

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 00-4785
)
THOMAS JENKINS,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 24 and 25, 2000, at Fort Lauderdale, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles T. Whitelock, Esquire
Whitelock & Associates, P.A.
300 Southeast 13th Street
Fort Lauderdale, Florida 33316

For Respondent: Randy Fleischer, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent violated Subsection 231.36(1)(a), Florida Statutes, and Rule 6B-4.009(1)(2) and (3), Rule 6B-1.006(3)(a), (b), (e), and (f), Rule 6B-1.006(4)(a) and (b), Rule 6B.006(5)(a), (c), (d), (e), (f), and (o), and Rule 6B-

1.001(1), (2), and (3), Florida Administrative Code, and, if so, what actions should be taken.

PRELIMINARY STATEMENT

On July 26, 2000, Petitioner, Tom Gallagher as Commissioner of Education, issued an Administrative Complaint against Respondent, Thomas Jenkins (Mr. Jenkins), alleging that Mr. Jenkins violated Subsections 231.28(3)(c), and 231.28(1)(i), Florida Statutes, and Rule 6B-1.006(5)(d), Florida Administrative Code. Mr. Jenkins requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on August 10, 2000, for assignment to an Administrative Law Judge. The case was assigned Case No. 00-3345PL.

On October 1, 2000, Dr. Frank Till, Superintendent of Schools, Broward County, filed an Administrative Complaint against Mr. Jenkins, alleging that Mr. Jenkins violated Subsection 231.36(1)(a), Florida Statutes, and Rule 6B-4.009(2), (3), and (6), and Rule 6B-1.006(5)(d) and (f), Florida Administrative Code. Mr. Jenkins requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on November 30, 2000, for assignment to an Administrative Law Judge. The case was assigned Case No. 00-4785.

On December 15, 2000, Petitioner, Tom Gallagher as Commissioner of Education, filed Petitioner's Motion to Consolidate and Amend the Administrative Complaints. By Order of Consolidation dated December 15, 2000, the cases were consolidated. On December 29, 2000, an Order Granting Petitioner's Motion to Amend the Administrative Complaints was issued.

At the final hearing, Petitioners called the following witnesses: Jill Wilson, Cathy Greenspan, Charlene Hogan, Susie Ruder, Linda Altheide, Sydna Satterfield, Ana Valdes, Donna Blank, Patricia Lewis, Barbara Perkins, Amy Winder, Thomas Jenkins, and Carol Bristow. The testimony of Alice Lacy was presented by deposition. Petitioners' Exhibits 1-33 were admitted in evidence.

At the final hearing Respondent testified in his own behalf and called the following witnesses: Cynthia Wedderburn, Karen Simmonds, Michelle Tull, Ralph Eckhardt, and Sophia Matson. Respondent's Exhibits 1-9 were admitted in evidence.

The parties agreed to file their proposed recommended orders within 20 days of the filing of the transcript. The four-volume Transcript was filed on February 12, 2001. The parties timely filed their Proposed Recommended Orders, which have been considered in rendering this Recommended Order. A

separate Recommended Order has been issued in Case No. 00-3345PL.

FINDINGS OF FACT

1. Mr. Jenkins holds a Florida Educator Certificate. At all times pertinent to this proceeding, he was employed as a physical education teacher at Pasedena Lakes Elementary School (Pasedena Lakes) in the Broward County School District, where he had been teaching for 15 years.

2. Mr. Jenkins was a Master Steward for the teachers' union. He was also a member of the School Advisory Council (SAC) and was chair of the Safety and Discipline Committee, which is a part of SAC.

3. Jill Wilson has been the principal at Pasedena Lakes for six years and has a total of 29 years of educational experience. The assistant principal at Pasedena Lakes is Charlene Hogan, who has been at Pasedena Lakes for five years and has a total of 28 years of experience in the field of education.

4. On October 29, 1998, at approximately 5:00 p.m., Mr. Jenkins came to Ms. Wilson's office and yelled at her, accusing her of discrediting him and making things worse at the school. During this incident, Donna Blank, a former employee of Pasedena Lakes, was leaving the building and, through a window, observed Mr. Jenkins pounding on Ms. Wilson's desk and saying,

"You're not my boss." Ms. Blank went to her car, but returned to the building because she felt that she could not leave Ms. Wilson alone in that situation. When Ms. Blank went to Ms. Wilson's office, Ms. Wilson was visibly shaken.

5. Ms. Wilson felt intimidated by Mr. Jenkins and, as a result of the incident, issued a memorandum to Mr. Jenkins dated October 30, 1998. The memorandum outlined the events that had taken place in Ms. Wilson's office on October 29, 1998, advised Mr. Jenkins that his actions were inappropriate, and required him to schedule future meetings with her secretary so that she could have another staff member present when they met.

6. Pasedena Lakes has about 900 elementary students. Parking was a problem at the school, as well as traffic congestion when parents dropped off students in the mornings. Parents would park in the teachers' parking spaces, and there would be disruptions in the flow of traffic when the parents would take time to dole out lunch money, dress the children, say farewells, and otherwise take up additional time as they were dropping off the students.

7. Mr. Jenkins volunteered to help direct traffic in the mornings in order to reduce the congestion in the parking lots. His mode of directing traffic was more aggressive than the methods that had been used previously by the other teachers. Mr. Jenkins used a bull horn to shout at the parents to move the

traffic along and to tell them to kiss their kids at home and not at school. At first his efforts were commendable, but he began to become frustrated with the job. Mr. Jenkins would yell at the parents and the students, upsetting both the parents and the students. On one occasion while on traffic duty, Mr. Jenkins, using his bullhorn, called another teacher "Deadwood," belittling her in front of students, parents, and other staff members.

8. Sometime during the fall of 1999, Patricia Lewis was bringing her two children to the school. Ms. Lewis needed to talk to one of her children's teachers, so she dropped her children off and told them to wait for her while she parked the car. While she was parking the car, Mr. Jenkins yelled at her children, "You little monkeys, hurry up and get back to class." Ms. Lewis, a Haitian-American, was upset at his remarks and confronted him. She told Mr. Jenkins, "My kids have a name. You do not call them that." Mr. Jenkins replied, "If you don't like it, go get a lawyer, and my lawyer will win."

9. Visibly upset, Ms. Lewis went to the school administration's office and asked to speak to the principal. She talked with Ms. Wilson and explained what had happened in the parking area. Ms. Wilson assured her that she would take care of the matter and talk to Mr. Jenkins. Ms. Lewis left the office and went to find her child's teacher to talk with her as

originally planned. She ran into Mr. Jenkins in the hallway. Mr. Jenkins said, "Oh, you're the one who went to the principal." Ms. Lewis told him that she did not want to talk with him and turned away. Mr. Jenkins began to yell at her, and she went back to the office in tears. When she got to the principal's office, Ms. Lewis was loud and upset. Again Ms. Wilson calmed her down.

10. In the fall of 1999, the Safety and Discipline Committee had concerns over the traffic problems at Pasedena Lakes and over unauthorized visitors on campus. A meeting of SAC was scheduled for November 9, 1999, to discuss these issues. The Safety and Discipline Committee met and drafted a letter which was to be sent to the parents asking them to come to the meeting and outlining the concerns which would be discussed. Ms. Hogan was on the Safety and Discipline Committee, and she edited the draft letter with input from other committee members so that the letter would fit on one sheet of paper.

11. Mr. Jenkins was not happy with the edited version, but he did not tell Hogan of his displeasure at the time the letter was rewritten. Mr. Jenkins helped distribute the letter to the parents in the parking lot.

12. Alice Lacy, a teacher at Pasedena Lakes, was the chair of SAC, and Hogan was co-chair. On November 1, 1999, Mr. Jenkins told Ms. Lacy that he wanted to have a meeting prior

to the SAC meeting scheduled for November 9, 1999, in order to get the teachers to form a coalition and come to the November 9 meeting to support him. As chair of SAC, Lacy told Mr. Jenkins that it would be better to send a memorandum to the teachers rather than schedule a separate meeting. Later on the same day, Mr. Jenkins told Ms. Lacy that he was demanding that the teachers come to the November 9 SAC meeting. He became angry with Ms. Lacy and told her that it was a personal issue and that the teachers owed it to him. He stormed away from Ms. Lacy.

13. Ms. Lacy became concerned about the November 9 SAC meeting and felt that Mr. Jenkins should clarify his intentions prior to the meeting. She sent Mr. Jenkins a memorandum, requesting that he provide her with an agenda by November 5. Mr. Jenkins did not supply an agenda. Ms. Lacy heard him yelling at teachers outside her classroom on November 5, but did not know what he was discussing with the teachers.

14. Ms. Lacy became concerned and sent a memorandum dated November 5, 1999, to Ms. Wilson and Ms. Hogan, urging that the November 9 SAC meeting be postponed until the issues involving Mr. Jenkins could be resolved.

15. The administration met with Mr. Jenkins, and Ms. Lacy was assured that Mr. Jenkins understood that the SAC meeting would be under Ms. Lacy's direction, the agenda would be followed, and the meeting would take place in the media center.

16. When Ms. Lacy went to the media center on the evening of November 9, 1999, she found that the media center was locked and that Mr. Jenkins was setting up the meeting in the cafeteria, where he could have teachers sit on stage with him to lend him support. Lacy confronted Mr. Jenkins and told him that the meeting would take place in the media center as planned. Mr. Jenkins shook his finger at Ms. Lacy and told her that she was making a big mistake.

17. When Ms. Lacy was calling the meeting to order, Mr. Jenkins called out of turn and said, "I motion to move this meeting to the cafeteria." Ms. Lacy called Mr. Jenkins out of order.

18. There was a large turn-out for the SAC meeting, and it was agreed that each speaker would be limited to two minutes. When Mr. Jenkins began to make his presentation for the Safety and Discipline Committee, Ms. Lacy felt that he was unprepared and was improvising. Several times Mr. Jenkins spoke and went over his two-minute limit. When he did, Ms. Lacy would cut him off and go on to the next speaker. After this happened three times, Susie Ruder, a teacher at Pasedena Lakes, sent a note to Ms. Lacy, telling Ms. Lacy that she felt Ms. Lacy was being rude to Mr. Jenkins. After Ms. Lacy received the note, she gave Mr. Jenkins more time to speak.

19. The day after the meeting, Mr. Jenkins ran into Ms. Hogan and Cathy Greenspan, a reading resource specialist at Pasedena Lakes, on the school campus. Mr. Jenkins shook Ms. Hogan's hand and commented that the SAC meeting had been a good meeting.

20. Approximately ten minutes later, Mr. Jenkins went to Ms. Wilson's office. He was wearing shorts, a shirt, and a fanny pack. His purpose for the visit was to discuss sending flyers to parents advising them of the decision of SAC to require parents to obtain a visitor's pass to come on the school campus. Ms. Wilson told him that the passes had been ordered but had not arrived and that she did not want the flyers to be sent until the passes had arrived.

21. Mr. Jenkins shifted the conversation and told Ms. Wilson that she was responsible for the rumor mill around school and accused her of changing a letter that had been written by the Safety and Discipline Committee in October to advise the parents of the November 9 SAC meeting. Mr. Jenkins said the letter that went home to the parents was not the letter the Safety and Discipline Committee had agreed upon. Ms. Wilson did not know about the changes to the letter and called Ms. Hogan to come into the office to discuss the letter. Ms. Hogan brought in the disc on which the letter had been saved, and they viewed it on the computer.

22. Mr. Jenkins again shifted the conversation to the November 9 meeting and held Ms. Wilson responsible for the rudeness he felt Ms. Lacy displayed at the SAC meeting. Mr. Jenkins then shifted the discussion again and wanted the South Area Office to look into what Ms. Wilson's role was on SAC. Mr. Jenkins started to yell and point his finger in Ms. Wilson's face. His face got red, and his voice became louder. He told Ms. Wilson that she would be in charge of damage control. Ms. Hogan told him not to point his finger at Ms. Wilson. Mr. Jenkins turned to Ms. Hogan and said, "I've got an attorney, I've got the union, and I've got a gun."

23. Both Ms. Wilson and Ms. Hogan asked Mr. Jenkins what he said. He replied that he did not know what he said and that he had been interrupted. Either Ms. Wilson or Ms. Hogan told him that he had said, "I've got a gun." Mr. Jenkins became flustered and walked out of the office. Both Ms. Wilson and Ms. Hogan were shocked by Mr. Jenkins' outburst. Neither woman could tell whether Mr. Jenkins actually had a gun in his fanny pack.

24. A conference room was located next to Ms. Wilson's office. Cathy Greenspan, Donna Blank, and Barbara Perkins were in the conference room when Mr. Jenkins was meeting with Ms. Wilson and Ms. Hogan. Both Ms. Blank and Ms. Perkins heard

Mr. Jenkins say the word, "gun." Ms. Greenspan heard

Mr. Jenkins say, "I've got a gun."

25. After Mr. Jenkins left the administration office, Ms. Hogan called the Special Investigative Unit (SIU), which is the school police, and requested assistance. Investigator Evelyn McCabe came to the school. Ms. Hogan was afraid of what Mr. Jenkins might do and locked herself in her office until Investigator McCabe arrived.

26. Mr. Jenkins returned to the administration office with Sydna Satterfield, a teacher at Pasadena Lakes and a friend of Mr. Jenkins. Mr. Jenkins, Ms. Satterfield, Investigator McCabe, Ms. Wilson, and Ms. Hogan went into to Ms. Wilson's office. A few minutes later Susie Ruder, another teacher and friend of Mr. Jenkins, joined them. Mr. Jenkins denied saying that he had a gun and then stated that he did not know what he said. He threw his keys on Ms. Wilson's desk and asked to be transferred to an "F" school. He walked out of the office but returned and said that he wanted an investigation. Ms. Wilson told him to think about whether he wanted an investigation or wanted to work out things. She advised him that she was willing to work with him on their problems. Mr. Jenkins said he did not know what he said, but apologized for whatever he had said. Mr. Jenkins and Ms. Wilson hugged, and they agreed to try to work together.

27. That evening and the next morning, Ms. Wilson received calls from staff members who feared for their safety and the safety of their children as a result of the incident with Mr. Jenkins. Ms. Wilson began to think about what had happened and the complaints from staff. She also saw an article in the newspaper concerning a colleague who had not contacted authorities concerning an incident that had happened at his school and had tried to resolve the situation by himself. She felt she had to get assistance. Ms. Wilson called Bruce Wagar, who is in charge of professional standards. He advised her to file a complaint with SIU, which resulted in an investigation.

28. As part of the investigation, Mr. Jenkins underwent a psychological evaluation in April 2000 by Dr. Joel Kimmel. The evaluation report stated:

Personality tests and behavioral observations indicate that Mr. Jenkins is a frustrated individual who believes he is being prevented from doing his job. His responses to the personality tests indicate that he tends to define his identity based upon his position and derives a lot of satisfaction from his job. He enjoys working with students and motivating them to achieve their potential. He likes the status and recognition he receives from his position and may have a lonely life outside his job. He also appears to be somewhat incompetent, or inefficient. When frustrated, he can escalate and demand his way. However, there are no signs of any violent behaviors in any of his responses suggesting that he probably will not act out when frustrated. He does believe in the

benefit of talking things out. However, he does want to do things his way and may not respect others if they disagree with him. He also does appear to have some boundary issues in terms of not understanding where his authority ends and being able to accept the authority of others. His greatest fear is that of failure and losing his job which could represent a failure for him. His provisional diagnosis would be Adjustment Disorder with Mixed Emotional Features (DSM IV 309.28).

It is highly recommended that Mr. Jenkins participate in sensitivity training and interpersonal relationship programs in order to develop his capacity to tolerate others' viewpoints as well as decrease his frustration. A stress reduction program would also be helpful in improving his ability to control his frustration and developing more patience. Meetings between he [sic], his principal, and a counselor may be of assistance in improving their relationship.

29. Mr. Jenkins has demonstrated inappropriate behavior on different occasions involving his students. He showed his paycheck to a first grade class and asked them if that was not a lot of money. Another time, he read an article from a newspaper to a kindergarten swim safety class about a student who had drowned and told the class that they could drown. Mr. Jenkins left his physical education class outdoors unattended when their regular classroom teacher failed to pick them up on time.

30. On November 17, 1999, Ms. Wilson inadvertently referred to Mr. Jenkins during a morning announcement as Thomas Wilson rather than Thomas Jenkins. Mr. Jenkins and his wife

composed a letter to show how one word could be misconstrued. The letter, which Mr. Jenkins referred to as a private joke, stated that Mr. Jenkins thinks that Ms. Wilson fantasizes about him being her husband, that she wants his body, that Ms. Wilson was a "horny lady," and that she might lose control and have sex with him. Mr. Jenkins' wife shared the letter, which Mr. Jenkins called a "nothing" letter, with other employees of Pasedena Lakes.

31. Both teachers and parents testified that they were fearful of Mr. Jenkins based on his past conduct and that he had created a hostile work environment.

CONCLUSIONS OF LAW

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

33. Petitioner, in seeking to dismiss Mr. Jenkins, is required to establish the allegations in the Amended Administrative Complaint by a preponderance of the evidence. See Section 120.57(1)(j), Florida Statutes.

34. Petitioner has alleged that Mr. Jenkins should be dismissed pursuant to Section 231.36(1)(a), Florida Statutes, which provides:

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certified

pursuant to s. 231.17 or employed pursuant to s. 231.1725 and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

35. Petitioner has alleged that Mr. Jenkins is guilty of incompetency, immorality; and misconduct in office. These terms are defined in Rule 6B-4.009(1)-(3), Florida Administrative Code, which provide:

The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for each of such charges is hereby defined:

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

(a) Inefficiency: (1) repeated failure to perform duties prescribed by law (Section 231.09, Florida Statutes); (2) repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils

are deprived of minimum educational experience; or (3) repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

(b) Incapacity: (1) lack of emotional stability; (2) lack of adequate physical ability; (3) lack of general educational background; or (4) lack of adequate command of his or her area of specialization.

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

(3) Misconduct in office is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., which is so serious as to impair the individual's effectiveness in the school system.

36. Petitioner has failed to establish that Mr. Jenkins is guilty of incompetency as defined by Rule 6B-4.009(1), Florida Administrative Code. The psychological evaluation performed by Dr. Kimmel did not demonstrate that Mr. Jenkins was emotionally unstable.

37. Petitioner has established that Mr. Jenkins is guilty of immorality as that term is defined by Rule 6B-4.009(2), Florida Administrative Code. Mr. Jenkins' statement, "I've got

a gun" is sufficiently notorious to bring Mr. Jenkins into public disrespect.

38. Petitioner has established that Mr. Jenkins is guilty of misconduct in office as that term is defined by Rule 6B-4.009(3), Florida Administrative Code. He has violated the provisions of Rule 6B-1.001 and Rule 6B-1.006, Florida Administrative Code as set forth below.

39. Petitioner has alleged in the Amended Administrative Complaint that Mr. Jenkins violated Rule 6B-1.001, Florida Administrative Code which provides:

(1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(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.

40. Petitioner has alleged in the Amended Administrative Complaint that Mr. Jenkins violated the following provisions of Rule 6B-1.006, Florida Administrative Code.

(1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

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

(a) Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

(b) Shall not unreasonably restrain a student from independent action in pursuit of learning.

* * *

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

(f) Shall not intentionally violate or deny a student's legal rights.

* * *

(4) Obligation to the public requires that the individual:

(a) Shall take reasonable precautions to distinguish between personal views and those of any educational institution or organization with which the individual is affiliated.

(b) Shall not intentionally distort or misrepresent facts concerning an educational matter in direct or indirect public expression.

* * *

(5) Obligation to the profession of education requires that the individual:

(a) Shall maintain honesty in all professional dealings.

* * *

(c) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(d) Shall not engage in harassment or discriminatory conduct which unreasonably

interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

(e) Shall not make malicious or intentionally false statements about a colleague.

(f) Shall not use coercive means or promise special treatment to influence professional judgments of colleagues.

* * *

(o) Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 231.28(1), Florida Statutes.

41. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(3)(a), Florida Administrative Code, when he told kindergarten students that they could drown, and left students unattended on the physical education field.

42. Petitioner has failed to establish that Mr. Jenkins violated Rule 6B-1.0006(3)(b) and (f), Florida Administrative Code.

43. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(3)(e), Florida Administrative Code, by calling Haitian-American students little monkeys.

44. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(4)(a), Florida Administrative Code, when he

treated the November 9, 1999, SAC meeting as a personal issue rather than a professional issue.

45. Petitioner has failed to establish that Mr. Jenkins violated Rule 6B-1.006(4)(b), Florida Administrative Code.

46. Petitioner has failed to establish that Mr. Jenkins violated Rule 6B-1.006(5)(a), Florida Administrative Code.

47. Petitioner has failed to establish that Mr. Jenkins violated Rule 6B-1.006(5)(c), Florida Administrative Code.

48. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(5)(d), Florida Administrative Code, by his actions towards Ms. Wilson on October 29, 1998; his manner and statement made during the November 10, 1999, meeting with Ms. Wilson that he had a gun; his manner and remarks made while directing traffic; his attempt to get the November 9, 1999, SAC meeting place changed to the cafeteria; and his confrontation with Ms. Lewis.

49. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(5)(e), Florida Administrative Code, through his "nothing" letter concerning Ms. Wilson.

50. Petitioner has failed to establish that Mr. Jenkins violated Rule 6B-1.006(5)(f), Florida Administrative Code.

51. Petitioner has established that Mr. Jenkins violated Rule 6B-1.006(5)(o), Florida Administrative Code, when he confronted Ms. Lewis in the hallway after she had gone to the

principal's office to complain about his conduct in the parking lot.

52. Petitioner has established that Mr. Jenkins violated Rule 6B-1.001(1), Florida Administrative Code, by his actions towards Ms. Wilson, Ms. Hogan, Ms. Lewis, and Ms. Lacy and his actions while directing traffic.

53. Petitioner has established that Mr. Jenkins has violated Rule 6B-1.001(2), Florida Administrative Code, by his referring to Haitian-American students as monkeys, showing his paycheck to students, telling kindergarten students that they could drown, and leaving students unattended.

54. Petitioner has established that Mr. Jenkins violated Rule 6B-1.001(3), Florida Administrative Code, by his actions towards Ms. Wilson, Ms. Hogan, Ms. Lewis, and Ms. Lacy, his calling Haitian-American students monkeys, his saying that he had a gun, his calling another teacher "Deadwood," and his "nothing" letter concerning Ms. Wilson.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that just cause exists for suspending Thomas Jenkins, finding that Thomas Jenkins is guilty of immorality and misconduct in office, and suspending Thomas Jenkins for 60 days.

DONE AND ENTERED this 30th day of March, 2001, in
Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
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this 30th day of March, 2001.

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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.