STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-1667
	)	
MICHAEL L. GRAYER,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Largo and Tarpon Springs, Florida, on October 21-24, 2002.

APPEARANCES

For Petitioner: Jacqueline Spoto Bircher
School Board Pinellas County
301 4th Street, Southwest
Post Office Box 2942
Largo, Florida 33779-2942

For Respondent: Mark Herdman, Esquire
Herdman & Sakellarides, P.A.
2595 Tampa Road, Suite J
Palm Harbor, Florida 34684

STATEMENT OF THE ISSUE

The issue is whether Petitioner terminated Respondent's annual contract as a teacher for just cause.

PRELIMINARY STATEMENT

By charging letter dated March 14, 2002, Petitioner's superintendent informed Respondent that he was suspended with pay effective February 25, 2002, until the School Board meeting on April 16, 2002. Petitioner's superintendent stated that he intended to recommend to the School Board that it terminate Respondent effective April 17, 2002. The letter states that the grounds for these actions are that Respondent was arrested on January 31, 2002, and charged with sexual battery on a 17-year-old female student and inappropriate conduct with other students. The letter charges that Respondent has thus violated School Board Policy 8.25(1)(a), (c), (i), (m), and (v) and the Code of Ethics and the Principles of Professional Conduct of the Education Profession. The letter concludes that these violations constitute just cause for dismissal under Section 231.36, Florida Statutes.

By amended charging letter dated August 2, 2002, Petitioner added and clarified charges. This letter adds to the charges stated in the March 14 letter by stating that Respondent is guilty of:

> 1. Kissing a female student and touching her in the vaginal region.
> 2. Kissing a second female student on at least one occasion.
> 3. Making inappropriate comments to female students about their appearance.

> 4. Making inappropriate comments of a sexual nature to or in front of students.
> 5. Allowing students who were not scheduled to be in [Respondent's] class to come into and spend time in [Respondent's] classroom for no valid school purpose.
> 6. Encouraging students to leave campus during the school day for the purpose of getting food, including bringing Mr. Grayer food.
> 7. Us[ing] non-curriculum related materials in class, such as the showing of videos.
> 8. Lack[ing] appropriate record-keeping.
> 9. Lack[ing] appropriate classroom instruction.

The August 2 letter states that these actions constitute just cause, pursuant to Section 231.26, Florida Statutes, for the termination of Respondent because these actions:

> 1. Violate School Board policies 8.24 and 8.25(1)(a), (c), (i), (k), (l), (m), (o), (t), (v), and (x).
> 2. Violate the Code of Ethics and Principles of Professional Conduct of the Education Profession in Florida, including but not limited to 6B-1.001(2) and (3) and 6B-1.006(3)(a), (g), and (h).
> 3. Constitute misconduct in office, willful neglect of duty and immorality.

At the hearing, Petitioner withdrew the charges in paragraphs 6, 8, and 9 of the August 2 letter. Petitioner called 28 witnesses and offered into evidence 23 exhibits: Petitioner Exhibits 1-23. Respondent called nine witnesses and offered into evidence one exhibit: Respondent Exhibit 1. The parties jointly offered 13 exhibits: Joint Exhibits 1-13. All exhibits were admitted.

The court reporter filed the transcript on November 25, 2002. The parties filed their proposed recommended orders on January 8, 2003.

FINDINGS OF FACT

1. Petitioner hired Respondent, an inexperienced teacher who had recently graduated from college, and assigned him to teach and serve as an assistant basketball coach at Dixie Hollins High School during the 2000-01 school year. For the 2001-02 school year, Petitioner reassigned Respondent to Tarpon Springs High School, where Respondent assumed the duties of head basketball coach. During both school years, Respondent was on annual contract.

2. Initially, an administrator at Tarpon Springs High School informed Respondent that he would teach American history and economics, which are the subjects that he had taught at Dixie Hollins High School. When Respondent reported for duty at Tarpon Springs High School, administrators did not give him a schedule until a couple of days before classes started.

3. At that time, Respondent learned that, during the first quarter, he was to teach counseling and personal fitness, neither of which he had taught before. He also learned that, the following quarter, he was to teach Freshman Experience, which was a relatively new course, and personal fitness. In the

third quarter, he was due to teach earth-space science in place of personal fitness.

4. At least for the first two quarters, Respondent was assigned students in the GOALS program, which is designed for students who have not made substantial academic progress due to social problems. In this program, the students take only four classes per quarter. Each class runs one hour and forty-five minutes, five days weekly.

5. Respondent had difficulties assembling materials for the peer counseling course. Teachers who had previously taught the course were not available. Extensive renovations at the school made it difficult to locate materials for this and other courses. Respondent finally visited a teacher at another school and obtained books, guides, and tests for peer counseling. These materials advised Respondent to help the students learn to settle their disputes peaceably without adult intervention and suggested that the teacher supplement the book with relevant movies dealing with peer pressures, conflict, and social issues.

6. Respondent experienced similar difficulties with the personal fitness course, for which he had books, but no teacher edition or worksheets. However, Respondent's background in athletics presumably prepared him to teach this course.

7. Although Respondent voiced similar complaints about Freshman Experience, he had a quarter to try to obtain

materials. Also, no one else at the school had any experience with this course, which the District had abruptly required the high schools to teach. Similar to peer counseling, Freshman Experience is a motivational course that also covers personal and academic issues, as revealed by the titles of the required books, Chicken Soup for the Soul and Ten Steps for How To Manage Time.

8. The seven charges listed in the Preliminary Statement fall into four groups. Charges 1 and 2 are the most serious; they allege that Respondent kissed two students and touched the vaginal area of one of these students. Charges 3 and 4 are also sexual in nature; they allege that Respondent made inappropriate comments to female students about their appearance and inappropriate sexual comments to or in front of students. Charges 5 and 6 pertain to classroom management; they allege that Respondent allowed students to come to his classroom for no legitimate purpose and encouraged students to leave campus to get him food. Charges 7-9 pertain to curriculum, administration, and instruction; they allege that Respondent used noncurriculum-related materials (such as videos), lacked appropriate recordkeeping, and lacked appropriate classroom instruction.

9. Petitioner wisely dropped Charges 6, 8, and 9. No evidence in the record supported these allegations prior to

Petitioner's announcement that it was not pursuing these allegations.

10. Charges 5 and 7 require little more analysis. The evidence supports neither of these allegations.

11. Concerning Charge 5, unenrolled students visiting Respondent's classroom included basketball players. While Respondent remained the basketball coach, these players briefly visited the room from time to time to discuss something about the basketball program. Petitioner did not show the extent of these visits or that they were illegitimate.

12. Unenrolled students who were not participating in the basketball program infrequently visited Respondent's classroom. Although the principal testified that one of his assistant principals told him that there was a problem with unenrolled students visiting Respondent's classroom, he added that she rejected his offer to talk to Respondent and said she would handle it. After that conversation between the principal and assistant principal, the principal said the problem was eliminated. Interestingly, though, neither the assistant principal nor anyone else ever talked to Respondent about this issue, which appears not to have loomed large at the time.

13. Concerning Charge 7, Petitioner never proved the rating of any of the films mentioned during the hearing as shown in Petitioner's classroom. Films mentioned during the hearing

as shown in one of Respondent's classes include With Honors, Rudy (shown repeatedly), Finding Forrestor, Saving Private Ryan, The Hurricane, [The Mask of] Zorro, and assorted basketball videotapes.

14. The record reflects disagreement among Petitioner's administrators as to the policy concerning the application of the District policy regarding R-rated films. According to the representative of the Office of Professional Standards, The Patriot (apparently an R-rated film) "could" violate this policy, but, according to the principal, who is now handling workforce development in the District office, The Patriot "probably" would not be a problem.

15. Even if The Patriot were a problem, as an R-rated film, it would be so only if Respondent had not obtained permission slips from parents to show this and perhaps other R-rated films. Respondent testified that he did so. Notwithstanding the testimony of one student to the contrary, Petitioner never proved that Respondent failed to obtain permission slips.

16. The issue of the relationship, if any, between the films and the courses fails because Petitioner failed to prove the contents of the films or to prove adequately the prescribed content of the courses, so as to permit a finding that the films were irrelevant to the courses. The broad outlines of peer

counseling in particular, at least as established in this record, would appear to accommodate a vast array of films. A sufficient number of students testified in sufficient detail to a broad array of bookwork, class discussion, and other instructional and assessment methods in both peer counseling and Freshman Counseling to overcome whatever proof that Petitioner offered in support of Charge 7.

17. The crux of this case lies in the charges involving sexual improprieties, as alleged in Charges 1-4. The quality of proof was considerably different between Charges 1 and 2, on the one hand, and Charges 3 and 4, on the other hand. Analyzing Charges 3 and 4 first may help explain the findings as to Charges 1 and 2.

18. Concerning Charges 3 and 4, Petitioner proved that Respondent made numerous inappropriate comments to female students, of a sexual nature, that understandably made the students feel uncomfortable. Respondent directed three of these comments and one behavior to T. R., a junior.

19. While walking around the track during the personal fitness class that T. R. was taking from Respondent, he asked her what she thought of a 26-year-old dating an 18-year-old. T. R. was either 18 years old or Respondent implied that the dating would await her 18th birthday; either way, T. R. reasonably believed that Respondent meant her. Although

actually 29 or 30 years old at the time, Respondent typically told his students that he was only 26 years old, so T. R. reasonably believed that Respondent meant him.

20. T. R. was so uncomfortable with this question that she mentioned it to a female teacher at the school, Cheryl Marks-Satinoff. Thoughtfully considering the matter, Ms. Marks-Satinoff found that the question was "odd," but not "extremely inappropriate" and "on the fence."

21. Ms. Marks-Satinoff's characterization of the question, in isolation, is fair. In the context of other comments to T. R. and other female students during the relatively short period of two school quarters--little else, if any, of which was Ms. Marks-Satinoff was then aware--the comment acquires its proper characterization.

22. To T. R., Respondent also said, "If I were still in high school, I'd be climbing in your window at night." T. R. was "shocked" by this comment, but her mother or stepmother, when told by T. R. about the comment--again, in isolation--did not attach much importance to it.

23. On another occasion, when a female student asked why T. R.'s grade was better than D. P.'s grade, Respondent replied, "T. R. and I have an agreement."

24. While taking Respondent for personal fitness, T. R. found Respondent staring at her repeatedly. Accordingly, T. R. switched from stretch pants to baggies.

25. T. R.'s testimony is credible. She spoke with adults about two of the comments roughly at the time that they were made. Also, T. R. bore no grudge against Respondent. She said that she did not think twice about the dating comment, although she obviously gave it enough thought to raise it with Ms. Marks-Satinoff. T. R. freely admitted that Respondent made the comment about crawling into her window in a joking manner. She discredited D. P., who is the alleged victim of the most serious sexual incident, discussed below, as a person who always lies, convincingly. T. R. added that D. P. told her once that Respondent "tried" to kiss her and put his hand up her skirt and did not understand why D. P. confided in her initially. T. R. testified that she never heard Respondent do or say anything inappropriate in the personal fitness class that she took with D. P. T. R. testified that Respondent made her and her friends leave if they disturbed his class the few times they got out of their assigned class to visit his office and watch movies. T. R. described another female student, B. H., who testified to several inappropriate comments made by Respondent, as someone who "likes to stir the pot."

26. To A. T., an 18-year-old who graduated from Tarpon Springs High School in June 2002, Respondent alluded to the size of her breasts, in front of the class, and used his hands to frame them. Although done in connection with a warning that A. T. was violating the school dress code due to the revealing nature of her shirt, Respondent delivered this warning in a sexual manner that was obviously unnecessary for the purpose of reminding the student to conform to the dress code.

27. A. T. testified that she liked Respondent as a teacher, but he made her uncomfortable, and he should be more a teacher than a friend. Like T. R., A. T. seemed not to bear any negative feelings toward Respondent, but instead merely seemed to be describing an insensitive incident as it happened.

28. To N. S., a junior at the time, Respondent said, upon learning that she had surgically implanted rods in her back, that he wanted to have sex with her. N. S. testified that she was not bothered by the remark. N. S.'s testimony is credited. She was friendly toward Respondent and had long dated Respondent's teacher assistant.

29. To A. M., Respondent said that she looked pretty and could get any guy she wanted. A. M.'s testimony is credited. She did not have much interaction with Respondent and was not part of any group interested in causing him trouble. She seems simply to have truthfully reported an ill-advised comment that

Respondent made to her, although she did not describe her reaction to the comment.

30. To L. D., Respondent said that he had a bracelet of hers that she had lent him and that, whenever he looked at it, it reminded him of her. L. D. felt uncomfortable about this remark. L. D. also testified that Respondent sometimes tried to get the boys to treat the girls with respect, and her testimony is credited.

31. Other witnesses, especially D. P. and B. H., described other comments, but their credibility is poor, and their testimony cannot be credited. The demeanor of two witnesses favorable to Respondent revealed something bordering on exasperation with him, even as they testified that he never said anything sexually inappropriate in class. The demeanor of each witness was consistent with someone who believed that Respondent was only joking around in class, when making sexually charged comments, and had suffered more than enough due to the consequences of lies told by two female students, as described below.

32. In isolation, the comment about having sex with a student with orthopedic rods in her back is sexually offensive, as is the sexual comment and gesture framing a female student's breasts is sexually offensive. The comments about the agreement between T. R. and Respondent, the bracelet reminding Respondent

of L. D., and A. M. being able to sufficiently pretty to get any boy are not sexually offensive, in isolation, but, even in isolation, betray a tendency by Respondent to regard certain of his female students as females more than students.

33. With the exception of the comment to A. M., all of the comments, gesture, and behavior, in the aggregate during a relatively short period of time, depict a transformation by Respondent of the relationship between a teacher and several of his students to a more ambiguous relationship, at times resembling the relationship that might exist between these girls and the boys with whom they attended high school. Nearly all of these incidents embarrassed the female students; all of them, except perhaps A. M., reasonably should have been embarrassed by them. Several of these incidents suggest that Respondent regarded these female students as available for him in some role other than that of student--for instance, as females with whom to flirt. Petitioner has proved that Respondent exploited these female students, with the possible exception of A. M., for personal gain.

34. This characterization of these comments, gesture, and behavior is confirmed by Respondent's implausible assertion that all of these students, except N. S., are lying. If confident that the comments, gesture, and behavior were innocuous or at

least not improper, Respondent could have gained credibility by admitting these incidents and explaining their innocence.

35. With one exception, Petitioner has not proved that Respondent sexually harassed or discriminated against his female students or these students in particular. The record does not suggest any quid pro quo in the sexual incidents, although the agreement with T. R. approaches the type of proof required. Nor does the record suggest that the sexual commentary, gesturing, or behavior were so pervasive as to create a hostile environment. Two students, N. S., A. M., and L. D., were each the subject of a single comment. One student, A. T., was the subject of a single incident, which consisted of a comment and gesture. On this record, Petitioner failed to prove that Respondent's treatment of these students rose to harassment or discrimination of them or of his female students in general.

36. However, Respondent's treatment of T. R. rose to harassment and sexual discrimination because he made three sexually inappropriate comments and engaged in one sexually inappropriate behavior that caused her to alter her mode of dress. Respondent implicitly asked her to think about dating him--now or later--with the comment about a 26-year-old dating an 18-year-old. Respondent implicitly identified the possibility of their having sex with the comment about climbing in her window. Respondent alluded to the possibility of sex

between T. R., a student, and himself, a teacher with the power of the grade, with the comment about her grade resulting from an agreement. And Respondent leered at T. R. sufficiently to cause her to change her workout clothes.

37. In partial mitigation of the sexual comments, gesture, and behavior, but not the harassment or discrimination, no one seems to have provided Respondent with any timely feedback on this manner of interacting with certain female students. The only reports to adults seem to have been of isolated comments. In addition to the two reports noted above, a male student reported inappropriate comments, midway through the first quarter, to the teacher who was head of GOALS. Although the teacher did not describe the inappropriate comments, she said that she talked only to the two female students involved and evidently decided that the matter was not sufficiently important to discuss with Respondent or the administration.

38. As noted above, Ms. Marks-Satinoff learned from T. R. of a borderline inappropriate comment. Sometime later, in January, she spoke briefly with Respondent and advised him to watch inappropriate comments. This marks the only feedback, and it was too late to alter the course of events.

39. However, for the same reason that this lack of feedback does not mitigate at all the harassment and

discrimination involving T. R., the value of this mitigation is largely undermined by the fact that the knowledge of the need to refrain from improper personal references to students is not granted only to the most experienced teachers or administrators. Perhaps Respondent was not fully aware that his comments, gesture, and behavior were sexually charged and did not realize the effects of these comments, gesture, and behavior on his students, as some teachers may not be fully aware of their sarcasm and its effect on their students. However, Respondent, as a teacher, remains responsible for determining the effect of his interaction upon his students and ultimately must bear the consequences if he fails to identify the problem.

40. D. P. is the complainant in Charge 1. She was born in September 1984 and was a senior during the 2001-02 school year. Respondent taught her peer counseling during the first quarter and personal fitness during the second quarter.

41. D. P. testified that on Monday, January 14, 2002, she approached Respondent to ask if she could exempt a final exam. She testified that he said to return after lunch. When she did, she testified that they met in his office where he kissed her and moved his hand up her leg until he digitally penetrated her vagina.

42. D. P.'s testimony is unbelievable for several reasons. First, two different students testified that they heard her say

that she would get Respondent into trouble. One of the students testified that he heard her say this immediately after an argument D. P. had with Respondent over absences and tardies. D. P. was upset with Respondent because her numerous absences and tardies prevented him from exempting her from the final examination in his class. D. P. did not tell anyone of the alleged incident until immediately after she found that she could not obtain an exam exemption from Respondent.

43. Second, D. P.'s testimony is unusually inconsistent with other statements that she has given. Some inconsistencies are not fatal to credibility, but the number and importance of inconsistencies in her testimony and statements preclude a finding of credibility. Numerous material discrepancies exist between D. P.'s testimony at the hearing and her testimony in a prehearing deposition. Other discrepancies exist between her testimony at the hearing and earlier statements given to law-enforcement officers or made to others. These discrepancies include differences of two hours as to when during the day the incident occurred and one day as to which day on which it occurred. D. P.'s implausible implication is often that the persons taking down her version of events made a mistake.

44. Third, D. P.'s testimony is improbable. First, Respondent was aware of the investigation into his dealings with female students by the morning of January 14. The investigation

was already underway by the end of the prior week. For instance, D. P. had given her first statement on January 11. It is unlikely that Respondent would engage in such egregious sexual abuse of a student while he knew that he was under investigation. Second, Respondent's teacher assistant testified that he was in the office during the entire time that the incident supposedly would have taken place, and he never saw D. P.

45. Fourth, D. P. has a poor reputation for honesty among her peers who know her well. D. P. testified that she told several persons about the sexual abuse, but they all denied such conversations. At one point during her testimony, she stated that everyone at school had his or her own opinion concerning rumors as to with which student Respondent was accused of having an improper relationship. As she testified, D. P. seemed clearly to have relished the attention that she had gained by making the charge.

46. S. Y. is the complainant in Charge 2. S. Y. was born in April 1987 and was a sophomore during the 2001-02 school year. She was a student of Respondent. She testified that Respondent taught her Freshman Experience during the third quarter, although she was not a freshman and Respondent did not teach very long into the third quarter before he was terminated, as described below.

47. S. Y. testified that Respondent kissed her one day while they were alone in his office. A number of reasons exist that undermine the credibility of this assertion.

48. First, S. Y.'s testimony is also unusually inconsistent with other statements that she has given. At different times, she has attested that the kiss occurred between Thanksgiving and Christmas, before Thanksgiving, and in January.

49. Second, S. Y.'s timing in reporting the kiss is suspect. First, three times she told investigators nothing about a kiss. Second, she reported the kiss only after she knew that D. P. had accused Respondent of sexual improprieties. S. Y. admitted that emotions were running "sky high" at the time. Unlike D. P., who did not like Respondent, S. Y. liked him, at one time even having a crush on him. S. Y. appeared capable of jealousy regarding her feelings about Respondent, as evidenced by the following facts.

50. Third, S. Y. reported the kiss immediately after he referred her to the office for abruptly interrupting his class and loudly demanding that he tell her who else he was "fucking." Although she denied knowledge that Respondent was having sexual intercourse with any students, including herself, S. Y. admitted that the referral prompted her to report the kiss to an investigator.

51. Fourth, S. Y. engaged in embellishment concerning her relationship with Respondent, as would be consistent with a fantasy attachment to him. Although S. Y. implausibly denied it, she told Ms. Marks-Satinoff that she had been to Respondent's home, which was in a poor section of Clearwater. Respondent's home is not in a poor section of Clearwater. S. Y. also has said that Respondent proposed that she and another girl perform in a porn movie that he would make. The reality is either that she proposed it to Respondent, who told her never to suggest such a thing again, or that a former boyfriend proposed the porn movie--without Respondent's involvement.

52. For the reasons listed above, it is impossible to credit the testimony of D. P. or S. Y. that Respondent sexually abused them. Although the presence of multiple accusations of this type may sometimes be indicative of their reliability, they are more likely due to Respondent's sexual banter and flirtation and repeated failure to maintain appropriate boundaries between the professional and the personal. Both D. P. and S. Y. were doubtlessly aware of Respondent's tendencies in this regard, and, from this sexually charged atmosphere, which Respondent himself had helped create, they struck back at Respondent by making sexual allegations. D. P. chose to strike out at Respondent for not granting her an exemption to which she was not entitled, and S. Y. chose to strike out at Respondent for

referring her to the office and not meeting the unrealistic expectations that she and her infatuation on Respondent had generated.

53. Shortly after D. P. and possibly S. Y.'s charges emerged, law enforcement officers arrested Respondent, who remained in jail for nine days. In June 2002, the state attorney's office dropped the charges, although D. P. testified at the hearing that she intended to sue Respondent and Petitioner. Petitioner then terminated Respondent's employment six weeks prior to the end of the term of his annual contract.

54. A proper penalty must reflect the nature of the offense and its impact on the students. Some students who were the subject of improper comments, gesture, and behavior denied embarrassment. Of those admitting to embarrassment, it does not seem to have been traumatizing or even especially painful. Not entirely without reason, some of the students implied that Respondent had already suffered enough, having been fired and served nine days in jail on accusations that were not established on this record. Also, the mitigation discussed above, as to the failure of authority figures to provide Respondent with timely feedback as to the improper comments, gesture, and behavior, but not harassment and discrimination, plays a role in setting the penalty.

55. Petitioner's representative from the Office of Professional Standards testified that Charges 3 and 4 would suffice to warrant dismissal, depending on the frequency of the improper comments. The improper comments warrant, at most, an unpaid suspension of three days, but the harassment and discrimination involving T. R. warrant a more serious penalty. In the absence of the other sexually inappropriate comments and gesture, the harassment and discrimination involving T. R. probably would warrant a long suspension.

56. However, two facts warrant termination. First, the harassment and discrimination involving T. R. are accompanied by the sexually inappropriate comments and gesture involving the other students. Second, still not grasping the requirements of a professional's proper relationship toward his students, Respondent has continued, implausibly, to deny all of the sexually inappropriate comments, except for an admission of a vague version of the comment about the orthopedic rod in N. S.'s back. By branding these students liars when he himself is lying, Respondent makes the case for Petitioner that termination is the proper remedy.

CONCLUSIONS OF LAW

57. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida

Statutes. All references to Rules are to the Florida Administrative Code.)

58. Petitioner must prove the material allegations by a preponderance of the evidence. Dilleo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990).

59. Section 230.33(7)(e) authorizes the superintendent to suspend a teacher until the next meeting of the school board. Section 230.23(5)(f) authorizes the school board to suspend or dismiss a teacher, pursuant to Chapter 231, Florida Statutes. Section 231.36(1)(a) provides:

> All [instructional-staff] 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.

60. Rules 6B-4.009(2) and (3) define "misconduct in office" and "immorality," but not "willful neglect of duty." The rules state:

> (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.

61. Petitioner failed to prove that Respondent is guilty of immorality. His conduct was not "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." Likewise, Petitioner has failed to prove that Respondent is guilty of willful neglect of duty. The record discloses that he largely attended to his instructional duties and his inappropriate comments, gesture, and behavior did not constitute a willful abandonment of such duties.

62. However, the issue is closer as to misconduct in office. Rule 6B-1.006(3) provides that, with respect to student, a teacher:

> (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
> (g) Shall not harass or discriminate against any student on the basis of . . . sex . . . and shall make reasonable effort to assure that each student is protected from harassment or discrimination.
> (h) Shall not exploit a relationship with a student for personal gain or advantage.

63. Petitioner proved that Respondent harassed and discriminated against T. R. due to sex and generally exploited his relationship with several female students for personal gain or advantage by treating them as females rather than students. Although the evidence is not clear and convincing on this point, Petitioner proved by a bare preponderance of the evidence that Respondent's harassment and discrimination involving T. R. and treatment of the other female students discussed above was so serious as to impair his effectiveness in the school system.

64. Petitioner's Policy 8.25(1)(o) forbids employees from having an inappropriate relationship with a student. Policies 8.25(1)(k) and 8.25(1)(l) cover the prohibitions stated in Rule 6B-1.006(3)(h) and (g), respectively. Policy 8.25(1)(x) incorporates state law. The penalties for these violations range from cautions or reprimands to dismissal.

65. School Board Policy 8.25(1)(a) calls for dismissal of a teacher guilty of "inappropriate sexual conduct," but the examples are all of conduct more serious than exists in this case: "lewd and lascivious behavior, indecent exposure, solicitation of prostitution, sexual battery, possession or sale of pornography involving minors, and sexual relations with a student." Policy 8.25(1)(k) provides a penalty range of caution to dismissal for "using position for personal gain," and Policy 8.25(1)(o) provides for a penalty range of reprimand to

dismissal for sexual harassment or discrimination of a student. These latter policies are applicable here. Policy 8.25(3) identifies a wide range of aggravating and mitigating factors; the relevant factors have been identified above.

66. The harassment and discrimination involving T. R. is the focus for the discipline. Harassment and discrimination involving a student is serious, but Petitioner's policy calls for anything from a reprimand to dismissal. Respondent's behavior toward T. R. is not sufficiently serious as to warrant dismissal. However, one aggravating factor is Respondent's sexually inappropriate comments, gesture, and behavior toward the other female students, but, even this probably would not have justified dismissal. The aggravating factor that warrants dismissal is Respondent's unprofessional attempt to deny responsibility for his actions and, even worse, accuse the students whom he mistreated of lying. Respondent still seems not to understand the professional responsibilities of a teacher toward his students.

RECOMMENDATION

It is

RECOMMENDED that the Pinellas County School Board enter a final order dismissing Respondent from employment.

DONE AND ENTERED this 13th day of February, 2003, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of February, 2003.

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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 must be filed with the agency that will issue the final order in this case.