STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SCHOOL BOARD OF PINELLAS COUNTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 94-1631
	)	
JAMES RAY,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

On May 10, 1994, a formal administrative hearing was held in this case in St. Petersburg, Florida, before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Keith B. Martin, Esquire
Assistant School Board Attorney
301 Fourth Street Southwest
Largo, Florida 34649-2942

For Respondent: Mishele B. Schutz, Esquire
535 Central Avenue
St. Petersburg, Florida 33701

STATEMENT OF THE ISSUE

The issue in this case is whether the Petitioner, the School Board of Pinellas County, should dismiss the Respondent, James Ray, from his employment as a drama teacher on annual contract on charges: (1) that on February 10, 1994, rather than contact a school administrator to report the incident, he allowed two high school students to take a third, who was inebriated to the point of being incapacitated, home from school; and (2) that on February 11, 1994, he allowed the two students to show a videotape they had made of the inebriated student the previous day which contained denigrating and humiliating scenes of several students physically abusing the inebriated student.

PRELIMINARY STATEMENT

On or about March 9, 1994, the Pinellas County School Superintendent suspended the Respondent from his employment as a drama teacher on annual contract, without pay, pending disposition of his recommendation that the School Board dismiss the Respondent on the charges set out in the preceding paragraph. On March 23, 1994, the School Board met and followed the Superintendent's recommendation. The Respondent requested formal administrative proceedings, and on March 28, 1994, the matter was referred to the Division of Administrative Hearings (DOAH). On March 31, 1994, it was scheduled for final hearing on May 10, 1994.

At the final hearing, the School Board called twelve live witnesses and had the transcripts of the deposition testimony of two other witnesses admitted in evidence as Petitioner's Exhibits 1 and 2. The School Board also had Petitioner's Exhibits 3 through 10 admitted in evidence. The Respondent called four witnesses and testified in his own behalf. The Respondent also had Respondent's Exhibits 1 through 6 admitted in evidence.

At the end of the hearing, the parties requested and received 20 days in which to file proposed recommended orders. Explicit rulings on the proposed findings of fact contained in the parties' proposed recommended orders may be found in the Appendix to Recommended Order, Case No. 94-1631.

FINDINGS OF FACT

1. Until March 23, 1994, the Respondent, James Ray, was a drama teacher on annual contract at the Pinellas County Center for the Arts (PCCA) program at Gibbs High School in St. Petersburg, Florida. He had been on successive annual contracts since 1990.

2. PCCA is a special program for the arts. It is located at Gibbs High School and operates under the purview of the Gibbs High Principal and her administration. But it operates separately under the direction of its own Coordinator, who reports to the Principal, and has its own Guidance Counselor, who works primarily with the Coordinator, while also part of the school's guidance office. The education and work experience of those hired as PCCA teachers tend to be primarily in the performing arts, as opposed to being in formal classroom teaching.

3. PCCA's class schedule differs from that of the regular Gibbs High students. While regular students are dismissed from school at approximately 2 p.m., PCCA students are in class until approximately 3:30 p.m.

The Incident on February 10, 1994

4. During a class the Respondent was teaching at approximately 2:00 p.m. on Thursday, February 10, 1994, a student of the Respondent, named Marshal, came to the door of the Respondent's classroom and got the Respondent's attention. The Respondent went to the door, and the student asked the Respondent to step out in the hall. When the Respondent did, the student and another student of the Respondent, named Sean, pointed to a third student, who had fallen out of a chair near the door in the hallway and was lying on the floor. The two apparently sober students told the Respondent, and Respondent could see for himself, that the student lying on the floor was inebriated to the point of being incapacitated. Marshal and Sean told the Respondent that the inebriated student had been drinking. The Respondent presumed that they were referring to alcohol consumption. The Respondent told Marshal and Sean that he was going to contact a school administrator, but they pleaded with him instead to let them take the inebriated student home. They assured the Respondent that they could manage it, and the Respondent agreed to let them do so.

5. Since the regular Gibbs High students were being dismissed from school, the Respondent advised them to go out the back door of the school so as to encounter the fewest people possible.

6. The Respondent did not know the name of the inebriated student. He vaguely recognized the student but did not know from where. The Respondent did not think the inebriated student was in any of the Respondent's classes. The Respondent never inquired as to the identity of the student.

7. After dealing with the students who had come to the door, the Respondent returned to his classroom to advise his class that he had to leave the classroom and to have one of his students lead dance exercises in his absence. He then went to the office a guidance counselor, Cody Clark, to report the incident. However, since he did not know the inebriated student's name, he was unable to identify him for Clark. The three students already had left, and the Respondent did not know where they were. He and Clark concluded that there was nothing more that could be done at that time.

8. After speaking with Clark, the Respondent returned to his classroom. By the end of class, Marshal returned to the Respondent's class and told the Respondent that Sean had taken the inebriated student home on a regular school bus. This time, he indentified the inebriated student by name. Marshal also informed the Respondent that he had videotaped David, the inebriated student, while he was drunk in order to communicate an anti-drinking message to the other students. (The theme of the message was supposed to be, roughly, "make sure you never get this drunk.") The Respondent did not ask to see the video and did not ask whether David agreed its being recorded and shown.

The Incident on February 11, 1994

9. The next morning, February 11, 1994, the Respondent had only four students in his first period class. (Some of his students apparently observed what some called "national skip day.") Someone came by his classroom to tell him that the videotape of David drunk the day before was going to be shown in the first period classroom of another teacher, Keven Renken.

10. At the time, the Respondent thought that the video had been recorded after the three students had left the Respondent's classroom door on the previous afternoon. He again did not ask to preview the video. Although the Respondent did not ask, he had the impression that David was aware of and agreed to the showing of the videotape. The Respondent also was assuming that Renken had approved of the showing. He did not verify either assumption.

11. Meanwhile, Marshal had only told Renken that he had "a film of someone being drunk." He also told Renken that the purpose of the videotape was to communicate an anti-drinking message. It was not clear from the evidence that Renken understood the video to be a recording of a student actually being intoxicated, as opposed to acting. Marshal managed to give Renken the impression that the Respondent had approved the showing of the videotape, and Renken did not preview the tape.

12. When the Respondent and his four students arrived at Renken's class, Renken was attending to matters at his desk, and the video had just begun. The Respondent told Renken that he understood that a videotape was being shown in Renken's classroom. This question confirmed to Renken that the Respondent already knew something about the videotape and, perhaps, had previewed it and had approved it. The teachers did not discuss with each other whether the videotape had been previewed or approved.

13. When Marshal saw that the Respondent and his class were arriving, he rewound and restarted the tape. The Respondent stood and watched the videotape

with the students while Renken continued to attend to the matters at his desk. Soon after the Respondent arrived, Renken got up from his desk and asked the Respondent to be in charge of both classes while he left the classroom to copy some paperwork. The Respondent naturally agreed, and Renken left the classroom for approximately fifteen minutes. When Renken returned to the class the videotape was almost over. (It only lasted approximately 25 minutes.) It is not clear at what point in the showing of the videotape Renken left the room, or what point he later returned. He did not see very much of it. The Respondent, on the other hand, watched the entire videotape with the students.

14. The videotape, which actually had been made during the morning on the previous day, was disgusting. It began by showing David unconscious on the floor of a room in Marshal's house next to what appeared to be, and what Marshal described on the videotape as being, green vomit. Right at the outset, Marshal mocked David for having gotten so drunk and verbally abused him by calling him names that were vulgar, humiliating and denigrating. From the beginning, the Respondent (and, if he was watching, Renken) should have realized: (1) that the videotape was inappropriate for viewing by the class; (2) that he should have suspected that David had not agreed to its viewing by the class; and (3) that he should have suspected that Renken did not knowingly approve showing the videotape to the class. He should have stopped the tape at least to question David and Renken.

15. The longer the tape ran, the more obvious and clear these judgments should have become to the Respondent. Subsequent footage showed David, while still lying unconscious on his stomach, being dragged by his feet, with his face scraping along the floor, out of the house and onto a concrete porch, leaving a trail of green vomit. On the porch, the other teenagers present (all male) continued various forms of physical and verbal abuse (which continued throughout the videotape.) When David regained semi-consciousness and began to move, they allowed him to fall off the porch on his face. (The porch was approximately two feet above ground level.) As he was leaning against the porch while trying to stand up, still only semi-conscious and totally incapable of protecting himself, they took turns pouring hot and cold water, flour, and urine on him. In a later segment, David is shown standing outside the house and is heard trying to protest and plead with the teenagers to stop hosing him down with a garden hose. He is seen attempting to stagger away and returning to the concrete porch, and it is obvious that he easily could have fallen and seriously injured himself. He stops on the porch to lean against the house, and the physical and verbal abuse continues. In a third segment, David is seen lying in a bathtub, again unconscious. There, the physical abuse continues. The other teenagers pour shampoo, gel, and powder on him. Later, they put nail polish and lipstick on his face, and one of them grabs his hair and bangs the back of his head against the bathtub. Finally, they take turns standing spread-eagle on the edge of the tub and attempting to urinate on David. At least some, but maybe not all, of them actually urinate on him.

16. The Respondent exhibited appallingly poor judgment in passively watching the videotape to its conclusion. It was clearly probable, if not absolutely obvious, that showing the videotape to the class was humiliating and denigrating, not only to David but to the others as well. (Although Marshal and Sean obviously did not realize it, the videotape raised serious questions about their character.) Yet, the Respondent concluded that he did not have "the right" to stop the videotape because it supposedly was the result of Marshal's and Sean's attempt at artistically and creatively expressing an "anti-drinking" message. It is difficult to detect the supposed artistic or creative content in the videotape. Even if there were any, the Respondent clearly should have

recognized his "right" as a teacher to stop the humiliating and degrading videotape. He did not even think to stop it in order to ascertain whether Renken and David indeed had approved of showing it. (In fact, neither had.)

17. After the videotape finished, the Respondent left with his class. Neither he nor Renken confiscated the videotape to prevent it from being shown again. As a result, between class periods, Marshal began to show it again. When guidance counselor Clark looked in to check the classroom, where he was planning to lead a tour during the next period, he briefly saw what was going on and told Marshal to stop the tape and bring it to him later. (Clark did not confiscate the tape either. It was not clear from the evidence what parts of the videotape Clark was able to see.) When the Respondent returned to the classroom, where his next class was being held, Marshal was in the process of showing it again. This time, the Respondent told him to stop the tape but still did not confiscate it.

Expectations of Pinellas County Teachers

18. At the beginning of each school year, all Pinellas County teachers receive a copies of the Pinellas County Teacher Handbook and Code of Student Conduct. They are told to read and be familiar with them.

19. According to the Pinellas County Teacher Handbook, while the use of guidance counselors for help with minor discipline problems related to instruction is permissible, for other discipline problems teachers are to contact the appropriate assistant principal. While the Teacher Handbook encourages teachers to "handle as many discipline problems as possible without jeopardizing the learning environment," it also provides that major offense should be referred directly to the assistant principal's office. The Teacher Handbook includes, among disciplinary offenses classified as major, being in possession or under the influence of "an unknown substance."

20. The Teacher Handbook also includes the following provisions from an outdated version of the Principles of Professional Conduct for the Education Profession:

> Obligation to the student requires that the educator:
>
> Shall make reasonable effort to protect the student from conditions harmful to learning or to health or safety.

21. The Teacher Handbook also requires that teachers be familiar with the "Code of Student Conduct." Among other things, the "Code of Student Conduct" prohibits the use or possession of illegal drugs, materials, substances, or alcoholic beverages on school property or prior to arriving at school and provides that a student violating the prohibition will be suspended and recommended for expulsion.

Impact on Teacher Effectiveness

22. David did not agree to showing the videotape. On the morning of Friday, February 11, 1994, Marshal and Sean told him that they had videotaped David while he was drunk the day before and that Marshal had the videotape. They said they were going to show the video in class that day. David did not think they were telling him the truth and did not think there actually was such a videotape. In any event, he was preoccupied as a result of also being told by

Marshal and Sean that they had brought him to school the day before. He was concerned that he may have been "referred" to the administration for discipline for being intoxicated on campus.

23. David went to ask guidance counselor Clark and was told that Clark had not "referred" him but that the Respondent might have. When he went to see the Respondent between the first and second period of class, the Respondent revealed to David that there was a videotape and that it already had been shown during first period in Mr. Renken's class. David then went to Renken's first period classroom, where Marshal and Sean were showing the videotape again. David watched for just a short time, but long enough to be shocked and disgusted, as well as humiliated. He left the classroom and went to report to Clark what Marshal and Sean were doing.

24. David has been seriously adversely affected by the videotape and its having been shown at school. He already did not have a good self-concept. As a result of the videotape and its being shown at school, and the aftermath, including this proceeding, he now is in counseling. He thinks former friends and aquaitances have been avoiding him. He verbalizes strong anger at, disillusion with, and distrust of Marshal and Sean. He thought they were his friends but no longer does after what they did. He does not verbalize similar feelings about the Respondent. To the contrary, he appreciates the Respondent's willingness to allow Marshal and Sean take him home from school on Thursday, February 10, and does not blame him very much for the videotape being shown the next day. On the other hand, he blames himself for causing the Respondent's dismissal and is experiencing difficulty dealing with the resulting guilt he feels.

25. On the other hand, David's mother faults the Respondent on several counts. First, she believes he should have taken steps to ascertain what David's problem was on the afternoon of Thursday, February 10, instead of taking the word of Marshal and Sean that he was drunk, presumably on alcohol, but that he was "okay." Second, she thinks she should have been notified so that she could have made arrangements to get David home and take care of him. Third, she thinks the Respondent exposed not only David but, as far as he knew, also other students to safety risks by allowing Marshal and Sean to take David home on the bus. Finally, she faults him for allowing the videotape to be shown in the classroom on Friday, February 11. She thinks the Respondent should be dismissed. She would no longer entrust the Respondent with David's safety and welfare, and she does not think the Respondent should be entrusted with the safety and welfare of any other students. She has given the School Board notice that she and her husband intend to claim damages for personal injuries to David as a result of the incidents on February 10 and 11.

26. Several other students also were appalled at the videotape that was shown on Friday, February 11. They also found it to be disgusting, degrading, and humiliating. They empathized with David and were upset at Marshal and Sean and the other teenagers involved in making the videotape. They also were surprised and perplexed that the teachers were allowing it to be shown. They kept watching the Respondent as the videotape was being shown to see if he was going to stop it.

27. The evidence is that, as a result of the incidents on February 10 and 11, the Respondent's effectiveness as a teacher in the school district has been seriously impaired.

28. At the same time, many other students and parents think the Respondent can continue to teach effectively. Without question, except for the incidents on February 10 and 11, the Respondent has been a fine teacher. Some report that he is one of the best teachers in the school. Except for the incidents on February 10 and 11, he has been caring and concerned for the students. The students have responded to those good qualities and have liked and respected the Respondent. The Respondent has been able to engage his students in the learning process and elicit a good educational response from his students. The incidents on February 10 and 11 represent unfortunate blemishes on an otherwise commendable teaching record. It certainly is possible that the Respondent will be able to rehabilitate himself so as to be worthy of consideration for future annual contracts with the School Board.

Discipline of Others Involved

29. The Respondent was not the only School Board employee who was disciplined for conduct related to the incidents on February 10 and 11, 1994. Cody Clark was reprimanded for not notifying administration and David's parents at approximately 3:30 p.m., when he first learned from the Respondent that David was the intoxicated student who had been brought to the Respondent's classroom earlier that afternoon, and for not confiscating the videotape he saw Marshal playing the next morning. Keven Renken was suspended without pay for ten days for his role in allowing the videotape to be shown on Friday, February 11, 1994. It is found that the nature and extent of their roles, and questions regarding the extent of their knowledge of the content of the videotape, can justify taking less severe action against them.

30. There was no evidence of any similar incidents involving School Board employees. The Respondent introduced evidence of discipline resulting from other kinds of incidents in an attempt to demonstrate that dismissal is too severe in relation to the Respondent's actions (or inactions). But those other incidents were too dissimilar to compare with the Respondent's action (or inaction) in this case, and the School Superintendent explained valid reasons for viewing the action (or inaction) by the teachers involved in those cases as being less egregious.

CONCLUSIONS OF LAW

31. The School Board can suspend or dismiss instructional staff on annual contract during the term of the contract only for "just cause." Section 231.36(1)(a) and (6)(a), Fla. Stat. (1993).

32. The School Board is required to prove the charges against the Respondent by a preponderance of the evidence. Allen v. School Board of Dade County, 571 So. 2d 568 (Fla. 3d DCA 1990); Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990); South Florida Water Management District v. Caluwe, 459 So. 2d 390 (Fla. 5th DCA 1984).

33. "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." Section 231.36(1)(a), Fla. Stat. (1993).

34. F.A.C. Rule 6B-4.009(3) further defines "misconduct in office," as used in Section 231.36(1)(a), as "a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida 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."

35. F.A.C. Rule 6B-1.001 provides in pertinent part:

> (1) The educator values the worth and dignity of every person . . ..
> (2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.
> (3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

36. The Code of Ethics of the Education Profession, in general, is aspirational in nature. The provisions the Respondent is accused of violating in this case, particularly, are not susceptible, in most cases, of forming the basis for suspension or dismissal. They speak exclusively of the educator "valuing," "seeking" and "striving." It is concluded that the evidence in this case did not prove a violation of F.A.C. Rule 6B-1.001(1)-(3), as written.

37. By comparison with the Code of Ethics, the Principles of Professional Conduct for the Education Profession set more definite and measurable standards of conduct. F.A.C. Rule 6B-1.006 provides in pertinent part:

> (1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida and shall apply to any individual holding a valid Florida teacher's certificate.
>
> * * *
>
> (3) Obligation to the student requires that the individual:
> (a) Shall make reasonable effort to protect the student from conditions harmful to learning or to health or safety.
>
> * * *
>
> (e) Shall not intentionally expose a student to unnecessary embarrassment or disparagement.

38. As for F.A.C. Rule 6B-1.006(3)(e), its elements include (1) "intentionally expos[ing] a student" (2) "to unnecessary" (3) "embarrassment or disparagement." Here, it is clear from the evidence (1) that it was not necessary for the Respondent to allow the videotape to be shown, (2) that it embarrassed and disparaged David, and (3) that the Respondent acted intentionally. (A specific intent to embarrass or disparage was not proven, but specific intent is not a necessary element of the offense; a general intent to act in a way in which one reasonably could expect to result in embarrassment or disparagement is sufficient.)

39. As mentioned, F.A.C. Rule 6B-4.009(3) requires that, to justify dismissal or suspension of a teacher, the violations must be "so serious as to impair the individual's effectiveness in the school system." It is concluded that the evidence in this case proves that the Respondent's was serious enough to "impair" his "effectiveness."

40. As as result, it is concluded that the Respondent was guilty of "misconduct in office," as defined by F.A.C. Rule 6B-4.009(3), providing just cause for the Respondent's dismissal during the term of his teaching annual contract.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the School Board of Pinellas County enter a final order dismissing the Respondent, James Ray, from employment under his annual teaching contract.

RECOMMENDED this 13th day of June, 1994, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON
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 13th day of June, 1994.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 94-1631

To comply with the requirements of Section 120.59(2), Fla. Stat. (1991), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

1.-40. Accepted and incorporated to the extent not subordinate or unnecessary.
41. Accepted but subordinate and unnecessary, and last sentence is conclusion of law.
42. Accepted but subordinate and unnecessary.
43. Accepted but subordinate and unnecessary. Also, most of the news articles reported phases of the dismissal process.
44. Accepted and incorporated.

Respondent's Proposed Findings of Fact.

1. Accepted and incorporated.
2.-4. Accepted but subordinate and unnecessary.

5.-9. Accepted and incorporated to the extent not subordinate or unnecessary.

10. Rejected as not supported by the evidence.

11. As to E-2, accepted but unnecessary. (Also, omits: "i.e., contacting parent, detentions.") As to E-3, rejected as not supported by the evidence.

12.-13. Accepted but unnecessary. However, the statements and clear inferences in the handbooks and rules, including the excerpts from an outdated version of the Principles of Code of Professional Conduct, required the Respondent to act differently than he did.

14.-17. Accepted and incorporated to the extent not subordinate or unnecessary.

18. First sentence, accepted and incorporated. As to the second sentence: rejected as contrary to the greater weight of the evidence that "the purpose" was to dissuade other students from abusing alcohol; accepted and incorporated that Marshal and Sean stated that was a purpose of the videotape.

19. Accepted and incorporated.

20. Rejected as not established that they "drug" [sic] David, or that Clark was listed as an administrator. (Clark was listed as a "Counselor.")

21. Rejected as contrary to the greater weight of the evidence that they said David was "drunk" or "messed up." (They said he was "sick." They assured her twice that David was nonetheless "alright." The third time she asked, David managed to lift his head and smile at her. She thought they were acting.) Otherwise, accepted but unnecessary.

22. Accepted and incorporated.

23. First sentence, accepted and incorporated. Second sentence, rejected as contrary to the greater weight of the evidence.

24. Accepted but unnecessary.

25. Accepted and incorporated.

26-27. Accepted but unnecessary. (It was not clear from the evidence that they knew or should have known David's condition.)

28. Accepted and incorporated. (However, it would not have been Clark's job, and apparently was not Clark's nature, to reprimand the Respondent. He certainly communicated to the Respondent that there was not much either of them could do without the identity of the intoxicated student, and the two of them engaged in considerable effort to try to deduce the student's name.)

29. Accepted and incorporated.

30. Rejected as contrary to the greater weight of the evidence that Marshal came back "shortly" after the Respondent left Clark's office.

31.-35. Accepted and incorporated to the extent not subordinate or unnecessary.

36. Rejected as contrary to the greater weight of the evidence.

37.-38. Accepted and incorporated to the extent not subordinate or unnecessary.

39. Rejected as contrary to the greater weight of the evidence that the period was "short"; it was about 15 minutes.

40. Rejected as contrary to facts found and to the greater weight of the evidence.

41.-42. Accepted and incorporated to the extent not subordinate or unnecessary.

43. Last sentence, rejected as not being clear from the evidence why the Respondent did not let Marshal show the tape during the second class period; however, that is the reason given by the Respondent in his testimony. Otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

44. Rejected as contrary to facts found and to the greater weight of the evidence that there were no "drastic reactions." The Respondent himself found the tape to be "disgusting," and so did several other students. However, they

apparently were following his lead, looking at the Respondent and waiting to see his reaction (reasonably, expecting him the stop the showing.) Also, rejected as contrary to facts found and to the greater weight of the evidence that the Respondent did not shut off the videotape only because "he did not want to override Mr. Renken." He also testified that he did not want to stifle the "creativity" of Marshal and Sean. It is not clear why the Respondent had the poor judgment to let the videotape be shown.

45. Accepted but unnecessary.

46. Accepted and incorporated.

47. Rejected as not established by the evidence.

48.-52. Accepted but subordinate and unnecessary.

53. As to the first sentence, he testified that students needed to be protected, not teachers. Second and third sentences, rejected because he made it clear that each case is decided on its own facts and that the Respondent's evidence did not recite all of the pertinent facts. From the facts contained in the Respondent's evidence, the Superintendent recalled: in one case, a teacher got a three-day suspension for pushing a student, who did not belong in the classroom and refused to leave, out the door, accidentally causing the student to bump his head and cut his arm slightly; in another, a teacher got a five-day suspension for becoming upset at a student who hit him in the face with a thrown wad of paper, chasing the student with a stool, and accidentally injuring the student's hand slightly when he threw the stool on the floor; and, in a third, a teacher was suspended for five days for drinking off campus with adult students and for driving them and a school staff member while "appearing to be under the influence of alcohol."

54.-60. Accepted and incorporated to the extent not subordinate or unnecessary.

61. Accepted and incorporated as to specific references to videotapes and their confiscation. But several more general guidelines applied and were adequate.

62.-64. Accepted but subordinate to facts contrary to those found, and unnecessary. The guidelines were adequate to inform the Respondent as to what he should have done in this case. (Even without knowing the specifics of the guidelines and rules, Nurmela knew from intuition that the Respondent had violated them. Even Pomerantzeff testified that, from her understanding, never having seen it herself, the videotape was beyond the limits of what she would have allowed students to show and see.)

65. Rejected as contrary to the greater weight of the evidence that he testified student and parent reaction was the sole basis for determining teacher effectiveness. (It can be one factor.)

66. Accepted but subordinate and unnecessary.

67. Rejected as contrary to the greater weight of the evidence that they made that generalization.

68-70. Accepted and subordinate to facts found.

71.-72. Accepted but subordinate and unnecessary.

73. Rejected that they were instructed that signing any petition for the Respondent could result in discipline, only signing one that Shorter had not pre-approved, in accordance with school policy.

74. Accepted but subordinate and unnecessary.

75. Rejected as not established by the evidence.

76.-77. Accepted but hearsay that cannot support findings.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the School Board of Pinellas County 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 consult with the School Board of Pinellas County concerning its rules on the deadline for filing exceptions to this Recommended Order.