

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JIM HORNE, AS COMMISSIONER OF )  
EDUCATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 03-2877PL  
 )  
RAYMOND JOSEPH AGOSTINO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held in this case before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings, on October 30, 2003, via video teleconference at sites in Tallahassee and Fort Myers, Florida.

APPEARANCES

For Petitioner: Bruce P. Taylor, Esquire  
Post Office Box 131  
St. Petersburg, Florida 33731-0131

For Respondent: Robert B. Burandt, Esquire  
Roosa, Sutton, Burandt, Adamski  
& Roland, LLP  
1714 Cape Coral Parkway, East  
Cape Coral, Florida 33904-9620

STATEMENT OF THE ISSUE

Whether Respondent's educator's certificate should be subject to discipline for the violations alleged in the Administrative Complaint dated May 7, 2003.

PRELIMINARY STATEMENT

Following an investigation by the Department of Education (the "Department"), Petitioner filed an Administrative Complaint against Respondent on May 7, 2003. Respondent denied the allegations and filed an Election of Rights, seeking a formal hearing. This matter was referred to the Division of Administrative Hearings on August 7, 2003. The case was initially set for hearing on October 2, 2003. The case was continued once due to technical problems with the video teleconference equipment in Fort Myers. The hearing was rescheduled for final hearing on October 30, 2003.

The Administrative Complaint set forth the following material allegations of fact:

On or about May 15 and 16, 2002, Respondent engaged in more than one physical altercation with his wife. During these altercations, Respondent choked his wife, tried to gouge her eyes out, and scratched her face drawing blood. Respondent was arrested and charged with Battery--Domestic Violence. On or about July 31, 2002, the state attorney's office nolle prossed the case.

Based on the these factual allegations, the Administrative Complaint alleged one statutory violation: that Respondent was in "violation of Section 1012.795(1)(c), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude."

At the hearing, Petitioner presented the testimony of Officers Don Donakowski and Jason Matayas, and Sergeant Keith Munser, all of the Cape Coral Police Department; Michael Carroll, a 911 operator for the Cape Coral Police Department; and Georgianna McDaniel, director of personnel services for the Lee County School District. Petitioner's Exhibits 1 through 6 were admitted into evidence.

Respondent testified on his own behalf and presented the testimony of his wife, Pamela Agostino, and of Steven V. DeShazo, principal of North Fort Myers High School. Respondent's Exhibit 1 was admitted into evidence.

A Transcript of the hearing was filed on November 26, 2003. Petitioner timely filed a Proposed Recommended Order on December 8, 2003. On December 11, 2003, counsel for Respondent filed a motion for extension of time to file his proposed recommended order. As grounds therefor, counsel stated that he had not received a copy of the Transcript and was unaware that it had been filed until he received his service copy of Petitioner's Proposed Recommended Order. On December 19, 2003, Petitioner filed a response objecting to the motion on the ground that it would give Respondent the unfair advantage of responding to Petitioner's Proposed Recommended Order.

On December 22, 2003, the undersigned entered an Order granting the motion and giving Respondent until January 5, 2004,

to file a proposed recommended order. Acknowledging Petitioner's objection, the Order also gave Petitioner until January 12, 2004, to reply to those aspects of Respondent's proposed recommended order that may fairly be read as responsive to Petitioner's Proposed Recommended Order. Respondent filed his Proposed Recommended Order on December 22, 2003. Petitioner filed a short response on January 12, 2004.

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record of this proceeding, the following Findings of Fact are made:

1. Respondent, Raymond J. Agostino, holds Florida Educator Certificate No. 385460, covering the areas of educational leadership, elementary education, and English to Speakers of Other Languages, which is valid through June 30, 2005.

2. At all times relevant to this proceeding, Mr. Agostino was employed as an assistant principal at North Fort Myers High School in the Lee County School District.

3. On the morning of May 16, 2003, at about 5:34 a.m., a 911 emergency call was received by the Cape Coral Police Department. A female voice could be heard screaming on the line. The 911 operator asked the caller to state the nature of the emergency. The caller did not identify herself but could be

heard screaming, "Get the fuck off of me! Get the fuck off of me!"

4. Michael Carroll, the 911 operator who received the call, testified that when he answers an emergency call, his equipment provides a readout of the caller's phone number and address. Mr. Carroll relays the call to the police department's dispatcher, who in turn dispatches officers to the indicated address.

5. In this instance, the caller identification equipment indicated that the call came from a telephone with the number "458-5077." At the time, this was the phone number of Mr. Agostino and his wife, Pamela Agostino. They resided at 1943 Northeast Fifth Terrace in Cape Coral.

6. Officers Don Donakowski and Jason Matyas of the Cape Coral Police Department were dispatched to the Agostino house at about 5:35 a.m. on May 16, 2003, and arrived in separate cars at about 5:39 a.m. From outside the house, they observed a shirtless male, later identified as Mr. Agostino, in the living room area. They did not see Mrs. Agostino. They knocked on the front door, and Mr. Agostino answered. The officers identified themselves, told Mr. Agostino why they had been sent to the house, and asked him what happened.

7. Mr. Agostino told the officers that he and his wife had been arguing over financial matters but denied that there had

been any kind of physical confrontation. Officer Matyas noted that Mr. Agostino was reluctant to provide details of the incident. The officers noted no visible injuries on Mr. Agostino. While talking to Mr. Agostino in the doorway, they observed Mrs. Agostino emerge from the master bedroom.

8. Officer Donakowski went inside the house to speak with Mrs. Agostino, who appeared very emotional, scared, and crying. Officer Donakowski observed that she appeared to have been in a physical altercation. There were scratches and a lump over her right eye and dried blood in her hair.

9. Mrs. Agostino told Officer Donakowski that she and her husband had an argument. She told Officer Donakowski that her husband was bipolar and sometimes would go on binges, including spending money he didn't have. Mrs. Agostino told Officer Donakowski that her husband asked her for a \$500 check to pay the mortgage. She told him she didn't have the money, and he became angry and began screaming at her. Fearing for her safety, she ran into the bedroom and locked the door. When Mr. Agostino broke down the door to get to her, Mrs. Agostino grabbed the bedroom telephone and dialed 911.

10. Mrs. Agostino told Officer Donakowski that when her husband saw her dialing 911, he threw her down, knocked the phone out of her hand, gouged at her eyes, and pulled out a handful of her hair. It was during this attack that she

screamed at her husband to get off of her. Mrs. Agostino told Officer Donakowski that she was then able to escape her husband's grasp and run into another room. She also told Officer Donakowski that her husband had attempted to strangle her in a confrontation on the previous day. Mrs. Agostino told Officer Donakowski that she would not give a written statement because she feared retaliation from her husband.

11. After he interviewed Mrs. Agostino, Officer Donakowski went outside and spoke with Mr. Agostino, while Officer Matyas conducted his interview with Mrs. Agostino. Mr. Agostino told Officer Donakowski that the only thing that happened was an argument, though he did admit to breaking down the bedroom door. Mr. Agostino stated that he had never physically abused his wife in seven years of marriage.

12. Officer Matyas noted that Mrs. Agostino was visibly upset and shaken. He observed fresh bloody scratches and swelling around her right eye, as well as blood in her hair near the scratches. Officer Matyas also noted several broken panels in the master bedroom door.

13. When Officer Matyas asked Mrs. Agostino what had happened, she told him that she and her husband had been in the living room. Mr. Agostino asked her for a \$500 check to pay the mortgage, because he had spent \$600 on a sprinkler system. She told him that she could not give him the money because she

needed it for a car payment. Mr. Agostino became angry and verbally abusive. Mrs. Agostino became fearful and locked herself in the bedroom. Mr. Agostino began banging on the bedroom door. As Mrs. Agostino picked up the phone to call 911, Mr. Agostino broke through the door and entered the bedroom. He forced Mrs. Agostino's head down to the floor while gouging at her eyes with his fingers and thumbs. She agreed to give him the money and he let her up.

14. Mrs. Agostino told Officer Matyas that there had been a physical confrontation on the previous day in which her husband attempted to strangle her. She believed her husband was bipolar, though he had not been medically diagnosed. She told Officer Matyas that she did not want to press charges because her husband could be fired from his job.

15. Based on the physical evidence and witness statements, the officers arrested Mr. Agostino and charged him with Battery--Domestic Violence. Officer Donakowski took photographs of Mrs. Agostino's injuries, the broken door, and a clump of hair that Mrs. Agostino stated had been pulled from her head by Mr. Agostino. The photographs were admitted into evidence at this proceeding.

16. The charges against Mr. Agostino were subsequently dismissed.



17. The Lee County School District investigated allegations of misconduct against Mr. Agostino arising from his arrest. At his predetermination conference, Mr. Agostino denied that any physical confrontation took place between his wife and him. The school district concluded that there was no probable cause to impose discipline on Mr. Agostino.

18. At the hearing in this matter, Mrs. Agostino testified that on the morning of May 16, 2003, it was, in fact, she, who attacked her husband. She testified that at the time, she was taking medication for petit mal seizures that made her very agitated, violent, and confused. She stated that the medication also caused her hair to fall out in clumps, accounting for the hair observed by the police officer.

19. The medication named by Mrs. Agostino was Keflex. In fact, Keflex is a marketing name for cephalexin, a cephalosporin antibiotic unrelated to treatment of seizures. However, the symptoms described by Mrs. Agostino are consistent with common reactions to seizure medications. It is within reason that Mrs. Agostino, who is not a medical professional, simply confused Keflex with another medication she was taking for seizures.

20. Mrs. Agostino testified that on the morning of May 16, 2003, she was attempting to confront Mr. Agostino about their finances, but he would not talk to her. Mrs. Agostino testified

that his silence infuriated her, and she became violent.

Mr. Agostino retreated into the bedroom. She broke through the door and attacked him, hitting him with the telephone, then throwing the telephone at him.

21. Mrs. Agostino testified that she did not know how the 911 call was made. She theorized that the speed-dial may have been activated when she threw the phone at Mr. Agostino. She also had no idea how the scratches appeared around her eye, unless she hit her head on the bedroom door as she broke it down. Mrs. Agostino testified that she told the police officers that her husband attacked her because she was mad at him.

22. At the hearing, Mr. Agostino testified that he and his wife were arguing about money. Mrs. Agostino became very agitated and started to become violent. Mr. Agostino retreated to the bedroom, closing and locking the door behind him. Mrs. Agostino "came through the door" and attacked Mr. Agostino, who put out his hands to fend her off. Mrs. Agostino started hitting him with the telephone. Mr. Agostino tried to get away, and she threw the phone at him. Mr. Agostino went into the living room. Mrs. Agostino followed and continued screaming at him. Mr. Agostino kept the couch between himself and his wife. At that point, the police knocked at the front door.

23. Steven DeShazo, the principal of North Fort Myers High School, testified that he has worked with Mr. Agostino for eight

years. Mr. DeShazo has had conversations with Mr. Agostino about scratches and abrasions on the latter's arms, presumably caused by Mrs. Agostino. Mr. DeShazo testified that he has had conversations with both Agostinos about their need for counseling, but that Mr. Agostino did not want to discuss his family problems. Mr. DeShazo discussed the May 16, 2003, incident with Mr. Agostino a few days after the events. Mr. Agostino told him that Mrs. Agostino had attacked him, and he had tried to fend her off. Mr. DeShazo had no personal knowledge of the events of May 16, 2003.

24. The testimony of the Agostinos at the hearing completely contradicted the statements that Mrs. Agostino gave to the police on the morning of May 16, 2003, as well as Mr. Agostino's admission to Officer Donakowski that he broke down the bedroom door. Only one version of these events can be true. It is found that the version of events related by Mrs. Agostino to the police officers was the truth.

25. The police officers were at the Agostino house within four minutes of the 911 call. They observed that Mr. Agostino was pacing the living room floor and was out of breath. Both officers observed that Mrs. Agostino was very emotional, crying, scared, and upset. These observations lead to the finding that Mrs. Agostino was still suffering under the stress of the

attack, and in her emotional state did not have time to contrive a false story.

26. This finding is supported by the fact that Mrs. Agostino's statements to the police officers were consistent with all the other evidence: the 911 call, the broken door, the clump of hair, her own physical injuries, and the fact that she was in the bedroom when the police arrived. At the hearing, Mrs. Agostino attempted to make her new story comport with the physical evidence but was far from convincing. The clump of hair was plausibly explained as a reaction to medication, but she had no explanation at all for the scratches above her eye. Mr. Agostino's testimony hinted that he might have scratched her eye while trying to fend her off. Mrs. Agostino theorized that throwing the telephone might somehow have caused it to speed-dial 911.

27. Even if the undersigned accepted the phone-throwing theory, there is no explanation for why the female voice on the 911 call was screaming, "Get the fuck off of me," if Mrs. Agostino was the aggressor and Mr. Agostino's only physical reaction was to fend her off.

28. There is also no explanation for why Mrs. Agostino was in the bedroom when the police arrived. Mr. Agostino testified that she was in the living room when the police knocked on the

front door, directly contradicting the testimony of both police officers.

29. At the hearing, Mr. Agostino testified that he told the police and school officials that there was no physical confrontation in order to protect his wife, who is also an employee of the Lee County School District. He feared that she would lose her job if it became known that she attacked him.

30. Given the evidence presented at the hearing, it is far more likely that Mrs. Agostino changed her story in order to protect her husband's job.

31. The evidence presented is sufficient to establish that Mr. Agostino committed an act of moral turpitude when he broke down the bedroom door, forced his wife's head down to the floor and gouged her eyes, releasing her only when she agreed to give him the money he wanted. This was an act of serious misconduct in flagrant disregard of society's condemnation of violence by men against women.

32. The evidence presented is not sufficient to establish that Mr. Agostino attempted to strangle his wife on May 15, 2003. In this instance, there was no physical or other evidence to corroborate Mrs. Agostino's hearsay statement to the police officers that her husband had attempted to strangle her.

33. Although the evidence establishes that Mr. Agostino committed an act of moral turpitude, the only evidence offered

regarding any notoriety arising from the May 16, 2003, incident was Mr. DeShazo's testimony that there was news coverage of the arrest. Mr. DeShazo stated that several students approached him expressing concern about Mr. Agostino and their hope that he would be allowed to remain at the school. Mr. DeShazo testified that no parents came to him expressing concern about the incident. There was no evidence to prove that Mr. Agostino's conduct was sufficiently notorious to cast him or the education profession into public disgrace or disrespect or to impair Mr. Agostino's service in the community.

34. There was insufficient evidence presented to establish that Mr. Agostino's performance as a teacher and an employee of the Lee County School District was diminished as a result of the May 16, 2003, incident and its aftermath. Mr. DeShazo testified that Mr. Agostino is the assistant principal for student affairs, which he described as the most high pressure, stressful job at the school. Mr. Agostino has never lost his temper at work, even in situations in which he has been hit and spat upon by unruly students. Mr. DeShazo testified that Mr. Agostino has been at work every day and has handled this uncomfortable situation with complete professionalism.

#### CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of these proceedings.

§§ 120.569 and 120.57(1), Fla. Stat. (2003). See also  
§ 1012.796(6), Fla. Stat. (2003).

36. License revocation and discipline proceedings are penal in nature. The burden of proof on Petitioner in this proceeding was to demonstrate the truthfulness of the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

37. The "clear and convincing" standard requires:

[T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

The findings in this case were made based on the standard set forth in Osborne Stern and Ferris.

38. Counsel for Mr. Agostino contends that the charges must be dismissed because the only sworn, eyewitness testimony in the record of this case is that Mrs. Agostino attacked her husband. He argues that the statements of the Agostinos to the

police officer must be disregarded as inadmissible, uncorroborated hearsay.

39. Florida Administrative Code Rule 28-106.213 provides that hearsay is admissible in an administrative hearing but cannot alone sustain a finding of fact unless it would be admissible over objection in a court of law. Under the facts set forth above, Mrs. Agostino's statements to the police officers would be admissible over objection as "excited utterances." Section 90.803(2), Florida Statutes, provides:

The provision of s.90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

\* \* \*

(2) Excited utterance.-- A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

40. In State v. Jano, 524 So. 2d 660, 661 (Fla. 1988), the Supreme Court of Florida set forth the standard for application of the "excited utterance" hearsay exception:

The excited utterance exception is not a new theory of Florida evidence but rather one of a group of exceptions subsumed under the old term of "res gestae." State v. Johnson, 382 So. 2d 765 (Fla. 2d DCA 1980); 1 F. Read, Read's Florida Evidence 693 (1987). The essential elements necessary to fall within the excited utterance exception are that (1) there must be an event startling enough to cause nervous



excitement; (2) the statement must have been made before there was time to contrive or misrepresent; and (3) the statement must be made while the person is under the stress of excitement caused by the event. Jackson v. State, 419 So. 2d 394 (Fla. 4th DCA 1982).

41. In the instant case, the police officers arrived within five minutes of the 911 call. Mrs. Agostino was still crying and visibly upset. Under all the circumstances and the facts found above, it is found that Mrs. Agostino's statements to the police officers constituted admissible "excited utterances."

42. Further, Mrs. Agostino's statements to the police officers corroborate, and are corroborated by, the other evidence in the case: the 911 call, the broken door, Mrs. Agostino's physical injuries, and the relative locations of the Agostinos at the time the police officers arrived. On the other hand, Mrs. Agostino's sworn testimony at the hearing conflicts with enough of the other evidence to render it unreliable in comparison.

43. The Administrative Complaint alleged that Mr. Agostino committed the acts prohibited by the provisions of Section 1012.795(1)(c), Florida Statutes (2003).

44. Section 1012.795(1), Florida Statutes (2003), authorizes the Education Practices Commission to suspend, revoke

or otherwise penalize a teaching certificate provided it can be shown that the holder of the certificate, inter alia:

(c) Has been guilty of gross immorality or an act involving moral turpitude.

45. Florida Administrative Code Chapter 6B-4 applies to school districts, but its definitions provide guidance as to the terms "immorality" and "moral turpitude." Florida Administrative Code Rule 6B-4.009 provides:

(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.

46. "Gross immorality" requires conduct more serious than that encompassed within the definition of "immorality" found in Florida Administrative Code Rule 6B-4.009(2):

[T]he term "gross" in conjunction with "immorality" has heretofore been found to mean "immorality which involves an act of misconduct that is serious, rather than minor in nature, and which constitutes a flagrant disregard of proper moral standards." Education Practice Commission v. Knox, 3 FALR 1373-A (DOE 1981).

Brogan v. Mansfield, Case No. 96-0286 (DOAH August 1, 1996).

47. The term "moral turpitude" is defined in Florida Administrative Code Rule 6B-4.009(6), as follows:

Moral turpitude is a crime that is evidenced by an act of baseness, vileness or depravity

in the private and social duties which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude.

Moral turpitude has also been defined by the Supreme Court of Florida as follows:

Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. . . It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated.

State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 611, 146 So. 660, 661 (Fla. 1933).

48. In Adams v. State, Professional Practices Council, 406 So. 2d 1170, 1172 (Fla. 1st DCA 1981), the court concluded that teachers "charged by §§ 231.09 and 231.28(1) [current Sections] with providing leadership and maintaining effectiveness as teachers . . . are traditionally held to a high moral standard in the community."

49. The evidence clearly establishes that Mr. Agostino broke down the bedroom door, forced his wife's head to the floor and gouged her eyes, and released her only when she agreed to give him the money he wanted. Based on the above findings of fact, Petitioner has proven by clear and convincing evidence

that Mr. Agostino's conduct falls within the definition of gross immorality found in the cases cited above.

50. However, there is a second element that must be proven before Mr. Agostino can be found guilty of gross immorality in violation of Section 1012.795(1)(c), Florida Statutes (2003). The court in McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2d DCA 1996), interpreting predecessor statute Section 231.28(1)(c), Florida Statutes, ruled that:

[I]n order to dismiss a teacher for immoral conduct the factfinder must conclude:  
a) that the teacher engaged in conduct inconsistent with the standards of public conscience and good morals, and b) that the conduct was sufficiently notorious so as to disgrace the teaching profession and impair the teacher's service in the community.  
(Emphasis in original)

51. Petitioner has failed to prove by clear and convincing evidence that Mr. Agostino's conduct was notorious, brought public disgrace or disrespect to Mr. Agostino or to the education profession, or that Mr. Agostino's ability to serve the community was impaired. Those students who were aware of the incident expressed the hope that Mr. Agostino would be allowed to stay at the school. No parents expressed concern about the incident. Therefore, Petitioner has failed to meet its burden of proving that Mr. Agostino committed acts of gross immorality in violation of Subsection 1012.795(1)(c), Florida Statutes (2003).

52. Petitioner has proven by clear and convincing evidence that Mr. Agostino committed acts involving moral turpitude when he committed violence against his wife. Thus, Petitioner has met its burden of proving that Mr. Agostino violated Section 1012.795(1)(c), Florida Statutes (2003). Unlike the definition of "immorality" in Florida Administrative Code Rule 6B-4.009(2), the definition of "moral turpitude" in Florida Administrative Code Rule 6B-4.009(6) does not require notoriety or impaired ability for service in the community.

53. Section 1012.796, Florida Statutes (2003), reads in pertinent part:

(7) A panel of the [Education Practices] commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

\* \* \*

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

54. The facts led to the conclusion that Mr. Agostino violated Section 1012.795(1)(c), Florida Statutes (2003). It must be noted that Mr. Agostino's violation occurred away from school and apparently had no effect on his job performance or on his reputation among students, parents, and co-workers. Given these facts, there would be nothing to gain by depriving Mr. Agostino of his livelihood while he deals with the emotional and psychological issues underlying the events of May 16, 2003. It is concluded that the appropriate penalty is the placement of Mr. Agostino on two years of probation, with the requirement that Mr. Agostino undergo a full psychological evaluation and receive any necessary counseling to ensure that he is fully capable of performing his assigned duties with no further incidents such as those of May 16, 2003.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be issued finding that Respondent violated the provisions of Section 1012.795(1)(c), Florida Statutes (2003). It is further

RECOMMENDED that a final order be issued placing Respondent on a two-year period of probation, subject to such conditions as the Commission may specify, including the requirement that Mr. Agostino undergo a full psychological evaluation and receive any necessary counseling to ensure that he is fully capable of performing his assigned duties with no further incidents such as those of May 16, 2003.

DONE AND ENTERED this 19th day of February, 2004, in Tallahassee, Leon County, Florida.



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LAWRENCE P. STEVENSON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of February, 2004.

COPIES FURNISHED:

Robert B. Burandt, Esquire  
Roosa, Sutton, Burandt, Adamski  
& Roland, LLP  
1714 Cape Coral Parkway, East  
Cape Coral, Florida 33904-9620

Kathleen M. Richards, Executive Director  
Education Practices Commission  
Department of Education  
325 West Gaines Street, Room 224E  
Tallahassee, Florida 32399-0400

Bruce P. Taylor, Esquire  
Post Office Box 131  
St. Petersburg, Florida 33731-0131

Marian Lambeth, Program Specialist  
Bureau of Educator Standards  
Department of Education  
325 West Gaines Street, Suite 224-E  
Tallahassee, Florida 32399-0400

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.