caluwe, 459 So.2d 390 (Fla. 4th DCA 1984).

Professional Incompetence

63. Section 4(e) of the Act provides that when professional incompetency is the basis for discharging a teacher, certain requirements must be met. These requirements include giving the teacher a clear and detailed statement on which the claim of incompetency is based, giving at least one opportunity to transfer to a new school, giving one year (during which an opportunity of specific in-service training will be given to correct alleged deficiencies). Further, the Act provides that the teacher "shall cooperate in undergoing specific in-service training". These prerequisites were met in this case, as shown by the unrefuted evidence culminating in the above Findings of Fact.

64. On April 25, 1989, the Respondent was put on notice by the Petitioner that unless her performance improved, she would be dismissed as a teacher with the Board. She was offered the opportunity to transfer to another school in this same letter. See Exhibit C in evidence.

65. During the 1989-90 school year, the Respondent was given specific instructions from Ms. Marshall regarding her new duties, was given the opportunity to attend in-service training sessions, and was personally assisted by both Dr. Harper and Ms. Stone in their attempts to help the Respondent improve her performance. The Respondent, however, failed or refused to avail herself of the training opportunities which were repeatedly offered to her.

66. Although the Board has not formally defined "professional incompetency", "incompetency", as defined in the Florida Administrative Code, has been accepted as persuasive in determining incompetency under the Act. See, School Board of Duval County v. Kirby Smith, DOAH Case No. 89-4132 (August, 1990). Rule 6B-4.009, Florida Administrative Code, provides:

(1) Incompetency is defined as inability or lack of fitness to discharge the required duty as a result of inefficiency or incapacity. Since incompetency is a relative term, an authoritative decision in an individual case may be made on the basis of testimony by members of a panel of expert witnesses appropriately appointed from the teaching profession by the Commissioner of Education. Such judgment shall be based on a preponderance of evidence showing the existence of one (1) or more of the following:

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional

stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

67. Chapter 6B of the Florida Administrative Code also contains the minimal standards of the education profession in Florida. Rule 6B-5.004, Florida Administrative Code, requires that teachers:

- (2) select, adapt or develop in sequence instructional materials and activities for the designated set of instructional objectives and student needs.
- (3) create interest through the use of materials and techniques appropriate to the varying abilities and backgrounds of students.
- (4) use individual students' interests and abilities when planning and implementing instruction.

Rule 6B-5.007, Florida Administrative Code, entitled "Management Techniques", provides as follows:

The educator, commensurate with job requirements and delegated authority, shall demonstrate competence in the following management techniques:

- (1) resolve discipline problems in compliance with the policies of the school, rules of the district school board and the state board and Florida Statutes.
- (2) maintain consistency in the application of policy and practice by:
 - (a) establishing routines and procedures for the use of materials and the physical movement of students.
 - (b) formulating appropriate standards for student behavior.
 - (c) identifying inappropriate behavior and employing appropriate techniques for correction.
- (3) maintain standards of conduct required in Rule 6B-5.007(2), F.A.C.
- (4) use management techniques appropriate to the particular setting.

These rules have been interpreted by a number of decisions which provide examples of the sort of behavior or teaching characteristics which provide evidence of incompetency. In *Turlington v. Reaves*, 9 FALR 1371 (1986), it was found that giving assignments without proper explanation of the assignment contributed to a finding of incompetency in the area of failure to adequately prepare and plan for instruction of students. That case also dealt with the teacher's failure to employ appropriate disciplinary techniques suitable to the particular situation, which involved a constant undercurrent of conversation amounting to unsatisfactory classroom management, which was determined to contribute to a finding of professional incompetence. In *Turlington v. Walker*,

9 FALR 2305 (1987); and in Department of Education v. Ferrara, 10 FALR 5766 (1987), the inability to control behavior of disruptive students and to appropriately handle discipline problems was held to be an indicator of incompetency. These two decisions also stand for the proposition that the failure to use adequate techniques of instruction in the classroom and to provide stimulative and varied learning experiences contributes to a finding of incompetence. In Castor v. Brewer, 9 FALR 5339 (1987), it was found that a teaching technique consisting primarily of giving students a reading assignment and having them answer questions in class was inadequate and was a factor in denoting teacher incompetence. So too, the dull presentation of subject matter, lacking an appropriate background, introduction and reinforcement, and the failure to use more than one teaching technique was deemed to be a factor denoting incompetence in Department of Education v. Marshall, 10 FALR 4303 (1987).

68. In the Walker decision and in Castor v. Perry, 9 FALR 5291 (1987), it was also determined that failure to create and maintain a classroom environment conducive to learning; allowing nonessential, nonproductive movement of students in the classroom and a chaotic classroom situation; the failure to maintain proper supervision of students in the classroom; and allowing students to be "off task", were factors supporting as finding of teacher incompetence. Demonstrated errors in lessons prepared by a teacher support a finding of incompetence, as determined in Department of Education v. Marshall, supra.

69. In the case at hand, the Respondent has demonstrated that she is incapable of counselling students, managing their behavior, or otherwise performing her assigned duties. Her classroom management ability and teaching techniques were observed on numerous occasions by Ms. Marshall, Ms. Keyes, Ms. Stone and Ms. Joseph. The Respondent essentially was unable to control her students, failed to employ appropriate teaching techniques, and disciplinary techniques to correct the students' behavior; was incapable of effectively delivering a guidance lesson, and failed to create interesting presentations for her students so as to maintain their interest, which would have helped her maintain order in the classroom. After being repeatedly advised and counselled concerning her teaching techniques and use of materials, she steadfastly refused to vary her teaching techniques and materials employed, despite the fact that they were often inappropriate for the learning level of the students she was supposed to be teaching. She spurned opportunities for training. These actions and omissions were proven by a preponderance of the evidence and, indeed, no countervailing evidence was offered. Thus, the Respondent effectively deprived her students of minimum educational or guidance experience and was demonstrated to be incompetent.

Refusal or Inexcusable Failure to Discharge
Duties of Employment

70. The Respondent was shown to have repeatedly failed to perform her counselling duties at Long Branch and Holiday Hill Schools, despite the repeated directives from Ms. Keyes and Ms. Marshall, her Principals and supervisors. The Respondent refused to try different materials and techniques and never sought to improve her lesson delivery. She never generated or followed a coherent classroom schedule. At Long Branch the Respondent failed to insure that the materials were consistently prepared for the CST, of which she was a part. Her failure to do so resulted in delayed placement of children in need of special services. Her failure to accurately convey information to teachers at Long Branch caused confusion and necessitated Ms. Keyes having to clarify and correct misinformation generated by the Respondent.

71. At Holiday Hill, the Respondent's failure to maintain a classroom guidance schedule, and follow it, significantly disrupted and denigrated the class schedules and teaching plans of teachers who were relying upon her appearance for the required counselling sessions. Her continued erroneous use of classroom guidance materials which were "age-inappropriate" resulted in meaningless guidance lessons for the children to whom they were directed. These acts and omissions were also proven by a preponderance of the evidence; no countervailing evidence was offered in opposition to it; and it was thus demonstrated that the Respondent refused or inexcusably failed to discharge her duties as a guidance counsellor.

Insubordination

72. "Gross insubordination or willful neglect of duty", as used in Section 231.36(a), Florida Statutes, is defined in Rule 6B-4.009, Florida Administrative Code, as a constant or continuing, intentional refusal to obey a direct order, reasonable in nature, and given by and with proper, authority. Actions which occur after a specific instruction to avoid such conduct constitute gross insubordination under this rule. *School Board of Dade County v. Garcia*, 13 FALR 2290, 2301 (1991). In the situation at hand, the Respondent continued to communicate in an unprofessional manner after she had been specifically admonished and instructed to cease this behavior on August 31, 1988 by her Principal. The Respondent was informed at the beginning of the 1988-89 school year that she was to communicate in a professional manner with administrators at Long Branch. Despite this instruction, on at least two separate occasions thereafter, the Respondent addressed her Principal in inappropriate language, such as "kiss my butt" and to "hit me, I'll sue you". She also deliberately refused to meet with Ray Bailey, after being instructed to do so by her Principal, failed to maintain an adequate log of her counselling activities after being instructed to do so, failed to escort students to and from the classroom and provide classroom guidance sessions after being repeatedly instructed to do so. All such conduct constituted a continuing intentional refusal to obey reasonable orders given to the Respondent by Ms. Keyes and Ms. Marshal, who had authority to give her such instructions. Thus, these actions and failures, proven by a preponderance of the evidence, to which no countervailing evidence was offered, constituted insubordination.

Immoral Conduct

73. The definition of "immorality" operative in this situation is found in Rule 6B-4.009(2), Florida Administrative Code, which provides as follows:

...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.

74. Exhibit GG in evidence is an official letter of reprimand from the Florida Department of Education, Education Practices Commission, which determined that the Respondent had supplied her son with answers to the SAT. This evidence, coupled with the testimony of Ms. Martinez and Ms. Keyes, establishes that the Respondent supplied her son with answers to the first-grade SAT. The Commission found that in doing this, the Respondent had lessened the

reputation of educators and that, therefore, such actions could not be condoned, for which she was reprimanded. This action was proven by a preponderance of the evidence, and it is concluded that it is inconsistent with standards of public conscience and good morals and is conduct which brings the individual concerned or the education profession into disrespect. As such, these actions are inexcusable and constituted immoral conduct.

75. Accordingly, it is concluded that the charges referenced herein are all supported by preponderant evidence to which no countervailing evidence was offered and that those charges have been sustained. In view of the repetitive and continuing nature of the insubordination, the refusal or inexcusable failure to discharge the duties of her employment, her demonstrated professional incompetency, especially after repeated opportunities were afforded the Respondent to gain assistance in improving her teaching, classroom management and administrative skills, which opportunities she spurned; a substantial penalty for the referenced conduct is warranted.

RECOMMENDATION

Having considered the foregoing Findings of Fact and Conclusions of Law, the unrefuted evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is therefore,

RECOMMENDED that a Final Order be entered by the Petitioner dismissing the Respondent from her employment with that agency.

DONE AND ENTERED this 24th day of December, 1991, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of December, 1991.

APPENDIX TO RECOMMENDED ORDER IN CASE NO. 90-4566

Petitioner's Proposed Findings of Fact:

1-116. Accepted.

Respondent's Proposed Findings of Fact:

1-5. Accepted.

6. Accepted, but not probative of the Respondent's position in this proceeding.

7. Accepted, but not probative of the material issues presented for adjudication.

8. Accepted.

9. Accepted, but not probative of the material issues presented for adjudication.

10. Accepted.

11. Accepted, but not probative of the Respondent's position nor of the material issues presented in this proceeding.

12-14. Accepted, but not, standing alone, probative of any material issues presented for adjudication.

15. Rejected, as immaterial.

16. Accepted, but not in itself dispositive of any material issues presented.

17-22. Rejected, as not in accordance with the preponderant weight of the evidence.

23. Accepted, but not itself dispositive of any of the material issues presented.

24-25. Accepted.

26-27. Accepted, but not itself dispositive of any of the material issues presented.

28. Accepted, but immaterial.

29. Accepted.

30. Accepted, in the sense that Ms. Harper never observed the Respondent actually performing her classroom duties.

31. Accepted, in the sense that the "seals" program was available for use by the Respondent at the Respondent's option, not to the extent that the Respondent could use the program in any way she saw fit once she elected to use it.

32. Rejected. The record, at page 161 of the Transcript, indicates that Ms. Harper met the Respondent two times in the 1989-90 school year, not in the 1988-89 school year.

33. Accepted, as to no specific guidance curriculum being mandated by the Board, but rejected in the sense that the proposed finding states that "only suggestions" are provided to individual guidance employees. The record reflects that much more than suggestions are provided to help individual guidance employees perform their duties and become trained to perform their duties.

34. Accepted, but not itself materially dispositive.

35. Accepted, but not itself materially dispositive.
36. Accepted.
- 37-38. Accepted.
39. Accepted, but not materially dispositive.
40. Accepted, but not materially dispositive.
41. Accepted, but not materially dispositive and subordinate to the Hearing Officer's findings of fact.
42. Accepted, but not as to its overall material import and subordinate to the Hearing Officer's findings of fact on this subject matter.
43. Accepted.
- 44-45. Accepted, but not materially dispositive.

COPIES FURNISHED:

Dr. Larry Zenke
Superintendent
Duval County School Board
1701 Prudential Drive
Jacksonville, FL 32207

Betty Castor, Commissioner
Department of Education
The Capitol
Tallahassee, FL 32399-0400

Cheryl R. Peek, Esq.
Assistant Counsel
Office of General Counsel
421 West Church Street
Towncentre, Suite 715
Jacksonville, FL 32202

David A. Hertz, Esq.
Duval Teachers United
1601 Atlantic Boulevard
Jacksonville, FL 32216

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.