

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 93-3795
	)	
STUART KANTOR,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Claude B. Arrington, held a formal hearing in the above-styled case on November 16 and 17, 1993, in Key West, Florida.

APPEARANCES

For Petitioner: John D. Gronda, Esquire  
Muller, Mintz, Kornreich, Caldwell,  
Casey, Crosland & Bramnick, P.A.  
200 South Biscayne Boulevard, Suite 3600  
Miami, Florida 33131-2338

For Respondent: Lorene C. Powell, Esquire  
Florida Education Associated/United  
118 North Monroe Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

Whether Respondent, a school teacher with a professional services contract, committed the offenses set forth in the Petition for Dismissal and, if so, the penalties that should be imposed.

PRELIMINARY STATEMENT

At all times pertinent to this proceeding, Respondent was employed by the Monroe County School Board as a classroom teacher pursuant to a professional services contract and was assigned to teach and coach at Marathon High School, one of the public schools in Monroe County. On June 25, 1993, Robert G. Walker, Petitioner's Superintendent of Schools, filed aPetition for Dismissal with the School Board which contained factual allegations as to Respondent's conduct with two femalestudents of Marathon High School and charged Respondent with misconduct in office, immorality,and gross insubordination. The Petition charged that Respondent'sconduct violated Sections 231.09, 231.36(6)(a), Florida Statutes,and Rules 6B-1.001, 6B-1.006, 6B-4.009, 6B-5.003, 6B-5.005, 6B-5.006, and 6B-5.010, Florida Administrative Code.

At the formal hearing, Petitioner presented the testimony of Debra Rafuse, Jenifer Rafuse, Peggy Creech, Deborah Matthews, Dr. Edward Deane, and Glynn Archer, Jr. Melissa Creech was also called by Petitioner as a rebuttal witness. Tracey Ann Gaines was also called by Petitioner as a rebuttal witness. Petitioner offered three exhibits, each of which was accepted into evidence.

The Respondent testified on his own behalf and presented the additional testimony of Leslie Gail Gaskins, Laura Jeanine Hewlett, Mary Elizabeth Herbst, Vivian Chisolm, Edgar Louis Hunt, Glynn Archer, Jr., and Robert G. Walker. Respondent offered two exhibits, both of which were accepted into evidence.

A transcript of the proceedings has been filed. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 60Q-2.031, Florida Administrative Code. Rulings on the parties' proposed findings of fact may be found in the Appendix to this Recommended Order.

#### FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was employed by the Petitioner as a classroom teacher pursuant to a professional services contract. Respondent holds Florida teaching certificate number 626239, covering the areas of English and ESOL (English Second Other Language), valid through June 30, 1994. Respondent has been employed since August, 1987, as a teacher and basketball coach at Marathon High School in the Monroe County, Florida, School District, and he has held a professional services contract with Petitioner since the beginning of the 1990-91 school year. Respondent's wife is also a teacher at Marathon High School.

2. Robert G. Walker has been employed with the School District of Monroe County for approximately twenty-six (26) years and has served as the Superintendent of Schools of the School District of Monroe County, Florida, since January 5, 1993. At all times pertinent to this proceeding Glynn Archer, Jr. was the Assistant Superintendent of Schools. Mr. Archer is an experienced educator who has extensive experience conducting investigations into allegations of misconduct.

3. At all times pertinent to this proceeding Dr. Edward Deane was the Principal of Marathon High School and Ms. Jesse Hobbs was the Assistant Principal.

#### 1990-91 SCHOOL YEAR: JENIFER RAFUSE

4. Jenifer Rafuse attended Marathon High School from the ninth through the twelfth grades. Jenifer graduated with honors from Marathon High School at the end of the 1992-93 school year. Jenifer is a female who was born June 28, 1972. At the time of the formal hearing, Jenifer was eighteen years of age.

5. During the 1990-1991 school year, Respondent taught a fifth period writing class at Marathon High School. Jenifer Rafuse, then fifteen (15) years old and a sophomore, was a student in that class. Jenifer experienced severe personal problems during her sophomore year. Her parents were experiencing financial difficulties and marital discord, which resulted in a dissolution of their marriage. Jenifer was also experiencing problems with her boyfriend.

6. A few months into that school year, Respondent and Jenifer began talking personally and privately during the writing class. At first, these conversations were merely exchanges between a concerned teacher and a troubled student. Gradually, the relationship between Respondent and Jenifer changed from a student/teacher relationship to what Jenifer described as "friends". Respondent and Jenifer would frequently have these conversations about her boyfriend and her parents.

7. The writing class was relatively small and the students would commonly be given time to work on their individual writing projects. It was during these times that Respondent and Jenifer would have personal discussions about her boyfriend and personal problems. Other students were present in the classroom when these discussions took place. Although these were not whispered conversations, the conversations were private between Respondent and Jenifer and were not intended to be overheard by the other students in the classroom.

8. Respondent began asking Jenifer different types of questions about the two of them going out or doing things alone together. One day during class, Respondent approached Jenifer and asked her if she had ever been white-water rafting. After Jenifer replied that she had not, Respondent told her that he planned to go rafting in Gainesville, Florida, within the next couple of weeks and asked her if she would like to go with him. He told Jenifer that they could go and drink Margaritas so that he could get her drunk and take advantage of her. Jenifer understood this clearly to mean that Respondent wanted to have a sexual relationship with her. The conversation about Gainesville, Florida, and Respondent's sexual advance made Jenifer feel extremely uncomfortable, nervous, and scared.

9. At about the same time during one of the conversations in the classroom, Respondent asked Jenifer if she would come to his house to baby-sit his small child. It was not unusual for Respondent or his wife to ask students to baby-sit for their son. Jenifer at first agreed to baby-sit for the Respondent and later became evasive because she was no longer comfortable with the Respondent. The Respondent asked her four or five times in the span of a week to come to his house to baby-sit. These repeated inquiries are not found to be harassment because Jenifer was being evasive, because there was no evidence that Respondent had an ulterior motive for asking her to baby-sit, and because there was no evidence that the Respondent knew that Jenifer did not want to baby-sit for his child.

10. During this period that Respondent was attempting to learn whether Jenifer would baby-sit for him, he called Jenifer at her home and asked her again about baby-sitting. During this conversation, Respondent told Jenifer that if she was still having any problems, she could talk to him, "that they could go out and have a drink, or have a beer" and talk.

11. This telephone conversation made Jenifer very uncomfortable and apprehensive about talking to Respondent in any context or being placed in a situation alone with him. She declined to ever baby-sit for him and felt that her relationship with the Respondent was no longer "friendly". As a result, she wanted to completely avoid Respondent, and began leaving school every day at lunchtime and not returning, so that she completely avoided seeing him or attending his class.

12. Jenifer's mother, Debra Rafuse, received a call at home from Respondent, who was inquiring as to why Jenifer was not in school and whether she was okay. Later that day, Mrs. Rafuse received a call from Jesse Hobbs, Assistant Principal at Marathon High School. Ms. Hobbs informed Mrs. Rafuse that Jenifer had been missing classes. Mrs. Rafuse was understandably concerned and confronted Jenifer about skipping school when Jenifer came home. Jenifer told her mother that she had been attending classes in the morning, but leaving at lunchtime and not returning. When Mrs. Rafuse asked Jenifer why she was doing that, Jenifer broke down and started crying. She then told her mother that Respondent had made advances toward her, had asked her to go away to Gainesville, Florida, for the weekend with him, and had talked to her about giving her Margaritas so she would get drunk and he could take advantage of her. Jenifer also told her mother that Respondent had said that if she ever needed to talk to him, they could go out to dinner or have a few beers and discuss whatever was bothering her.

13. Respondent also sent Jenifer a personal greeting card, assuring her that she could confide in him and that everything would work out. Respondent admitted to sending the card as a "pick me up". Jenifer was not offended by the card. The sending of the card, in and of itself, was not shown to be inappropriate.

14. Mrs. Rafuse and her husband became outraged when they learned of Respondent's actions toward their daughter and immediately scheduled a meeting with Ms. Hobbs, the Assistant Principal. Initially present at that meeting were Mr. and Mrs. Rafuse, Jenifer, and Ms. Hobbs. Jenifer explained to Ms. Hobbs what had transpired over the past few months with Respondent. The four of them proceeded to Dr. Edward Deane's office, who was the Principal at Marathon High School at all times pertinent to this proceeding, where Jenifer related the circumstances again, this time to Dr. Deane. After Dr. Deane understood Jenifer's allegations, Respondent was called into the meeting.

15. Dr. Deane explained to Respondent the nature of the charges Jenifer had made against him. Respondent looked down at the floor during the entire meeting. When asked by Dr. Deane what his response was Respondent simply stated that he had no comment. During the meeting, he never admitted or denied making the advances to Jenifer regarding a trip to Gainesville, Florida. Jenifer believed that the Respondent looked smug during this meeting, which she resented. Respondent apologized to Jenifer as he left the meeting.

16. Respondent, after apologizing to Jenifer and her parents, stated that perhaps Jenifer had misunderstood him. At the formal hearing and in his post-hearing submittal, the Respondent asserts that Jenifer must have misunderstood him. Jenifer testified that she is certain that she did not misunderstand Respondent. This conflict in the evidence is resolved by finding, based on the greater weight of the evidence and after considering the credibility of the witnesses, that Respondent invited Jenifer to go to Gainesville, Florida, with him, that he invited her to drink Margaritas, and that he implied that he wanted to have a sexual relationship with Jenifer. It is further found that Respondent asked Jenifer out to drink beer if she wanted to talk to him about her problems. It is also found that Jenifer did not encourage or provoke Respondent's behavior towards her. Jenifer had no motive to fabricate her version of the events that occurred between herself and the Respondent and she had no interest in having Respondent's employment terminated.

17. After Respondent left the meeting, Dr. Deane suggested to Jenifer's parents that she be taken out of Respondent's writing class, and his wife's English Honors class as well. Accordingly, her class schedule for the remainder of the school year changed. She was placed in a lower level English course and a business English course taught by other faculty members.

18. Following this meeting, Respondent and Dr. Deane had a private meeting to discuss the situation. Dr. Deane discussed with Respondent the serious implications of Jenifer's allegations, such as the negative impact on his character and reputation, on his career as a teacher, and on his family. Respondent testified that he understood Dr. Deane's admonishment. Respondent understood that these or similar allegations could ruin his family life, his reputation in the community and his career. Dr. Deane testified that he was sure Respondent listened, acknowledged, understood, and clearly agreed that for whatever he might have done, Respondent was at that point in time implying that it was never going to happen again. Dr. Deane felt that whatever transgressions may have taken place, that his conversation with Respondent would prevent this kind of situation from ever happening again.

19. Two years later, when Jenifer was in twelfth grade, she enrolled in a dual enrollment English course, which would allow her to receive both high school credits and college credits at the sametime. When she got to the class, however, she discovered that Respondent would be her teacher. After discussing the situation with her mother, she decided to stay in the course. Jenifer was aware that the course would be helpful in college, that no other teachers at Marathon High School taught the course, and that she was not presented with any viable alternatives for dual credit. Her mother felt that it would be acceptable if Jenifer thought she could handle it, because she was more mature at seventeen (17) than she had been at fifteen (15). Jenifer and Respondent got along without any problem during Jenifer's senior year at Marathon High School until Jenifer learned of Respondent's conduct with Melissa Creech. Jenifer gave Respondent a signed senior class photo of herself, as did many of the other seniors at Marathon High School. Jenifer wrote on the back of her picture that she enjoyed Respondent's class and that his class was a "blast". Jenifer considered Respondent to be a good teacher. Jenifer also signed Respondent's yearbook her senior year and again told him that she appreciated how much he taught her and helped to open her mind to creative writing. Jenifer's attitude toward Respondent changed again when she heard about Respondent's conduct with Melissa Creech.

#### SCHOOL YEARS 1991-92 AND 1992-93: MELISSA CREECH

20. Melissa Creech was a classmate of Jenifer's at Marathon High School and the two were acquaintances, although not good friends. Both girls attended Marathon High School from their freshman through their senior years, and both graduated in 1993.

21. Respondent taught Melissa a journalism class during the 1991-92 school year when Melissa was a junior. Melissa described her early relationship with Respondent as a normal student/teacher relationship. During the course of the year, Melissa began to discuss with Respondent a young man she was interested in dating. These discussions occurred in class and became as frequent as three to four times per week. More than once during the course of the journalism class, Respondent asked Melissa when she was going to give him a try or a chance. Respondent also asked Melissa to baby-sit for him, but Melissa declined his requests.

22. During the time that Respondent was Melissa's teacher, Melissa had a job at the drive-through window at the local McDonald's. Respondent would often appear at the drive-through while Melissa was working, sometimes with his wife and child, but more often than not he was alone. At least once while Melissa was working, Respondent initiated a conversation at the drive-through window wherein he told her he was counting down the days until she was eighteen (18) so that they could legally go out together.

23. Melissa was not offended by Respondent's conduct during her junior year, and she made no complaint during her junior year about Respondent to her parents or to school officials.

24. When Melissa became a senior she did not have any regular classes with Respondent as a teacher. Respondent would, however, serve as a substitute teacher from time to time for classes in which Melissa was a student. One day in June, 1993, very close to graduation, Respondent was acting as a substitute teacher for a class Melissa was in and he mentioned to her that he had a copy of the Keynoter newspaper that had her picture on the front page. He told her that he had an extra copy of the newspaper in his classroom and that she should come to his classroom to pick it up if she wanted it.

25. When Melissa went to his classroom, there was nobody else in the room. She went over to his desk where Respondent had a calendar opened to the month of July. Respondent showed Melissa that he had already marked his calendar for a business trip to Orlando and mentioned that he was not taking his wife and child. He then asked Melissa what she was doing on those dates and whether she wanted to go to Disney World with him to "have some fun". Melissa clearly understood this comment to mean that Respondent wanted to have a sexual relationship with her. Furthermore, Respondent also asked Melissa whether she was going to have a car, because if she was, she could drive the two of them to Orlando.

26. Melissa was scared and left the room. Melissa had not encouraged Respondent to make such advances toward her. On a later day, Respondent approached Melissa as she was leaving her second period class and asked her whether she had thought about it and whether she wanted to go to Disney World; she simply told him "No".

27. After that conversation about going to Orlando, Melissa began avoiding Respondent because she was frightened of him and she did not want to see him. Whenever he would see her, he would ask her to come to his room to sign his yearbook, but she never went. Respondent asked at least one of her friends, Tanya Niblit, to have Melissa come to see him because he needed to talk to her. Respondent also asked Melissa at least twice in person to sign his yearbook.

28. Melissa believed that Respondent was harassing her, but she did not tell her parents about Respondent's conduct because she was afraid of what they would do. Instead, she told her best friend, Miranda Grice, about it.

29. Miranda Grice knew Jenifer Rafuse and she knew of the problems Jenifer had encountered with Respondent in her sophomore year. Miranda subsequently told Jenifer that Melissa was having some of the same problems that she had with Respondent and that she wanted Jenifer to talk to Melissa.

30. Jenifer eventually did speak with Melissa about the situation while the two of them were at school. Melissa told her that Respondent had asked her to go away with him and that she was uncomfortable. While the two were talking,

Respondent noticed them and called out to Melissa. Melissa pretended not to hear him and kept on walking. Melissa began shaking and crying and told Jenifer that she did not know what to do because Respondent would not leave her alone. Jenifer explained to her that it would be best if the school authorities were notified of the situation because nothing could be done if they were not. Jenifer eventually approached Ms. Hobbs, the Assistant Principal, and told her that Melissa was having the same problems she had with Respondent.

31. Melissa was then called to Ms. Hobbs' office and asked to explain the situation in front of Jenifer, Ms. Hobbs and Ms. Matthews, the counselor. Melissa was very nervous and was trembling. She began crying when she started talking and cried for some time. Melissa stated that she was very frightened of Respondent and was adamant that she knew his advances were sexual in nature.

32. After she was finished relating the facts in Ms. Hobbs' office, Melissa was sent back to her classroom. At that point, Ms. Matthews met privately with Ms. Hobbs and Dr. Deane, the principal, and discussed reporting Melissa's case to the Department of Health and Rehabilitative Services (HRS) as a possible sexual abuse case. Because Ms. Matthews suspected possible sexual abuse, she did call HRS on the Abuse Hot Line. However, an HRS counselor advised Ms. Matthews when she called that they could not investigate the case because Melissa was already eighteen (18) years old.

33. Ms. Hobbs then called Mrs. Creech at work and asked her to come to the school. When she arrived, Melissa was called out of class and the group met in Dr. Deane's office, where Melissa again went over the incidents between Respondent and her for the benefit of Dr. Deane and her mother. When Melissa was finished telling her story, Dr. Deane called Respondent into the meeting.

34. When Respondent arrived at the meeting, Dr. Deane asked Melissa to tell him what she had already told everyone else present. Dr. Deane at that point asked Respondent whether he had any response and Respondent stated that he had no comment. At that point, the conversation became very emotional and heated, and Mrs. Creech began to ask questions of Respondent. Mrs. Creech asked Respondent what motivation he had for asking her daughter to go to Disney World with him. His response was that he didn't mean anything by that. Respondent apologized to Mrs. Creech. Both Ms. Matthews, who had a good working relationship with Respondent, and Mrs. Creech understood Respondent's answer to be an admission of guilt. When Mrs. Creech asked Respondent a second time what could have motivated him to ask her daughter to go away with him, he just put his head down and declined to comment.

35. The Respondent asserts that Melissa Creech had misunderstood him and that he never invited her to go to Orlando with him. The conflict in the evidence is resolved by finding that Respondent did invite Melissa to Disney World and that the invitation implied that he wanted to have a sexual relationship with her. Melissa had no motive to fabricate her version of the events that occurred between herself and the Respondent and she had no interest in having Respondent's employment terminated.

36. Dr. Deane reported the incidents involving Jenifer and Melissa to the central school board office and recommended that Respondent's employment be terminated. The incidents involving Jenifer and Melissa were investigated on behalf of the School Board by Glynn Archer, the Assistant Superintendent of Schools. Thereafter, Mr. Archer submitted his investigative report and his recommendation to Robert G. Walker, the Superintendent of Schools. Mr. Walker

thereafter recommended to the School Board that Respondent's employment pursuant to the professional services contract be terminated. At the time of the formal hearing, the Respondent had been suspended with pay by the School Board.

37. Respondent's effectiveness as a teacher in the Monroe County School District has been impaired by this misconduct.

#### CONCLUSIONS OF LAW

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

39. Petitioner has the burden of proving by a preponderance of the evidence the allegations contained in the Petition for Dismissal. See, Rule 28-6.08(3), Florida Administrative Code. See also, Florida Department of Transportation v. J.W.C., Co., 396 So.2d 778 (Fla. 1st DCA 1981), Allen v. School Board of Dade County, 571 So.2d 568 (Fla. 3d DCA 1990), and Dileo v. School Board of Dade County, 569 So.2d 883 (Fla. 3rd DCA 1990).

40. Section 231.02(1), Florida Statutes, provides, in pertinent part, as follows:

(1) To be eligible for appointment in any position in any district school system, a person shall be of good moral character . . .

41. Section 231.09, Florida Statutes, is as follows:

Members of the instructional staff of the public schools shall perform such duties prescribed by rules of the school board. Such rules shall include, but not be limited to, rules relating to teaching efficiently and faithfully, using prescribed materials and methods; record keeping; and fulfilling the terms of any contract, unless released from the contract by the school board.

42. The provisions of Section 231.36(1)(a), Florida Statutes, provide, in pertinent part, as follows:

(1)(a) Each person employed as a member of the instructional staff in any district school system . . . shall be entitled to and shall receive a written contract. . . . All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

43. Pursuant to the provisions of Section 231.36(6)(a), Florida Statutes, the employment of a member of the instructional staff with a professional services contract may be suspended or terminated at any time during the term of the contract, but the charges must be based on "just cause" as that term is defined by Section 231.36(1)(a), Florida Statutes.



44. Rule 6B-4.009, Florida Administrative Code, provide the following definitions pertinent to this proceeding:

(2) Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair the individual's service to the community.

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.

(4) Gross insubordination or willful neglect of duty is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

45. The provisions of Rule 6B-1.006, Florida Administrative Code, constitute the "Principles of Professional Conduct for the Educational Profession in Florida". Rule 6B-1.006(3), Florida Administrative Code, provides, in pertinent part, as follows:

(3) Obligations to the student requires that the individual:

(a) Shall make reasonable efforts to protect the student from conditions harmful to learning. . . .

\* \* \*

(e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

\* \* \*

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

46. Immorality is not a separate basis for termination of Respondent's employment under the provisions of Section 231.36(6)(a), Florida Statutes. The statutory definition of the term "just cause" found in Section 231.36(1)(a), Florida Statutes, is not all inclusive, and "immorality" is properly considered to be a basis for the termination of an employee's professional services contract. Compare, *Sherburne v. School Board of Suwannee County*, 455 So.2d 1057 (Fla. 1st DCA 1984) and the provisions of Section 231.02(1), Florida Statutes. In this proceeding, Petitioner has established that Respondent was guilty of "immorality" as that term is defined by Rule 6B-4.009(2), Florida Administrative Code, by his unwarranted advances towards Jenifer and Melissa. Respondent is in a position of special trust as a school teacher. His use of that position to "hit" on Jenifer and Melissa is conduct that is "inconsistent with the standards of public conscience and good morals" and is "sufficiently notorious to bring the individual concerned or the education profession into public disgrace or disrespect and impair [his] service to the community."

47. Petitioner has not established that Respondent is guilty of gross insubordination. Although it is concluded that Respondent failed to follow Dr. Deane's sage advice following the incident with Jenifer during her sophomore year, that failure does not constitute a ". . . constant or continuing

intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority" as the term "gross insubordination" is defined by Rule 6B-4.009(4), Florida Administrative Code.

48. Petitioner established by a preponderance of the evidence that Respondent engaged in misconduct in office in violation of Rule 6B-1.006(3)(a),(e), and (h), Florida Administrative Code, and within the meaning of Section 231.36(6)(a), Florida Statutes. Petitioner has established by a preponderance of the evidence that Respondent used his position as a schoolteacher to exploit Jenifer and Melissa in an effort to have a personal and sexual relationship with them. His concern was for himself, not the two students involved.

49. It is clear that Respondent has been a popular teacher and, except for the misconduct found in this proceeding, a good teacher. Although the findings of fact in this proceeding turn on the testimony of Jenifer and Melissa, these two young women are found to be very credible witnesses. While the undersigned recognizes the difficulty a teacher faces in defending against such allegations, Respondent's denials of these allegations are found to be less than credible.

50. It is concluded that Respondent's effectiveness as a teacher in the Monroe County School system has been impaired by this misconduct. This conclusion is based, in part, on the nature of the misconduct, the impact of the misconduct on Jenifer and Melissa, the reaction of their parents to the misconduct, and on the reactions of the Respondent's principal, the assistant superintendent of schools and the superintendent of schools. Further, from the record in this proceeding, it is apparent that these incidents have generated controversy in the community.

51. Petitioner has established that there exists just cause to terminate the Respondent's professional services contract.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Petitioner enter a final order which adopts the findings of fact and conclusions of law contained herein and which terminates Respondent's professional services contract.

DONE AND ENTERED this 16th day of March 1994 in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of March 1994.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 93-3795

The following rulings are made on the proposed findings of fact submitted by the Petitioner.

1. The proposed findings of fact in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, and 51 are adopted in material part by the Recommended Order.

2. The proposed findings of fact in paragraph 8 are adopted in part by the Recommended Order. The proposed findings of fact in the second sentence of paragraph 8 are unnecessary to the conclusions reached.

3. The proposed findings of fact in paragraph 10 are adopted in part by the Recommended Order. The proposed findings of fact in the last two sentences of paragraph 10 are unnecessary to the conclusions reached.

4. The proposed findings of fact in paragraphs 24, 43, 44, 45, 46, 47, 48, 49, and 50 are rejected as being unnecessary to the conclusions reached.

5. The proposed findings of fact in paragraph numbered 31 on page 13 of Petitioner's Proposed Recommended Order are adopted in material part by the Recommended Order. This paragraph is misnumbered.

6. The proposed findings of fact in paragraphs 40, 41, and 53 are subordinate to the findings made.

7. The proposed findings of fact in paragraph 52 are adopted in part by the Recommended Order or are subordinate to the findings made.

The following rulings are made on the proposed findings of fact submitted by Respondent.

1. The proposed findings of fact in paragraphs 1, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 20, 21, 22, 24, 30, 32, and 37 are adopted in material part by the Recommended Order.

2. The proposed findings of fact in paragraphs 2, 4, 18, 19, 25, and 26 are subordinate to the findings made.

3. The proposed findings of fact in paragraph 3 are adopted in part by the Recommended Order. The proposed findings of fact in paragraph 3 pertaining to Jason Rafuse are rejected as being unnecessary to the conclusions reached.

4. The proposed findings of fact in paragraph 11 are rejected as being contrary to the greater weight of the evidence and to the conclusions reached.

5. The proposed findings of fact in paragraph 17 are adopted in part by the Recommended Order. There was no evidence that any other reason or problem contributed to her cutting class.

6. The proposed findings of fact in paragraph 23 are adopted in part by the Recommended Order. The proposed finding as to Miranda's relationship to Jenifer's stepfather is rejected as being unsubstantiated by the record and unnecessary to the conclusions reached.

7. The proposed findings of fact in paragraphs 27, 34, and 35 are rejected as being unnecessary to the conclusions reached and, in part, as being unsubstantiated by the record.

8. The proposed findings of fact in paragraphs 28, 29, and 31 are rejected as being unsubstantiated by the record.

9. The proposed findings of fact in paragraphs 33, 36, and 38 are rejected as being unnecessary to the conclusions reached since it was not established that Mrs. Grice harbored any ill feelings towards the Respondent or that she influenced any of the witnesses in this proceeding.

10. The proposed findings of fact in paragraph 39 are rejected as being unnecessary to the conclusions reached since the matter of penalty is at issue in this proceeding. The proposed findings are not relevant as aggravating or mitigating evidence.

11. The proposed findings of fact in the first sentence of paragraph 40 are subordinate to the findings made. The proposed findings of fact in the remainder of paragraph 40 are rejected as being unsubstantiated by the evidence.

12. The proposed findings of fact in paragraphs 41, 42, and 43 are rejected as being unnecessary to the conclusions reached and as being irrelevant to any matter at issue in these proceedings.

COPIES FURNISHED:

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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 ten 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.