7-24-00

AP

STATE OF FLORIDA
FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY

FLORIDA A&M UNIVERSITY,

Petitioner,

vs.

JAMES STRICKLAND,

Respondent.

DOAH Case No. 99-3856
FAMU Case No. 00-002

SFH

FILED
01 MAR 15 PM 2:10
DIVISION OF ADMINISTRATIVE HEARINGS

AMENDED FINAL ORDER

On July 24, 2000, Administrative Law Judge Suzanne F. Hood with the Division of Administrative Hearings submitted her Recommended Order to Florida A&M University. A copy of the Recommended Order is attached hereto as Exhibit "A". The Petitioner, Florida A&M University, filed Exceptions to the Recommended Order and Respondent, James Strickland, responded to those Exceptions. The matter is now before the agency for final agency action.

Standard of Review

Pursuant to Section 120.57(1)(l), Florida Statutes (2000), the agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and must state with particularity its reasons for rejecting or modifying such conclusions of law. Section 120.57(1)(l), Florida Statutes (2000), also states that an agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. "The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." Heifetz v. Department of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Competent substantial evidence is evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957); Heifetz, 475 So.2d at 1281.

Rulings on Findings of Fact Exceptions

1. Petitioner takes exception to Paragraph 4 of the Recommended Order in its entirety, which states:

> Gibson had a "B" grade average going into the final exam for the comparative anatomy lab class. However, she failed to take the exam. Gibson's testimony to the contrary is not persuasive. Respondent assigned her an "I" grade for the lab class even though she did not have an excuse for missing the final exam.

This exception is denied. There is competent substantial evidence in the record for sentence one. (TP.181, L.18-25; TP.182, L.1-19). There is competent substantial evidence in the record that Ms. Gibson failed to take the lab final exam in 1995. (TP.182, L.10-19; TP.286, L.15-20; TP.356, L.3-22; TP.362, L.13-25; TP.363, L.1-3; TP.436, L.15-22). There is competent substantial evidence in the record that Respondent did assign her an "I" grade for the lab class in 1995 even though she did not have an excuse for missing the final exam. (TP.435, L.5-25; TP.436, L.1-2).

2. Petitioner takes exception to sentence four in Paragraph 6 of the Recommended Order, which states:

> Respondent reviewed Gibson's make-up exam and graded the objective portion. Based on Respondent's initial review, it was obvious that Gibson had performed poorly on the make-up exam. Respondent intended to go back and carefully grade the essay portions of the exam but neglected to do so right away. **Subsequently, Respondent misplaced Gibson's make-up exam.**

This exception is denied. There is competent substantial evidence in the record for this Finding of Fact. (TP.173, L23-25; TP.174, L.1-8; TP.178, L.21-25; TP.179, L.1). Ms. Gibson testified that Respondent told her that he lost the lecture make-up exam. (TP.18, L.18-20; TP.19, L.5-10; TP.81, L.6-25; TP.82, L.1-5). Mrs. Gavin testified that Respondent told her that he lost the lecture make-up exam. (TP.328, L.6-9; TP.341, L.3-8).

3. Petitioner takes exception to Paragraph 12 of the Recommended Order in its entirety, which states:

> Gibson made no effort to make-up the comparative anatomy lab exam in the spring of 1996. Respondent and Gibson knew that she had a grade of "I" in that class, but neither one raised the subject of a make-up exam with the other.

This exception is denied. There is competent substantial evidence in the record for these Findings of Fact. (TP.10, L.18-22; TP.286, L.8-20). However, this does not eliminate the fact that Ms. Gibson, as corroborated by Ernesha Adams, on several occasions made an effort to have Respondent change her grade to the grade she earned. (TP.17, L.7-25; TP.18, L.11-16; TP.129, L.11-24). Respondent admits that Ms. Gibson showed interest in resolving the matter when she received the failing grades before and after the Summer term of 1997. (PE 24, P. 3).

4. Petitioner takes exception to Paragraph 13 of the Recommended Order to the extent that it relates to the lab make-up final exam. It states:

> As a result of Respondent's failure to turn in a make-up grade in the lecture and lab classes within the time required under Petitioner's grading policies, Gibson's "I" grades became "F" grades in both classes.

This exception is denied. There is competent substantial evidence in the record for these Findings of Fact. The reasons relied upon are set forth in Paragraphs 1 and 3 above and are herein incorporated by this reference.

5. Petitioner takes exception to sentence four in Paragraph 17 of the Recommended Order, which states:

> During the summer term, Gibson and Carlton Williams served as Respondent's laboratory assistants. Respondent introduced Gibson and Mr. Williams as lab assistants at the beginning of the lab class. Gibson acted as a lab assistant throughout the summer, although her participation and attendance were sporadic from the middle to the end of the lab class. **Some of her absences were due to her mother's illness, which required Gibson to leave town for part of the summer.**

This exception is granted. There is no competent substantial evidence in the record to show that some of Ms. Gibson's absences in class were due to her mother's illness, which

required Ms. Gibson to leave town for part of the summer. Ms. Gibson did testify that she went out of town to see her sick mother, but not that she missed classes from the middle to the end of the Summer term because of her visits. (TP.27, L.7-8; Deposition of Yolanda Gibson P.37, L.2-9; P.43, L.17-25, P.44).

6. Petitioner takes exception to Paragraph 21 of the Recommended Order in its entirety, which states:

> Because Gibson was his lab assistant, Respondent had a need to contact her from time to time regarding preparation for and review of the material for the lab course. Respondent knew Gibson worked for Mr. Norton. Sometimes Respondent would contact Mr. Norton at work in an effort to contact Gibson. Other times Respondent would either call Gibson's home, leaving her messages, or page her on her pager. On one occasion, Respondent called Gibson at her mother's home in Ft. Pierce, Florida, to discuss class business, including Gibson's class performance.

This exception is denied in part. There is competent substantial evidence in the record that Ms. Gibson was a lab assistant for part of the summer term in 1997. (TP.84, L.13-14, L.23-24; TP.85, L.8-13; TP.211, L.11-13; TP.213, L.12-25; TP.411, L.2-7; TP.426, L.19-21; Deposition of James Carlton Williams, II, P.6, L.20-25; P.7, L.1-13; P.8, L.17-25; P.9, L.1-12). Mr. Williams stated in his deposition that Ms. Gibson's activity as a lab assistant, participation and attendance slacked off significantly towards the middle and the end of the summer term. (Deposition of James Carlton Williams, II, P.9, L.6-25; P.10, L.1-19).

However, this exception is granted to the extent that there is no competent substantial evidence in the record that Respondent only called Ms. Gibson for the above stated reasons when she was or was not acting as his lab assistant. The record shows that throughout the Summer and Fall of 1997, Respondent paged and called Ms. Gibson's home and left messages regarding more than the above stated reasons. (TP.35, L.14-25; TP.36, L.1-4; TP.39, L.4-25; TP.40, L.1-7; TP.131, L.22-25; TP.132, L.1-10; TP.141, L.15-21; TP.154, L.20-25; TP.155, L.1-9). Respondent acknowledged that Ms. Gibson stopped performing as a laboratory teaching assistant and stopped attending both classes at some point in the summer term of 1997. (TP.258, L.1-11, TP.286, L.22-25; TP.287, L.1-5). The record reflects that Respondent

continued to call after Ms. Gibson was no longer his lab assistant.

7. Petitioner takes exception to Paragraph 23 of the Recommended Order in its entirety, which states:

> Respondent also agreed to tutor Gibson and her roommate at lunch or dinner on several occasions during the summer. Respondent reviewed old anatomy and physiology tests during some of these engagements; other dinner meetings were more in the nature of a social relationship between students and teacher. However, Respondent never sought to have lunch or dinner with Gibson as a date for purposes of establishing a romantic relationship.

This exception is denied in part. There is competent substantial evidence in the record for sentence one and the first half of sentence two. (TP. 64, L.23-25; TP.65; TP.146, L.4-11; TP.248, L.13-23; TP.250, L.6-10).

However, this exception is granted in part. There is no competent substantial evidence in the record that other dinner meetings were more in the nature of a social relationship between students and teacher and that Respondent never sought to have lunch or dinner with Gibson as a date for purposes of establishing a romantic relationship. (TP.31, L.19-25; TP.32, L.1-4; TP.131, L.22-25; TP.132, L.1-13).

8. Petitioner takes exception to Paragraph 24 of the Recommended Order in its entirety, which states:

> Respondent did not invite Gibson to have dinner with him at his home. On one occasion Gibson and her mother went by Respondent's home for a visit.

This exception is granted. There is no competent substantial evidence in the record for these Findings of Fact.

9. Petitioner takes exception to Paragraph 25 of the Recommended Order in its entirety, which states:

> Mr. Norton and Gibson showed Respondent how to contact Gibson on her pager. At that time, Gibson was under the mistaken impression that Respondent had purchased the pager for her. Persuasive evidence indicates that

Mr. Norton and not Respondent purchased the pager for Gibson.

This exception is denied in part. There is competent substantial evidence in the record that Mr. Norton and Ms. Gibson showed Respondent, at Respondent's home, how to contact Ms. Gibson on her pager. (TP.32, L.5-15; TP.33; TP.34; TP.35, L.1-13). There is competent substantial evidence in the record that Mr. Norton and not respondent purchased the pager for Ms. Gibson. (TP.28, L.2-7; TP.29, L.1-12; TP.141, L.3-11).

However, this exception is granted in part. Since the Administrative Law Judge (ALJ) accepted the fact that Mr. Norton and Ms. Gibson showed Respondent how to contact Ms. Gibson on her pager, then it must be accepted that this took place at Respondent's home. This is a reasonable conclusion because these facts are referenced together only once in the record. (TP.32, L.5-15; TP.33; TP.34; TP.35, L.1-13).

10. Petitioner takes exception to Paragraph 26 of the Recommended Order in its entirety, which states:

> Respondent may have referred Gibson to his dentist in the summer of 1997. There is no persuasive evidence that Respondent paid her dental bill.

This exception is denied in part. There is competent substantial evidence in the record that Respondent referred Ms. Gibson to Respondent's dentist in the summer of 1997. (TP.46, L.6-17; TP.301, L.20-22; PE 4).

However, this exception is granted in part. There is no competent substantial evidence in the record that Respondent did not pay Ms. Gibson's dental bill.

11. Petitioner takes exception to Paragraph 27 of the Recommended Order in its entirety, which states:

> Respondent did not give Gibson money to have her hair done. The only competent evidence in the record indicates that Gibson received that money from Mr. Norton. Gibson's understanding that Respondent gave the money to Mr. Norton to give to her was incorrect.

The exception is denied. There is competent substantial evidence in the record that Ms. Gibson received money to have

her hair done from Mr. Norton and not Respondent. (TP.117, L.15-19; TP.118, L.1-3; TP.132, L.25; TP.133, L.1-21).

12. Petitioner takes exception to sentence three in Paragraph 28 of the Recommended Order, which states:

> Sometimes Respondent goes to the dog track. On one occasion, one of his male students drove him there. **However, the greater weight of the evidence shows that Respondent did not go to the dog track with Gibson.**

This exception is granted. There is no competent substantial evidence in the record for this Finding of Fact.

13. Petitioner takes exception to Paragraph 29 of the Recommended Order in its entirety, which states:

> Respondent did not kiss or attempt to kiss Gibson in Jones Hall or at any other location. Gibson's testimony to the contrary is not credible.

This exception is granted. There is no competent substantial evidence in the record for this Finding of Fact.

14. Petitioner takes exception to sentence three in Paragraph 30 of the Recommended Order, which states:

> Respondent did not offer to give Gibson an unlimited charge card. Gibson's testimony that Respondent confirmed this offer in person is not persuasive. **The same is true regarding Gibson's testimony that Respondent paid for gas in her car and for an oil change.**

However, Petitioner states that the sentence is the following:

> Respondent did not make these deposits with the intent of establishing an inappropriate sexual relationship with Gibson.

This sentence is in Paragraph 32. Therefore, it is addressed below.

15. Petitioner takes exception to Paragraph 32 of the Recommended Order in its entirety, which states:

> Respondent loaned or gave Gibson $300.00 on two occasions: August 3, 1997 and August 7, 1997. On each occasion Gibson gave Respondent her deposit slips so that he could make the deposits directly to her bank account. Respondent did not make these deposits with the intent of establishing an inappropriate sexual relationship with Gibson.

This exception is denied in part. There is competent substantial evidence in the record for sentence one and two. (PE 3; TP.215, L.15-23; TP.42, L.25; TP.43, L.1-6; TP.135, L.1-3; TP.217, L.25; TP.218, L.1-21; TP.348, L.10-18).

However, this exception is granted in part. There is no competent substantial evidence in the record that the checks given to Ms. Gibson by Respondent were loans or that Respondent did not make these deposits with the intent of establishing an inappropriate sexual relationship with Ms. Gibson. (TP.67, L.16-20).

16. Petitioner takes exception to sentence two in Paragraph 35 of the Recommended Order, which states:

> Gibson opened her bank account with approximately $100.00 in cash. **Respondent did not give the cash to Gibson directly or indirectly through Mr. Norton.**

This exception is denied. There is competent substantial evidence in the record for this Finding of Fact. (TP.98, L.2-14; TP.347, L.6-25, TP.348, L.1-9).

17. Petitioner takes exception to sentence three in Paragraph 36 of the Recommended Order, which states:

> Gibson did not take the midterm or final exam in the comparative anatomy lecture course during the summer of 1997. She chose instead to focus on the anatomy and physiology class for which she was officially enrolled. **She did not have time to study for her comparative anatomy lecture course after missing classes to care for her mother.**

This exception is granted. There is no competent substantial evidence in the record for this Finding of Fact. Ms. Gibson testified that she needed to study for other classes. After visiting her sick mother, she only had time to concentrate on

her other classes. (TP.27, L.7-8; Deposition of Yolanda Gibson P.37, L.2-9; P.43, L.17-25, P.44).

Rulings on Conclusions of Law Exceptions

18. Petitioner takes exception to Paragraph 48 of the Recommended Order, which states:

> The instant case is a quid pro quo sexual harassment case in which Respondent is charged with withholding Gibson's grades in an attempt to gain her sexual favors. Petitioner has not met its burden of proving that Respondent's withholding of Gibson's grades was sexually motivated.

This exception is granted. The instant case is not only a quid pro quo sexual harassment case. This case is also about sexual conduct that has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working or educational environment. The Petitioner has met its burden of proving that Respondent's withholding of Ms. Gibson's grades was sexually motivated and created an intimidating, hostile or offensive working and educational environment. See also Paragraph 19 below. (TP.40, L.16-19; Ms. Gibson's deposition P.65; P.66, L.1-3; TP.130, L.3-12; TP.141, L.22-25; TP.142; TP.143, L.1-9)

19. Petitioner takes exception to Paragraph 49 of the Recommended Order, which states:

> There is no dispute that Gibson's initial grade of "I" in the comparative anatomy lecture class was legitimate. Subsequently, she failed the make-up examination and earned a final grade of "D". Respondent should have recorded that grade in a timely fashion, but there is no persuasive evidence that his failure to do so was sexually motivated. Instead, Respondent became focused on helping Gibson, at her request, gain admission to the physical therapy program. Having committed to this course of action, and following his improper but routine practice of allowing students to improve their grades by retaking a final after sitting in a subsequent class, Respondent had no reason to submit a grade change form prior to Gibson's sitting in on the course again.

This exception really addresses Findings of Fact found in different paragraphs of the Recommended Order. This exception is denied in part. There is competent substantial evidence in the record for sentence one and two. (TP.14, L.12-25; TP.20, L.3-12; TP.182, L.21-25; TP.183, L.1-6; PE 14).

However, this exception is granted in part. There is competent substantial evidence that his failure to turn in Ms. Gibson's lecture grade was sexually motivated. The ALJ characterizes Respondent as being focused and committed to helping Gibson. There is no competent substantial evidence for this Finding of Fact. Respondent received Ms. Gibson's lecture exam in February of 1996. Respondent misplaced Ms. Gibson's lecture exam in the middle of 1996. See Paragraph 2 above for record cites. Respondent found Ms. Gibson's lecture exam after the filing of Ms. Gibson's sexual harassment complaint, after an investigation was conducted by Mrs. Carrie Gavin and after Respondent was dismissed from employment at Florida A&M University. Respondent found the exam in January of 2000, almost fours years later. (TP.175, L.2-18; TP.178, L.12-20; TP.401, L.6-25; TP.402; TP.403, L.1-9). For Ms. Gibson's lab grade, Respondent first attempt to change it was after the investigation by Mrs. Gavin began. Respondent made two other attempts and all three attempts failed because Respondent did not correctly submit them for Ms. Gibson. (TP.206, L.12-25; TP.284, L.11-19; TP.292, L.1, 2; PE 16). However, Respondent correctly submitted grade change forms for five other students in April and August of 1996 and January and May of 1997. (TP.190-199; PE 17-21).

20. Petitioner takes exception to Paragraph 50 of the Recommended Order, which states:

> Gibson's testimony that she repeatedly asked Respondent to change her grades after she took the February 1996 make-up final exam and before the summer of 1997 is not credible. Gibson did not change her goal of gaining admission to the physical therapy program until the fall of 1997. At that time, she changed her major to psychology.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is granted in part. Ms. Adams testified that she went with Ms. Gibson several times, from the Fall of 1996 to the Fall of 1997, to talk with Respondent about Ms. Gibson's grade in Comparative Anatomy. (TP.128, L.8-25; TP.129, L.1-24. Respondent admitted that Ms. Gibson showed more interest in resolving this matter

sometime after she received the failing grades but before the Summer of 1997. (PE 24, P.3) Entre Palmer testified to the fact that Ms. Gibson talked about her frustration with not receiving her grades for Comparative Anatomy. (TP. 413, L.15-25; TP.414, L.1-8, TP.415, L.20-22).

However, this exception is denied in part. There is competent substantial evidence in the record for sentence two and three. (TP.71 L.17-24)

21. Petitioner takes exception to Paragraph 51 of the Recommended Order, which states:

> Gibson agreed to sit in on the comparative anatomy lecture class again in the summer of 1997. Gibson did not take the midterm or final exam. Respondent cannot be faulted for failing to request a grade change in the lecture class at that time.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied. Petitioner in its exception admits sentence one occurred and Ms. Gibson also testified to it. (TP.23, L.9-11). Ms. Gibson testified that she did not take the exams in the Summer of 1997 for the Comparative anatomy lecture class. (TP.26; TP.27, L.1-20; Deposition of Ms. Gibson, P.36, L.20-24)

However, Respondent could have informed Ms. Gibson that her grade was an "F". Ms. Gibson, in return, could have turned in a grievance if she thought that was not the appropriate grade or taken other actions. In either case, she would have known what her final grade was.

22. Petitioner takes exception to Paragraph 52 of the Recommended Order, which states:

> As to Gibson's comparative anatomy lab grade, she never took the final exam in 1995 and did not attempt to take a make-up final in 1996. Respondent should have given Gibson an "F" grade in 1995 because she did not have an excuse for not taking the exam. Instead, Respondent gave Gibson an "I" grade, which later turned into an "F".

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is granted for only sentence two. Respondent should have given

Ms. Gibson an "F" grade for the lab final exam in 1995 but not for the class. Even though she failed the lab final exam, that does not mean she failed the lab class. (TP.181, L.22-25; TP.292, L.6-11).

The other sentences were addressed in Paragraph 1 and 3 above.

23. Petitioner takes exception to Paragraph 53 of the Recommended Order, which states:

> Respondent subsequently agreed to let Gibson sit in on a subsequent comparative anatomy lab class and to change her 1995 lab grade if she passed the course. This decision was contrary to Petitioner's grading policy, but was consistent with Respondent's policy of helping his students achieve their career goals.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is granted. There is no competent substantial evidence in the record for these Findings of Fact. Respondent offered Ms. Gibson the opportunity to sit in on the class again. (TP.179, L.21-24). Ms. Gibson did not request the opportunity. Respondent asked her to sit in during the Summer of 1997. (TP.179, L.25; TP.180). Subsequently, Respondent told Ms. Gibson, she needed to sit in the class. (TP.19, L.3-10; TP.180, L.9-14).

Under Respondent's policy for retaking exams, students who fail the exam are allowed to sit in on the course again, if they really want to. (TP.181, L.3-8). However, you must have an excuse in order retake the exam. (TP.420, L.21-24). Ms. Gibson had an excuse for the lecture class but not for the lab.

Also, Respondent would allow a student to sit in on a class, if he had misplaced an exam but looked over it before he misplaced and saw that they did not pass. (TP.316, L.3-21). Mr. Verrilien Clerve and Mr. Palmer testified that Respondent allowed them to take the class over simply because they did not do well on the final exam. (TP.354, L.9-12; TP.407, L.10-19). However, Respondent allowing Ms. Gibson the opportunity to take the lab class over doesn't fall under any of these policies.

24. Petitioner takes exception to Paragraph 54 of the Recommended Order, which states:

> Respondent has never denied that Gibson earned a "B" in the comparative anatomy lab class in the summer of 1997. He was negligent in not turning in a grade change form in a timely fashion. When he discovered his oversight, Respondent tried unsuccessfully to correct his mistake.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is granted to the use of the word "negligent" and the last sentence. Respondent was more than negligent because he demonstrated on at least five prior occasions successful submission of grade change forms for other students.

25. Petitioner takes exception to Paragraph 55 of the Recommended Order, which states:

> There is no evidence that any of Respondent's actions before the summer of 1997 was in any way sexually motivated. Gibson had no reason to suspect that Respondent was improperly withholding her grades until she began working for Mr. Norton after summer school began in 1997. By that time, Gibson was sitting in on the lecture and lab classes and working as one of Respondent's lab assistants. Respondent and Gibson believed that she would gain valuable work experience and a financial benefit.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied as to sentences one, two and three. There is competent substantial evidence in the record for these Findings of Facts. Ms. Gibson testified that before she met Mr. Norton, she had no reason to think that Respondent was withholding her grade for sex. (TP.83, L.19-22)

This exception is granted as to the last sentence. There is no competent substantial evidence in the record for this Finding of Fact.

26. Petitioner takes exception to Paragraph 56 of the Recommended Order, which states:

> The situation began to change after Mr. Norton came into the picture. At that time, Gibson began to assume that Respondent was being nice to her in order to gain her sexual favors. This mistaken belief was

based on false statements made by Mr. Norton to Gibson regarding Respondent's intentions. There is no evidence that Respondent was aware of the things Mr. Norton was saying until the fall of 1997 when Gibson dropped Respondent's Developmental Anatomy class.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied as to sentence one. There is competent substantial evidence in the record for this Finding of Fact. (TP.25, L.1-10).

This exception is granted as to the rest of the paragraph. There is no competent substantial evidence in the record for these Findings of Fact. (TP.45, L.13-18; TP.67, L.16-20; TP.140, L.4-20).

27. Petitioner takes exception to Paragraph 57 of the Recommended Order, which states:

> In the summer of 1997 Respondent had legitimate reasons to contact Gibson by phone, on her pager, and at Mr. Norton's concession stand. At times he needed to talk to Gibson about her lab duties. At other times Respondent needed to discuss arrangements for anatomy and physiology tutoring sessions with Gibson and her roommate. Respondent's efforts to contact Gibson were not sexually motivated.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied for sentence one, two and three. There is competent substantial evidence in the record for these Findings of Fact. See Paragraph 6 above.

This exception is granted for the last sentence. Respondent's efforts were sexually motivated. See Paragraph 6 above.

28. Petitioner takes exception to Paragraph 58 of the Recommended Order, which states:

> Respondent graciously agreed to assist Gibson and her roommate by tutoring them in anatomy and physiology, a core subject for the physical therapy program. Most of these sessions took place on campus in a residence hall where Mr. Norton worked. Perhaps it was not wise for Respondent to meet Gibson and her roommate for

> tutoring sessions during lunch and dinner. However, Respondent's only objective was to help his students academically. Respondent's conduct during these sessions was never inappropriate and never implied that he desired anything other than a student/teacher relationship with Gibson. Respondent certainly never attempted to kiss Gibson.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied in part. There is competent substantial evidence in the record for sentence three and the first half of sentence one, except for the word "graciously". See Paragraph 7 above.

This exception is granted for the rest of the paragraph. There is no competent substantial evidence in the record for these Findings of Fact.

29. Petitioner takes exception to Paragraph 59 of the Recommended Order, which states:

> Respondent freely admits that he gave Gibson $600.00 in August of 1997. He did so only because he had been unable to obtain work/study funds for her. He felt obligated to help her and did so with no ulterior motive or improper purpose.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied in part. There is competent substantial evidence in the record for sentence one. See Paragraph 15 above.

This exception is granted for the rest of the paragraph. There is no competent substantial evidence in the record for these Findings of Fact.

30. Petitioner takes exception to Paragraph 60 of the Recommended Order, which states:

> There is no credible evidence that Respondent gave Gibson money or gifts other than the $600.00, which he deposited into her bank account. There is evidence that Mr. Norton gave Gibson cash money and paid for the pager.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception

is denied in part. There is competent substantial evidence in the record for most of these Findings of Fact. See Paragraphs 9, 11 and 15 above.

This exception is granted in part. There is competent substantial evidence in the record that Respondent paid Ms. Gibson's dental bill in the summer of 1997. See Paragraph 10.

31. Petitioner takes exception to Paragraph 61 of the Recommended Order, which states:

> When Gibson went to Respondent's office in the fall of 1997 to drop her developmental anatomy class, she was not sure whether Respondent was aware of the statements allegedly made by Mr. Norton. Respondent expressed genuine surprise when Gibson described Mr. Norton's alleged statements and conduct. Even in that conversation, no discussion of withholding grades for sex occurred.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is denied for sentence one and three. There is competent substantial evidence in the record for most of these Findings of Fact. (TP.103; TP. 104; TP.105).

This exception is granted for sentence two. There is no competent substantial evidence in the record for this Finding of Fact. Ms. Gibson testified that Respondent seemed surprised about Mr. Norton wanting to get money from Respondent not about all of Mr. Norton's statements. (TP.103, L.22-25; TP.104, L.1-4).

32. Petitioner takes exception to Paragraph 62 of the Recommended Order, which states:

> Gibson's conclusion that Respondent withheld her grades to gain sexual favors is based entirely on the alleged statements by Mr. Norton. Mr. Norton did not testify at the hearing. His alleged statements are inadmissible hearsay. Section 120.57(1)(c), Florida Statutes. Moreover, to the extent that Mr. Norton's statements are admissible, they are contrary to the greater weight of the evidence.

Section 120.57(1)(c), Florida Statutes, provides:

> Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil action.

"While hearsay evidence is generally admissible in administrative hearings, hearsay alone does not constitute competent substantial evidence." Forehand v. School Board of Gulf County, 600 So.2d 1187, 1191.

This exception is granted in part. There is no competent substantial evidence in the record for sentence one. The hearsay evidence of Mr. Norton's statements given by Ms. Gibson and Ms. Adams explained Strickland's actions towards Ms. Gibson. (TP.135, L.21-25; TP.136, L.1-11, 17-24).

33. Petitioner takes exception to Paragraph 63 of the Recommended Order, which states:

> There was no conspiracy or agency between Respondent and Mr. Norton. Respondent never told Gibson that everything Mr. Norton was saying was true. There is no non-hearsay evidence in the record to establish precisely what Mr. Norton was telling Gibson. If Mr. Norton was telling Gibson that Respondent would take care of her if she granted Respondent sexual favors, Respondent was unaware of it.

This exception is granted. There is no competent substantial evidence for these statements.

34. Petitioner takes exception to Paragraph 64 of the Recommended Order, which states:

> This case contains conflicts in the evidence, inconsistency in witness testimony and recollections, and some unexplained events. On balance, it is more likely that Respondent and Gibson were victims of Mr. Norton's scheming.

This exception is denied as to sentence one. There is competent substantial evidence in the record.

This exception is granted as to the last sentence. There is no competent substantial evidence in the record.

35. Petitioner takes exception to Paragraph 65 of the Recommended Order, which states:

> Respondent is the proverbial absentminded professor. He is a kindhearted old gentleman who can be manipulated by others. His generosity and commitment to helping his students by allowing them to sit in on his classes and retake exams when they are not entitled to do so contributed to the suspicion of his guilt in this case. However, there is no credible evidence that Petitioner violated rule 6C3-10.103, Florida Administrative Code.

This exception really addresses Findings of Facts found in different paragraphs of the Recommended Order. This exception is granted. There is no competent substantial evidence in the record for these Findings of Fact. See Paragraphs 1-34.

Rejections and Modifications of Findings of Fact

36. The second and third sentences of Paragraph 14 of the Recommended Order are rejected. There is no competent substantial evidence in the record for these Findings of Fact.

37. The second half of sentence one of Paragraph 15 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact.

38. The third sentence of Paragraph 17 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact. See Paragraph 6 for further discussion.

39. The second, third and fourth sentences of Paragraph 18 of the Recommended Order are rejected. There is no competent substantial evidence in the record for these Findings of Fact. Respondent was hostile to Ms. Gibson when she asked him about her grades before the summer of 1997 and he continued this hostility until talking with Mr. Norton during the summer of 1997.

40. Sentence two of Paragraph 20 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact. Respondent's conversations with Mr. Norton about Ms. Gibson included more than the list given in this Finding of Fact. It included finding out what Ms. Gibson liked, her family, and her finances.

41. Sentence two of Paragraph 31 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact. Respondent gave Ms. Gibson the money in order to obligate her more to perform sexual favors for him.

42. The last sentence in Paragraph 37 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact. Respondent purposely did not submit a correct change grade form for Ms. Gibson's lab grade.

43. The first sentence in Paragraph 38 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact. Submitting Ms. Gibson's grade did not slip Respondent's mind. Respondent withheld her grade as her teacher in order to gain sexual favors from Ms. Gibson.

44. The second and third sentences in Paragraph 39 of the Recommended Order are rejected. There is no competent substantial evidence in the record for these Findings of Fact. Respondent purposely wanted to hold up Ms. Gibson's grade because he had not received what he wanted. Respondent wanted to appear to be changing Ms. Gibson's grade. Respondent's ultimate effort of withholding Ms. Gibson's grade was successful.

45. The third sentence in Paragraph 40 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact.

46. The last half of the fourth sentence in Paragraph 41 of the Recommended Order is rejected. There is no competent substantial evidence in the record for this Finding of Fact.

ORDER

Upon review and consideration of the Recommended Order and the complete record in this proceeding, and having considered and ruled upon the Exceptions and Responses to the Exceptions, it is accordingly ORDERED:

1. Findings of Fact 1-13, 16, 19, 22, 27, 34, 35, 42-44 of the Recommended Order are adopted and incorporated herein as inclusions in the Findings of Fact for this Final Order. The remaining Findings of Fact of the Recommended Order have been modified and/or rejected above and are included as Findings of Fact for this Final Order.

2. Conclusions of Law 45-47 of the Recommended Order are adopted and incorporated herein as inclusions of the Conclusions of Law for this Final Order. The remaining Conclusions of Law of the Recommended Order have been modified and/or rejected above and are included as Conclusions of Law for this Final Order.

3. IT IS ORDERED THAT Respondent's dismissal as an employee is confirmed.

DONE and ORDERED this 24th day of October, 2000.

James H. Ammons for
Frederick S. Humphries
President

Filed with the Agency this
24th day of October, 2000.

Abigail V. Raddar
Abigail V. Raddar
Agency Clerk

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the agency clerk of Florida Agricultural & Mechanical University and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

cc: Thomas W. Brooks, Esquire
Bishop C. Holifield, Esquire