

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE G. RICH AND)
PAMELA G. RICH,)
)
 Petitioners,)
)
vs.) Case No. 97-5615
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 21 and 22, 2001, in Shalimar, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Christopher P. Saxer, Esquire
Christopher P. Saxer, P.A.
126 Eglin Parkway, Northeast
Fort Walton Beach, Florida 32548-4917

For Respondent: Eric D. Schurger, Esquire
Department of Children and
Family Services
160 Governmental Center, Suite 601
Pensacola, Florida 32501

STATEMENT OF THE ISSUE

Whether Petitioner's application to become adoptive parents with the Department should be granted.

PRELIMINARY STATEMENT

By letter dated October 14, 1997, Respondent informed Petitioners, that based on the eligibility criteria contained in HRS Manual 175-16, 5-8, Respondent denied Petitioners' application to adopt a child. The denial was based on Petitioners' alleged problems with establishing appropriate parent-child relationships with appropriate boundaries.

On November 13, 1997, Petitioners demanded a formal hearing. The matter was forwarded to the Division of Administrative Hearings for formal hearing.

At the hearing, Petitioners testified in their own behalf and called three witnesses to testify. Petitioners also offered one exhibit into evidence. Respondent called four witnesses to testify and offered seven exhibits into evidence.

After the hearing the parties filed Proposed Recommended Orders on April 23, 2001, and June 28, 2001, respectively.

FINDINGS OF FACT

1. Beginning in November 1993, Petitioners were foster parents licensed by the Department. They stopped fostering in 1997.

2. On March 25, 1997, Petitioners submitted an application to become adoptive parents through the Department.

3. On August 22, 1997, an adoptive home study was completed by Ms. Townsend, supervisor of adoption and

out-of-home care for the Department and adoption counselor for Petitioners. Among other things, the home study consisted of an interview with Petitioners and a review of Petitioners' history as foster parents. Ms. Townsend testified that when asked, Petitioners said they wanted to adopt a little girl under four. However, because of the age desired, such a child is not a special needs child.

4. After completion of her review, Ms. Townsend identified the following needs in Petitioners:

1. Appear to allow emotions to influence their judgment.
2. Appear to be inflexible when presented an opinion different from their own where children are concerned.
3. Seem to have unrealistic "love conquers all" attitude about special needs children.
4. Appear to have trouble defining boundaries in their relationships with children.
5. Need to develop more structure and objectivity when dealing with special needs children.
6. It appears that they may, unintentionally, encourage the dependence of children on them in an effort to demonstrate their love.
7. May need to examine more closely their motivation and apparent need to have a child.
8. Need to develop a more positive working relationship with the Department.

5. The needs referenced above were based on the interviews with Petitioners and their history as foster parents.

Ms. Townsend also identified several strengths that Petitioners had as adoptive applicants. These strengths were:

1. Family has knowledge and experience with special needs children.
2. Committed and sincere desire to adopt.
3. Willingness to take an active role in the lives of children.
4. Demonstrated ability to accept children regardless of their problems.
5. Provide assurance to children that they are loved and cared about.
6. Open, verbal, and demonstrative people.
7. Actively pursue what is in the best interest of children.
8. Stable marriage of twenty-five years.
9. Stable and well kept home with space available for expanding the family.
10. Stable and more than adequate employment and income.

6. Based upon her assessment of Petitioners, Ms. Townsend felt Petitioners' deficiencies outweighed their strengths. She recommended denial of Petitioners' application and that they pursue adoption of a non-special needs child.

7. Per Department procedure, an adoptive applicant review committee was convened to consider Petitioners' application. The committee consisted of Ms. Winters, operations management specialist; chairperson, Mary Alegretti; Diane Rickman; Sheila Sinkfield; and Donna Veline. The committee report attached the foster parent adoptive home study, the foster parent re-licensing study, the original foster home study, a memorandum from Tom Waltz, foster child licensing counselor, dated January 8, 1997, a memorandum from Tom Waltz dated August 19,

1994, and a memorandum from Michele Shaner, foster care counselor, dated October 5, 1994, and the individual recommendations of all the committee members.

8. The attachments to the committee's report identified difficulties Petitioners had concerning foster children previously in their care. Those documents related specific concerns based on incidents regarding foster children J.J., H.J., and D.C.

9. The committee identified the following areas of concern for Petitioners:

They really do not want to adopt a special needs child. When the adoption counselor pointed out to them on more than one occasion that the type of child they were describing was not special needs, they then said they would consider a sibling group, as long as one of the siblings was a little girl.

It appears they have had problems in establishing appropriate parent-child relationships with appropriate boundaries.

R.R. and P.R. did not respond appropriately when a foster child in their home was on runaway status; they withheld information from the Department concerning her possible whereabouts.

10. Based on those concerns, the committee unanimously recommended denial of Petitioners' application to become adoptive parents. District legal counsel and the district administrator concurred with that recommendation.

11. Petitioners were notified of the denial. The denial was based upon an evaluation of Petitioners' capacity for parenthood pursuant to the Department's service manual, HRS manual 175-16. The denial letter only cited Petitioners' demonstrated problem in establishing appropriate parent-child relationships with appropriate boundaries.

12. Parenting a special needs child is more complicated and demanding than parenting a child without special needs. For the most part, special needs children come to the Department after they have been removed from or abandoned by the parents or other guardian. They often come from abusive or neglectful homes. Many special needs children have emotional and behavioral problems. The various problems a child may have differ with each child.

13. Generally, special needs children, and probably all children, need clear and consistent boundaries with enforced structure in their daily lives. The required amount of boundaries and structure will differ from child to child. Each child's individual problems must be dealt with in a consistent manner. In fact, the Riches are very familiar with the varying problems and difficulties associated with special needs children and have dealt with each child they fostered in appropriate ways.

14. Importantly, at no point in this review process was a specific child being considered for adoption. Because there is no specific child's needs under consideration, this case does not encompass whether a specific child would be a good adoptive match with Petitioners. Additionally because there is no specific child's needs under consideration, whether Petitioners could theoretically meet the theoretical needs of any and all special needs children is not the issue in this case. This case only encompasses whether Petitioners demonstrate the qualities expected of good parents.

15. Ronnie Rich and his wife Pamela Rich have been married for 29 years. Mr. Rich has been employed with the Pensacola newspaper since 1982. He often works at night. Although Petitioners never ruled out the possibility that Pam Rich might become pregnant, they had discussed adoption from the very start of their relationship. They both felt there were too many kids in the world already who needed somebody.

16. The Riches are very family oriented and participate in their church and church-sponsored activities. Ms. Rich is politically active in various social causes. They are somewhat "counter-culturish." Neither Ms. Rich's activism, nor the Riches' religious views have been pushed on any foster child in their care. Both Riches are very caring individuals.

17. The Riches became interested in fostering because of an incident that occurred in 1983 with a young child who lived behind them. The child eventually ended up in protective placement. During the process, the Riches met with Janice Jeffcoat who performed the investigation concerning their neighbor. Later they decided to become foster parents with the intention of having the neighbor's child placed with them. For reasons not related here, the placement did not occur.

18. Once the Riches began fostering children, they found that they had a knack with the kids they were fostering. At the time they decided to adopt a special needs child they had had a few years experience with special needs children. The Riches recognized that special needs children can be the hardest children to care for.

19. Petitioners' first foster child was H.J., a 15-year-old female child.

20. H.J. was known as a difficult child to place anywhere. She was particularly difficult for new and inexperienced foster parents.

21. Petitioners describe H.J. as "a shocker." H.J. was known to say things to people just to see what kind of rise she could get from them. She would lie down in the hallway as if she were dead when someone opened the front door. She once told

a dinner guest, Reverend Hawkins, that she was part of a group that sacrificed animals.

22. H.J. had a history of violence with her step-mother and with her brother. The family had several knock-down-dragout fights, involving serious physical violence. H.J. had serious emotional and mental health problems. She often tantrumed, lost control of her behavior, injured herself, damaged property, and verbally abused others. This behavior was exhibited during her stay at the Riches. None-the-less, H.J. stayed with them for 5 months.

23. During H.J.'s time at the Riches' home, she was seeing Chris Guy in therapy. The Riches supported and participated in that therapy. In fact, H.J. made progress in controlling herself while under the care of the Riches. Her behavior deteriorated when she learned that she was going to be placed with her uncle in Alabama.

24. Finally she was removed from the Riches' home when one night she became uncontrollable, self-injurious, destructive, and threatening toward Ms. Rich. She ended up in the hospital, where the Riches stayed with her until three o'clock in the morning. After a short placement with another foster home, H.J. was placed with her uncle in Alabama.

25. The Department's concerns as to H.J., were that Pam Rich had taken H.J. to hear a band at a restaurant where alcohol

was served; used the term "jail bait"; allegedly encouraged H.J.'s interest in the occult; allegedly encouraged H.J. to explore her lesbian feelings; and stated a favorable opinion on the legalization of marijuana. H.J. did not testify at the hearing regarding the validity of the Department's concerns or her perception of the Riches' behavior or lifestyle. Moreover, all of these concerns were investigated by the Department with subsequent recommendations for relicensure as foster parents.

26. During the course of her stay with the Riches, H.J. wanted to go see a band that was playing at a popular restaurant in town. Ms. Rich agreed that H.J. could go to the performance as long as Ms. Rich accompanied her. While there Ms. Rich drank one glass of wine in the presence of H.J. During a break, an older man with the band began to "hit" on H.J. in an attempt to pick her up. The man's English was not very good. In an effort to quickly terminate the man's pursuit, Ms. Rich told the man that he needed to leave because H.J. was "jail bait." She used the term to make the man understand his attention was not wanted and that he should go away. The man promptly left. Ms. Rich did not intend the term "jail bait" to be derogatory to H.J. She intended to use the term to communicate very quickly to the man in a language he could understand that serious consequences would ensue if he continued to pursue H.J. There was no evidence that H.J. found the remark offensive or derogatory.

There was also no evidence that H.J. needed to be protected from an adult appropriately having a glass of wine.

27. At some point during her stay with the Riches, H.J. elected to participate in the Riches' church and some of its church-sponsored functions. Ms. Rich and H.J. attended a chaperoned youth conference sponsored by the church in south Florida. Unknown to Ms. Rich, H.J. was "hit on" by another girl at the youth conference who allegedly was gay. Upon returning home, H.J. told Ms. Rich about the incident. Ms. Rich asked H.J. if the incident bothered her. H.J. said that it didn't. Ms. Rich told H.J. about a triangular pendant she wore that indicated that it is okay that another person is gay, but that the wearer of the pendant is not gay. The pendant is known as a PFLAG pendant. PFLAG stands for Parents and Friends of Lesbians and Gays. Afterward, H.J. on her own bought a PFLAG pendant at the Crystal Center where she took yoga classes. Additionally, at some point, H.J. asked Ms. Rich how she would react if she told her she was gay. Ms. Rich told H.J. that it would be okay. H.J. then informed Ms. Rich that she was not gay; Ms. Rich told H.J. that not being gay was okay too. Ms. Rich only had these discussions at H.J.'s prompting. Ms. Rich did not initiate H.J.'s discussions about homosexuality. She did not encourage H.J. to purchase a PFLAG pendant. On another occasion, after hearing a song by a popular group about legalizing marijuana,

H.J. inquired about the Riches' position on the subject. The Riches explained that while it might be a sound policy to legalize marijuana and treat it more like alcohol, alcohol and marijuana were illegal substances for a teenager and were strictly prohibited in their family. H.J. then changed the subject and moved on to other things.

28. There was no evidence that H.J.'s parental needs included a boundary excluding honest discussion of homosexuality or marijuana when H.J. raised such. Teenagers will raise controversial issues with the adults who are significant in the teenagers life. The Riches' responses were not inappropriate. Again these facts do not support the conclusion that either Rich demonstrated an inability to set appropriate boundaries for a special needs child.

29. Finally, H.J. had some interest in the occult. The evidence did not show that this interest was serious, but was more of the behavior H.J. used to shock others. When H.J. came to the Riches' she brought a voodoo doll with her. She stapled it to the wall and never moved the doll from that spot. The Riches never saw her use the doll for voodoo purposes. At some point, H.J., like other teenagers, wanted a Ouija board. Mr. Rich purchased a Ouija board for H.J. He did not find it unusual to buy H.J. a Ouija board because he had had a Ouija board when he was growing up. He saw the board as a game and

did not associate the board with the occult. The evidence did not show that the Riches used crystals and chanted. The evidence did not show that the Riches encouraged H.J. to use crystals and chant. The evidence did not demonstrate that any of this activity was a necessary boundary which H.J. required to be maintained. Again these facts do not establish that the Riches do not have the ability to set appropriate boundaries for children.

30. After H.J., two sisters from Santa Rosa County were placed with Petitioners. Petitioners were told that nobody in Escambia or Santa Rosa County would take them in. The sisters had been in foster care prior to this placement and an older sister had been removed from the home permanently. The girls' father had a history of violence. The oldest of the two girls placed with Petitioners made accusations of inappropriate touching by the father. The girls had problems as to how they related to each other and discussed things. During the placement, Petitioners, who live in Escambia County, traveled with the girls to and from appointments in Milton, Okaloosa County, Florida; they also attended court hearings with them. The girls were in their care for a few months. No Department concerns were noted for this placement.

31. The next placement to Petitioners' home was K. She came to Petitioners from Turning Point. Turning Point is a

facility for young girls with serious behavioral problems. The facility's purpose is behavior modification.

32. K. was a very difficult child. She would be happy and laughing one minute and the next, she would close down.

33. During her stay with the Riches, K. was finishing the program at Turning Point. However, her mother was not prepared to take her back into her home. The Riches were a "gap period" placement between the time K. left Turning Point until her mother could make proper living arrangements with a place for K.

34. During the placement, the Riches worked very closely with various therapists and case workers at Turning Point. Turning Point staff were sometimes in and out of Petitioners' home three or four times a week, visiting K. and holding therapy sessions. Staff would come once a week to see the Riches and to see if they had any problems.

35. K. was reunited with her Mother. The Riches remain friends with K. and her mother and maintain contact with them. The Department did not have any concerns with this placement.

36. After K., J.J. was placed with the Riches. Up to this time, Mr. Rich stated that they had had older female children. J.J. was 2 years, 10 months old upon her arrival at the Riches' home. She stayed with the Riches for 15 months and was 4 years old when she left.

37. J.J.'s problems were not the same as those of the other foster children who had been placed with Petitioners. She had more serious behavioral and emotional problems. She soiled her pants, did not sleep through the night, and had nightmares. She came from a home with a tremendous amount of drugs, alcohol, and violence. Sexual abuse was not an issue with J.J. On one occasion, Mrs. Rich asked J.J. what she was looking for in the hallway. J.J. replied that she was looking for the blood. Later, the Riches learned that her mother had been beaten so severely by her father that there was blood in the hallway. J.J., at the age of three, was in therapy. J.J. improved at the Riches' home.

38. While J.J. was in the Riches' home, it was normal for the Riches to rock J.J. to quiet her before bedtime. It was a period of time for her to stop from the rushing of the day and settle down before bedtime. Her bedtime was fairly early in the evening just after supper.

39. The Department's concern as to J.J. was related to bathing. The child was not yet old enough to be left unsupervised in the bath tub. Therefore, someone had to watch her while she bathed. Most often, Ms. Rich was responsible for supervising J.J.'s bath. Occasionally, Ms. Rich would shower or bathe with J.J. Usually, she would keep an eye on J.J. while J.J. was in the bath tub. About once a month, Mr. Rich

supervised the end of J.J.'s bathing. He would keep an eye on her from the hallway. The only time, Mr. Rich was called on to supervise J.J.'s bath was when Ms. Rich had to leave J.J. to begin cooking or take care of some other task which had to be done so that J.J. could get to bed on time. Nothing the Riches did regarding J.J.'s bath was unusual or abnormal. Clearly, given the age of J.J., the Riches acted responsibly in supervising J.J. in the bath. There was no evidence which demonstrated that such a bathing routine was harmful to J.J. or was an inappropriate boundary regarding her, especially since sexual abuse was not an issue with her. The Department came to the same conclusion when it relicensed the Riches as foster parents.

40. Petitioners wanted to adopt J.J. after J.J.'s case worker expressed the possibility to them. However, the Riches were not kept informed of the Department's ongoing efforts to reunite J.J. with her parents. With these mixed signals about whether she would be staying with the Riches on a permanent basis or whether she would be reunified with her mother and father J.J. quickly reverted back to soiling her pants, not sleeping through the night, and having nightmares. J.J. was reunited with her parents. The Riches experienced considerable remorse over the loss of J.J. They felt department staff had

misled them and cruelly raised their hopes about adoption of J.J.

41. In October, 1996, after investigation of the above concerns, the Department found the Riches had a lot to offer its special needs children and recommended relicensure. The Riches were found to have used appropriate discipline; were committed to the children placed in their care; provided a warm, friendly, and caring environment to those foster children; and were extremely cooperative with the Department on fostering issues. Two foster care counselors thought they were above satisfactory in all areas of fostering.

42. Before J.J. left the Riches' home, Delores Shelton, formerly known as D.C., was placed with the Riches. She was 16 years old.

43. Beginning with her father, Delores had been passed around among various males in and out of her family. Once her father had left her with another man, he and her mother abandoned Delores and moved to California. At each move to another male who would take care of her, Delores was mentally, physically, and sexually abused. At age 15, she ended up with a man who was 26. They had a child together, but were not married. One day they had a fight. The Department was called to take Dolores and the infant child into custody. At that

point, prior to placement with the Riches, Delores was moved from foster home to foster home.

44. Delores was diagnosed with severe post-traumatic stress disorder. She also was diagnosed with a drug and alcohol problem. Drug and alcohol abuse is not uncommon for teenagers with post-traumatic stress disorder and Delores' behavior was out of control.

45. Delores was a chronic runaway. The Riches knew Delores from a prior placement with another foster parent. They were aware of her problems. At the time of transfer to the Riches, Betsy Thomas, from the Department, told them that Delores may or may not stay the whole night. Significantly, Delores never ran away while in the care of the Riches.

46. The Departments concerns as to Delores were that Mr. Rich had rocked Delores in a rocking chair with her in his lap, Petitioners placed her in a bed with them during an episode in which she threatened suicide, had attempted to interfere in her treatment, inappropriately kissed her in saying goodbye and failed to disclose Delores' whereabouts to the Department when she had run away.

47. Delores and J.J. were very close. They referred to each other as sisters and shared a room. On one occasion, while Mrs. Rich was cooking dinner, and Mr. Rich was rocking J.J., Delores was sitting on the couch and started making comments

such as "Well, I've never been rocked, my parents never rocked me. They never did that for me, but we do it every day for J.J., and sometimes rock J.J. more than once. But, you know, you all are all the time rocking her, but I've never been rocked."

48. At that time, Petitioners didn't know quite how to respond to Delores' request to be rocked. Mr. Rich told Delores that they would talk about it at another time. The next day she mentioned it again. So in full view of Mrs. Rich, Mr. Rich rocked Delores for no more than five minutes.

49. After that occurrence, Petitioners discussed the rocking of Delores and decided that an afghan and/or small quilt would be placed on Mr. Rich's lap between him and Delores. Petitioners discussed the rocking with Jean Lenhert, Delores' counselor. Ms. Lenhert agreed that it was the appropriate thing to do for Delores. Delores had regressed emotionally to a younger age, and she was seeking out affection from the people she viewed as her parents.

50. The rocking of Delores occurred no more than a half a dozen times. The rocking helped Delores. It calmed her down and relaxed her. Mrs. Rich tried to rock Delores on one occasion but it was too painful for her since she suffers from arthritis and Delores weighed somewhere between 110 to 120 pounds. Under these circumstances, the Riches acted

appropriately in handling a situation which had arisen. The Riches were aware that they did not want to encourage Delores to seek affection in inappropriate ways as she had done prior to becoming a foster child. Generally, maintenance of personal space and appropriate and limited demonstrations of affection are important for a child who has been sexually abused. These factors are the reason they sought guidance on the matter from Ms. Lehnert. Moreover, the Riches' judgment in this matter was correct since it did indeed help Delores through a regressive period. Given these circumstances, this incident does not demonstrate that Petitioners are unable to develop appropriate boundaries in a parent-child relationship.

51. Ms. Lehnert testified that she noticed a change in Delores after she was placed with the Riches. Delores told Ms. Lehnert that she felt like she had a home with the Riches. Delores stayed at the Riches' home and quit running away. Although she continued to use drugs and alcohol, it was not as extreme a use as her use in the past. Delores was trying to get off the drugs and alcohol.

52. The Riches participated in the therapy sessions when they were asked. They would ask to speak with Ms. Lehnert to let her know what Delores' behaviors had been that week. Such involvement was appropriate. In fact, Ms. Lehnert asked all parents, foster and biological to be so involved in a child's

treatment. Ms. Lehnert testified that Petitioners did everything she asked of them. If they weren't sure of something, they would always call her.

53. Ms. Lehnert testified that just being in Petitioners' house brought Dolores a sense of security and a comfort level. When Dolores was taken out of Petitioners' home, she ran away and reverted to her old behavior. Dolores never felt threatened or that the Riches behaved inappropriately towards her. She reported that she felt safe in their home.

54. Dolores testified that upon arriving at the Riches' home, they went over the rules with her. At first, she tried to break the rules to see what would happen. She stated that the Riches always talked to her about how they felt when she broke the rules. She said she later started following the rules because she felt comfortable at the Riches; she knew they wouldn't just kick her out because she broke a rule.

55. Significantly, Dolores testified that until she arrived at the Riches' home, she never felt a sense of security in any home. She stated that the Riches showed that they cared. They cared about her going to counseling and getting help to get her life together. She testified that in other homes she was not cared about but just there for the money.

56. Dolores testified that the Riches treated her like a member of their family. To this day she calls them mom and dad.

She considers them her real parents because they treat her like their daughter.

57. Delores was very withdrawn and very untrusting when she was first placed with Petitioners. After some time, she became more trusting. Soon the Riches could count on Delores to help around the house.

58. During her placement there was one occasion when Delores was placed in the bed between Petitioners; it was Thanksgiving weekend. Petitioners, Delores, and another foster child visited Ms. Rich's parents outside Spanish Fort, Alabama. After some time there, Petitioners noticed Delores appeared to be stoned. Petitioners discovered that Delores had gotten into Ms. Rich's mother's medicine cabinet. She had found an old Valium prescription and had taken some of the pills. Delores was caught trying to break into Ms. Rich's traveling case where she kept her arthritis medication. She also had tried to get into Ms. Rich's father's medication used for his heart condition. Delores clearly needed some professional help.

59. Petitioners did not want to take Delores to an Alabama hospital because they had learned from the MAPP class that you should always avoid getting another Department involved if necessary. Baptist Hospital in Pensacola was the closest hospital known to the Riches, so they took Delores there. Upon their arrival and assessment of Delores, the medical staff told

the Riches Delores did not meet the criteria to be Baker-acted. She was sent home with the Riches.

60. Petitioners drove home and called Les Chambers and Betsy Thomas two foster care counselors. Neither answered and the Riches left messages on their answering machines.

61. Mr. Rich drove back to Spanish Fort to collect their things and retrieve the other foster child whom they left with Ms. Rich's sister, a special education teacher. The trip took approximately 4 1/2 hours. When he returned, the other child was put to bed.

62. Delores was manic. She was walking in circles. Delores had told Ms. Rich that she knew how to commit suicide by slicing her wrists. She said she would show Ms. Rich how it was done, so Delores drew a streak with a pen from her wrist to her elbow. Ms. Rich stated that prior to that, Delores' suicide attempts had been scratches, laterally across her wrist. This was the first time she showed the "correct" way to slice her wrists in order to commit suicide. At some point, Delores walked into the kitchen. Ms. Rich realized that Delores was going to get a knife. Mrs. Rich ran to the kitchen and grabbed Delores' wrist as she was grabbing for a knife. Petitioners were very concerned and frightened that Delores would try to kill herself. It was 3 or 4 o'clock in the morning, and they were "dead on their feet." They had heard nothing from anybody,

and were at a complete loss as to what they should do. The Riches feared they would fall asleep and Delores would kill herself. They were afraid that if they put her to bed in another room she would kill herself. These fears were legitimate. The decision was made that the safest place for Delores was in the bed between the Riches under the covers, with Petitioners on top of the covers. Everyone was fully dressed. Delores made it through the night.

63. Betsy Thomas called the following afternoon and told them to tough it out. Mr. Chambers did not call until sometime the following Sunday. Eventually, Delores was admitted to the Baptist Adolescent Stress Unit at Baptist Hospital.

64. Upon being released from the Baptist Adolescent Stress Unit, Petitioners picked Delores up. Mr. Rich picked up a birthday cake for Delores because the Riches thought she would be staying with them. Upon arriving home there was a message from Les Chambers to deliver Delores straight to FIRS. There was no reason given as to why Delores was being removed from Petitioners' home.

65. Delores was next placed at Willow Edge's foster home. Even though Delores was no longer in the care of Petitioners, she continued to call them. She called Petitioners while at Ms. Edges' and told them she stayed up all night doing drugs with one of the other people in the home.

66. While Delores was at Ms. Edges' home a local mall held a shopping spree for foster children on December 14, 1996. Ms. Eastlack observed Ms. Rich create a scene with Delores and her new foster mother. Ms. Rich was crying and attempting to hug and talk to Delores; Delores was ignoring Ms. Rich. Delores was angry about being placed in another foster home. Ms. Rich shook her fist in the other foster mother's face, raising her voice at the foster mother. Ms. Rich was chastising the foster mother for permitting Delores to use drugs and stay up all night at her house. Ms. Rich was upset by the reports Delores had given the Riches of her activities at her new foster home, and she was concerned for Delores. Ms. Rich eventually was encouraged to leave by someone with Ms. Rich who tugged on her arm to get her to leave. While this episode was an emotional response, one such outburst does not reflect unduly on Petitioners as potential adoptive parents. It does show how much Ms. Rich cares about the children in her life.

67. After Ms. Edge's home, Delores was moved from several different foster placements. Eventually, she was taken to Lakeview Center and then to Meridian. Meridian is a long-term residential psychiatric care facility for children and adolescents typically between the ages of 8 to 18, to work on their behavioral and emotional problems as well as substance abuse issues. It is a voluntary, residential facility for

children. Stays are typically anywhere from three months to a year.

68. Delores, stayed at Meridian for approximately 20 days, ran away, was returned, stayed another two weeks at maximum and ran away again.

69. During the second time Delores ran away, the Riches received a call from Delores telling them she had run away because she couldn't stand Meridian anymore. She asked that they not be mad at her. She made several telephonic contacts with Petitioners. Petitioners were very concerned for Delores' safety on the streets; they feared she would revert to her old habits of trading sex for support. They encouraged her to return to Meridian and offered to pick her up and return her to Meridian. They stressed to her to stay clean and sober. At no time, did Delores reveal her location to Petitioners. She knew if she did Petitioners would tell the Department about her location and she would be picked up. At one point, Delores was desperate for money. Mr. Rich wrote Delores a letter enclosing some money and a phone card. He mailed it to an address she had stayed at. Delores did not tell Petitioners about this location until after she had left. At the time the letter was mailed, Mr. Rich did not know where Delores was and took a chance in the hope that she would get the letter. The evidence did not demonstrate that Petitioners withheld any information on the

whereabouts of Delores after she ran away from Lakeview/Meridian. They did not know where she was.

70. Delores remained on her own for several weeks, occasionally calling the Riches. She finally agreed to turn herself in. Petitioners picked Delores up, took her to lunch, bought her some clothes, since other than what she had on, she had none. They then took her to Meridian.

71. The Riches met with Dr. Kimberly S. Haga. Dr. Haga, Ph.D., is a licensed psychologist. She was employed at Lakeview/Meridian from November 1, 1996 through January 28, 2000. Dr. Haga met with Petitioners during a two-hour meeting. Mr. Rich thought the meeting lasted only about 45 minutes. From the beginning, the meeting was hostile. Even though she did not know the Riches and the history outlined here, the meeting opened with Dr. Haga stating that the Riches had a very dysfunctional family.

72. Although Delores was not placed with Petitioners at the time they returned her to Meridian, the Riches asked to be a part of her treatment. Petitioners knew they had formed a relationship with Delores, and believed it would be to her benefit if they participated. Moreover, Delores had requested their participation. Whether or not Delores returned to their home was unimportant; Petitioners wanted to see Delores get appropriate treatment.

73. Dr. Haga thought Petitioners "insisted on being a part of the treatment process" and "insisted upon dictating the terms of treatment." Dr. Haga opined that such insistence by Petitioners was inappropriate. However, Delores at the time and date viewed Petitioners as her parents. Petitioners were the only foster parents who did not have problems with Delores' running away. Dr. Haga was also not privy to the numerous conversations the Riches had with Delores about staying in treatment. One statement out of context does not show the Riches acted in a manner inappropriate for a parent-child relationship or that inappropriate boundaries had been established for Delores. Additionally, the Riches did not encourage Delores to be overly dependant on them. At the end of the meeting, Dr. Haga observed Mr. Rich embrace and kiss Delores on the lips in saying goodbye. It was not a sexual kiss. Delores did not interpret the kiss as anything other than saying goodbye to her parent. Petitioners also told Delores that she was welcome at home at any time. The Riches wanted Delores to know that they cared, that she was not being abandoned, and that she was welcome in their home when her treatment was complete. In the doctor's opinion, Petitioners did not demonstrate appropriate parenting skills. These opinions are not credited given the surrounding facts of the incidences referenced.

74. Because Delores had taken another younger child with her each time she had run away from Meridian, Delores was eventually denied admission to Meridian upon her return. After Meridian, Delores moved from foster home to foster home about every two to three weeks. Throughout she kept in touch with the Riches. Delores told Petitioners that she wanted to come home. They explained to her that they had no standing, and that she could not come back to their home until she was 18. At that time she was legally old enough to make her own decision.

75. Petitioners received a phone call from Delores telling them that the Department was putting her on a plane to California to live with the parents who had abused and abandoned her. She was 17 years old. While in California, Delores stayed in contact with Petitioners; she quickly was back on the streets engaging in her old behaviors. When Delores turned 18, Petitioners, at Delores' request, sent her an Amtrack ticket to Crestview, Florida. Delores returned to the Riches' home. She has since married, become sober, and lives with her husband.

76. The last child placed with the Riches was R. She was placed with the Riches before Delores left the Riches home. R. was age six when she was placed with the Riches.

77. She was a part of a sibling group in Protective Service care. R. had been sexually abused. R's knowledge of anatomy and love was clearly inappropriate for her age. For

that reason, Petitioners followed very strict rules for her that they had not really had to follow with J.J. They never bathed R. or supervised her in the tub. Petitioners worked closely with Donna Story and Chris Guy, R.'s therapists. Mr. Rich testified that R. was such a needy child that they had to have the professional guidance of Ms. Story and Ms. Guy because what R. had been through was so devastating. R. received therapy twice a week through Ms. Story, her therapist at Bridgeway. Ms. Story would come to the Riches' home once a week, and the Riches would take R. to a session once a week. The Department had no concerns regarding this placement.

78. Petitioners gave each child entering their home their own flashlight immediately upon their arrival because they knew they were entering a strange home. They wanted the children to have a sense of security to be able to get up and find a bathroom or simply find their way around the house in the night. The first day of a child's placement, Petitioners let each child settle in, showing them their rooms and the home. As time went on, Petitioners went over the rules of the house. They sat each child down and explained what was and was not expected of them. A lot of the information for the rules came from the MAPP class Petitioners had attended; the other rules were their personal rules. Each child knew exactly what was expected of him or her,

and knew what was appropriate and inappropriate behavior. The Riches maintained an open-door policy with the Department and made sure that every case worker knew that he or she was welcome at any time.

79. Christine Guy holds a Master's degree in counseling and psychology. As indicated earlier, Ms. Guy worked with the Riches throughout the time they were foster parents. She testified in favor of adoption by Petitioners. In 1994, the first year Petitioners were foster parents, her initial opinion about Petitioners as foster parents was not favorable to Petitioners. She stated in a letter dated October 7, 1994, "I'm unable to recommend that any additional foster children be placed with the R.R.'s regardless of age, due to their need to completely assimilate and their reluctance to work toward reunification with the biological family." The letter was prepared as a comment for the relicensure of the Riches as foster parents. However, the issue of aiding in reunification is not related to whether Petitioners would make good adoptive parents.

80. Over the years, Ms. Guy visited Petitioners' home and found it to be clean, well-maintained and appropriate. She also knew them to establish rules for their foster children. She knew some of the rules as they pertained to the children that she was seeing that lived in their home, and found them to be

very appropriate. She witnessed them grow as foster parents. She feels the Riches have acquired the skills necessary to be good foster parents. As stated by Ms. Guy in her testimony, "Having somebody that cares a whole lot is really hard to look at as anything but positive." Indeed Ms. Guy feels Petitioners would make good parents and good adoptive parents of a special needs child.

81. Jeannie Lehnert has a Master's degree in counseling and human development. She is a licensed and nationally certified counselor. She also testified in favor of adoption by Petitioners. Ms. Lehnert has been working with emotionally and mentally handicapped children since 1993. She maintains a private practice in Crestview and Fort Walton, and also teaches for the Okaloosa-Walton Community College.

82. Ms. Lehnert has known Petitioners since late 1995. She has observed their interaction with many of their foster children. Ms. Lehnert thought the Riches were the best foster parents in the county because they took a child into their home and into their family. They took them with all their bad behaviors and all their good behaviors.

83. Ms. Lehnert was familiar with the rules of Petitioners for their foster children. She believed them to be strict as far as a foster child following the rules. When working with the Riches, Petitioners did everything Ms. Lehnert asked of

them; if she asked them to impose certain restrictions, they would. She found Petitioners to be very open-minded to treatment and care-taking suggestions. Ms. Lehnert witnessed Petitioners' affections toward their foster children. She saw them hug them, pat them on the back, tell them they did a great job, and tell them that they cared about them. She found their affections to be very appropriate. The Riches did not cause the foster children in their care to become overly dependant on them. They accepted each child unconditionally. Petitioners did not favor one child over another child. They treated the children according to their ages and gave them privileges according to their ages; exactly the behavior a good parent would do.

84. In fact, the evidence demonstrated that the Riches' would make good adoptive parents. They have and had the skills necessary to establish appropriate boundaries in a parent-child relationship based on the needs of a particular child and had in the past established such boundaries. Whether a particular adoptive match can be found is left to the future. Petitioners' application to become adoptive parents should be granted.

CONCLUSIONS OF LAW

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

86. The Department has authority over dependent children, including permanent placement or adoption of children in its care. Section 409.145, Florida Statutes (1997). That law states, in relevant part:

(1) The department shall conduct, supervise, and administer a program for dependent children and their families. The services of the department are to be directed toward the following goals:

* * *

(c) The permanent placement of children who cannot be reunited with their families or when reunification would not be in the best interest of the child.

* * *

(5) The department is authorized to accept children on a permanent placement basis by order of a court of competent jurisdiction for the single purpose of adoption placement of these children. The department is authorized to provide the necessary services to place these children ordered to the department on a permanent placement basis for adoption.

87. The Department also has authority over adoption of special needs children. Section 409.166, Florida Statutes (1997). That law states, in relevant part:

(2)(a) "Special needs child" means a child whose permanent custody has been awarded to the department or to a licensed child-placing agency and
1. Who has established significant emotional ties with his or her foster parents; or

2. Is not likely to be adopted because he or she is:
a. Eight years of age or older;
b. Mentally retarded;
c. Physically or emotionally handicapped;
e. A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption.

(3)(a) The department shall establish and administer an adoption program for special needs children to be carried out by the department or by contract with a licensed child-placing agency.

* * *

(3)(c) The best interest of the child shall be the deciding factor in every case.
(Emphasis added)

88. At the time of the instant application, the Department had promulgated its rules regarding the recruitment, screening, and application process for adoptive applicants at Rule 65C-16.004, Florida Administrative Code Rule. That rule provides, in relevant part:

(2) Once an application is submitted by the prospective adoptive parents to district adoption staff, the priority must be to prepare and study those applicants who indicate a desire to adopt a special needs child(ren) through the department.

89. Evaluation of applicants for adoption placement is governed by Rule 65C-16.005, Florida Administrative Code. The Rule requires an adoption home study and gives guidelines to Department staff.

(2) A social study which involves careful observation and evaluation is made of the child and adoptive applicants prior to the placing of a child in an adoptive home. The study of the child and the adoption home study, including the group of individual preparation of the adoptive family, are a part of this process.

(3) This section of the rule provides guidelines to assist staff who are responsible for making adoption placement decisions. These guidelines cannot substitute for the judgment of staff and must be used in conjunction with a thorough assessment of the adoptive environment.
(Emphasis added)

90. At the time of the instant application, the Department had issued its service manual in order to assist staff judgment in evaluating adoptive applications. Department's Manual, HRS-M 175-16, 5-8. Section HRS-M 175-16, 5-8 concerns the evaluation of capacity for parenthood.

91. The Department's criteria used in the evaluation of adoptive applicants for placement of a child are now promulgated at Rule 65C-16.005, Florida Administrative Code. Although that Rule concerns adoptive placements, it reiterates the criteria for evaluation of adoptive applicants and the importance of staff judgment in making adoptive placement decisions. The Rule states:

(5) The criteria listed in this section establish policy to assist staff in making adoption placement decisions. These criteria cannot substitute for the judgment of staff and must be used in conjunction

with a thorough assessment of the adoptive environment and the extent to which it can best meet the individual needs of a child and his or her sibling group.

(6) The best interest of the child is the paramount concern in making an adoptive placement decision. (Emphasis added)

92. The Rule also provides for review by the district Adoptive Applicants Review Committee of all adoption applicant rejections. Rule 65C-16.005(11)(a)3., Florida Administrative Code.

93. In this case, the evidence does not support the conclusion that the Riches' had problems forming appropriate parent-child relationships with appropriate boundaries for a special needs child. The Riches reasonably responded to several serious situations with different children under their care. They did not act inappropriately toward any of those children, but always acted to protect them. The evidence demonstrates that the Riches have appropriate parenting skills for a special needs child and are very cognizant of the fact that a specific child may require boundaries unique to that child's situation. Therefore, the Riches' application to become adoptive parents should be granted.

RECOMMENDATION

Based upon the findings of fact and conclusions of law,
it is

RECOMMENDED:

That Petitioners' application to become adoptive parents be granted.

DONE AND ENTERED this 1st day of August, 2001, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.