



PRELIMINARY STATEMENT

At the times pertinent to this proceeding, the School Board of Palm Beach County (the School Board) employed Respondent as a behavioral interventionist assistant (BIA). On December 22, 2000, the School Board filed an Administrative Complaint alleging certain facts pertaining to Respondent's conduct. Based on those allegations, the School Board charged, in the alternative, that Respondent violated the following School Board Policies or State Board of Education Rules, which provide grounds for the termination of his employment:

School Board Policy 3.19;  
School Board Policy 3.27;  
Rule 6B-1.001(2), Florida Administrative Code;  
Rule 6B-1.001(3), Florida Administrative Code;  
Rule 6B-1.006(3)(a), Florida Administrative Code;  
Rule 6B-1.006(3)(e), Florida Administrative Code;  
Rule 6B-1.006(5)(d), Florida Administrative Code;  
Rule 6B-4.009(3), Florida Administrative Code; or  
Rule 4.009(3)(6), Florida Administrative Code.

Respondent timely challenged the allegations of the Administrative Complaint, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the final hearing in this case, the School Board presented the testimony of eight witnesses, each of whom was employed by the School Board at the times pertinent to this proceeding. The School Board offered seven exhibits, each of which was admitted into evidence.

Respondent did not appear at the hearing, and no one testified or introduced exhibits on his behalf.

At the conclusion of the hearing, the parties were allowed 20 days from the filing of the transcript to file their proposed recommended orders. A transcript of the proceeding was filed on July 2, 2001. On July 17, 2001, the School Board moved for an extension of time to file its Proposed Recommended Order until August 27, 2001. On July 19, 2001, that motion was granted. The School Board timely filed its Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a Proposed Recommended Order.

#### FINDINGS OF FACT

1. The School Board employed Respondent as a BIA during portions of the 1999-2000 and the 2000-2001 school years.
2. Respondent is not a member of a collective bargaining unit, and the terms of his employment are not subject to the provisions of a collective bargaining agreement.

3. At all times pertinent to this proceeding Respondent was an educational support employee within the meaning of Section 231.3605(1)(a), Florida Statutes. 1/

4. Respondent attended the School Board's new employee orientation on October 12, 1999. As part of the orientation, a film was presented and a discussion held on the issue of sexual harassment in the workplace. The School Board's sexual harassment policy and its import were discussed at the orientation session.

5. The School Board's Policy 3.19 deals in part with sexual harassment on the job. The policy includes a definition of sexual harassment, prohibits employees from engaging in sexual harassment, and provides that employees found to have engaged in sexual harassment would be disciplined and could lose his or her job. The School Board's Policy 3.19 provides, in pertinent part, as follows:

1. Sexual harassment is strictly prohibited. Sexual harassment has been defined as "unwelcome" sexual advances, requests for sexual favors, and other verbal, written conduct of a sexual nature when:

\* \* \*

c. Such conduct has the purpose or effect of unreasonably interfering with the individual's work performance, or creating an intimidating, hostile, or offensive working environment.

2. Examples of sexual harassment may include but are not limited to the following:

a. Gestures, letters, notes, invitations, comments, slurs, jokes, or epithets that are suggestive, derogatory, or obscene.

\* \* \*

d. Continuing to express sexual interest after being informed that the interest is unwelcome.

6. At all times pertinent to this proceeding Respondent was aware of the School Board's policy prohibiting sexual harassment.

7. Respondent's first job assignment as a BIA was at Indian Ridge Center School (Indian Ridge) in the fall of the school year 1999-2000.

8. At Indian Ridge, Respondent worked with teachers to diffuse crises resulting from student misbehavior and worked with students to improve their social skills.

9. Shortly after arriving at the school, Respondent made lewd comments of a sexual nature to Kathy Petrillo, a middle school teacher. He made comments about her body and asked her to go out with and have sex with him. Ms. Petrillo repeatedly told Respondent that she was not interested in him. Despite her efforts to rebuff Respondent, he continued to make inappropriate comments and gestures with sexual overtones to Ms. Petrillo.

10. Ms. Petrillo complained to William Basil, the Assistant Principal of Indian Ridge, about Respondent's inappropriate interaction with her and with other female members of the school staff.

11. During the fall of 1999, Respondent also made inappropriate comments and gestures with sexual overtones to Marlow Belkin, a female teacher at Indian Ridge. Ms. Belkin told Respondent that she had a boyfriend and was not interested in him, but he persisted with inappropriate and unwelcome comments. Respondent's conduct made Ms. Belkin feel very uncomfortable. Ms. Belkin was informed by students that Respondent had a "crush" on her. When she passed Respondent in the hallway, he stared at her. Ms. Belkin complained to Mr. Basil about Respondent's conduct. Ms. Belkin made it clear to Mr. Basil and to Respondent that she wanted no involvement with Respondent. After her complaint to Mr. Basil, Respondent's inappropriate conduct towards her stopped for a while. However, on Valentine's Day, in February of 2000, Respondent sent to Ms. Belkin a vase of carnations. Ms. Belkin refused the flowers after she learned that Respondent had sent them and wrote Respondent a letter, with a copy to Mr. Basil, advising Respondent she wanted no further personal advances from him. While there were no further personal advances from Respondent, he would leer at Ms. Belkin whenever he saw her.

12. Derrilyn Cerbone-Kreling, a female physical education teacher at Indian Ridge, met Respondent for the first time when he began working at her school. Shortly after his arrival, Respondent asked Ms. Cerbone-Kreling if she would like to kiss him, touch him, feel his biceps, and have sex with him. Additionally, when Respondent went to the school's gym to interact with the kids, Respondent displayed his body, lifted up his shirt, and asked Ms. Cerbone-Kreling to be physical with him. Respondent's behavior was consistent towards Ms. Cerbone-Kreling throughout the fall of 1999. Ms. Cerbone-Kreling complained to Mr. Basil about Respondent's conduct.

13. In response to complaints about Respondent's conduct, Mr. Basil advised Respondent in November 1999 that he had to be professional while working at all times and that he must stop making passes towards female co-workers.

14. Mr. Basil received another complaint concerning Respondent's conduct towards female employees in December of 1999. Mr. Basil spoke to Respondent about the allegations and advised him the situation needed to be taken very seriously. He also gave Respondent a written memorandum dated December 21, 1999. In the memorandum, Mr. Basil advised Respondent of the most recent allegations of sexual harassment and also referenced the earlier conversation they had in November concerning the same issue. Mr. Basil specifically referenced the new employee

orientation attended by Respondent and the need to maintain a safe and nondiscriminatory working environment. Respondent acknowledged receipt of the memorandum, but provided no other response.

15. On or about May 4, 2000, a professional standards investigation was initiated concerning Respondent, based in part on allegations he had made inappropriate comments towards female employees at Indian Ridge earlier in the school year.

16. Raymond T. Miller, a personnel compliance administrator with professional standards, conducted an investigation of the allegations.

17. On May 18, 2000, Respondent was placed on administrative leave with pay and assigned to his home.

18. After Mr. Miller completed his investigation, a committee of senior administrators reviewed the record of the investigation, including written statements from various witnesses. The committee determined that probable cause existed to sustain the allegations and recommended to the School Board that Respondent's employment be suspended for ten days without pay. The School Board rejected the recommendation as being too lenient. The committee ultimately recommended a 15-day suspension, which the School Board accepted. Respondent served the 15-day suspension, beginning in September 2000, without filing a grievance or any other appeal.



19. Subsequent to serving the 15-day suspension, Respondent was transferred to Seminole Trails Elementary School (Seminole Trails). He began working there as a BIA in October 2000.

20. Shortly after arriving at Seminole Trails, Respondent met Tabitha Lindor, a female School Board employee who worked as a Creole Language Facilitator. Respondent, who had not previously met Ms. Lindor, approached her in the teachers' dining room and made inappropriate comments and gestures about her body. Ms. Lindor was offended by Respondent's comments and gestures and immediately complained to the Assistant Principal and Principal. Respondent's inappropriate comments and gestures towards Ms. Lindor constituted sexual harassment.

21. Madeline Vega also worked at Seminole Trails in October of 2000. She was employed as an attendance clerk, and met Respondent soon after he was transferred there. Respondent made passes at Ms. Vega including asking her to go out with him. Respondent made inappropriate comments about her body and made inappropriate gestures to her. Ms. Vega did not welcome or encourage Respondent's comments and gestures, and she repeatedly told Respondent she would not go out with him. Despite those rebuffs, Respondent's inappropriate conduct towards Ms. Vega continued. Respondent's inappropriate comments and gestures towards Ms. Vega constituted sexual harassment.

22. Following an investigation and recommendation from the management committee that reviewed the investigative report, Superintendent Benjamin Marlin recommended to the School Board at its meeting of December 6, 2000, that Respondent's employment be suspended and terminated, subject to Respondent's right to request a formal administrative hearing. Superintendent Marlin, on behalf of the School Board, filed the Administrative Complaint that underpins this proceeding on December 22, 2000.

23. The School Board's Policy 3.27 pertains to the procedures to be followed in the suspension and dismissal of employees. Those procedures were followed in this proceeding.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this case. Sections 120.569 and 120.57(1), Florida Statutes.

25. The School Board has the burden of proving the allegations in the Administrative Complaint by a preponderance of the evidence. See Allen v. School Board of Dade County, 571 So. 2d 568, 569 (Fla. 3d DCA 1990); and Dileo v. School Board of Lake County, 569 So. 2d 883 (Fla. 3d DCA 1990).

26. Because there is no collective bargaining agreement applicable to this proceeding, Respondent's employment is subject to termination pursuant to the School Board's policies. See Section 231.3605, Florida Statutes.

27. The School Board proved that Respondent knowingly and repeatedly violated its policy prohibiting sexual harassment in the fall of 2000 after having been disciplined several months earlier for the same violation. His failure to comply with the School Board's Policy 3.19 prohibiting sexual harassment constitutes just cause to terminate his employment.

28. Rule 6B-1.001, Florida Administrative Code, constitutes the Code of Ethics of the Education Profession in Florida. Rule 6B-1.006, Florida Administrative Code, sets forth the Principles of Professional Conduct for the Education Profession in Florida. Rule 6B-4.009, Florida Administrative Code, provides criteria for the suspension and dismissal of instructional personnel. These rules pertain to members of the instructional personnel who hold a valid teacher's certificate. Except by analogy, those rules do not apply to Respondent, who was an educational support employee. Consequently, his violation of one or more of those rules does not provide an independent basis to terminate his employment.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the School Board enter a final order terminating Respondent's employment.

DONE AND ENTERED this 12th day of September, 2001, in  
Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of September, 2001.

ENDNOTE

1/ Section 231.3605(1)(a), Florida Statutes, provides, in  
pertinent part, that the term "educational support employee"  
means:

. . . any person employed by a district  
school system who is employed as a teacher  
assistant, an education paraprofessional, a  
member of the transportation department, a  
member of the operations department, a  
member of the maintenance department, a  
member of food service, a secretary, or a  
clerical employee, or any other person who  
by virtue of his or her position of  
employment is not required to be certified  
by the Department of Education or district  
school board pursuant to s. 231.1725. . . .

COPIES FURNISHED:

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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.