

9-6-02

FILED
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TAMPA FLORIDA

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SCHOOL BOARD,

Petitioner,

vs.

DOAH CASE NO:02-1666

DSM-CWS

NATALE MALFA

AP

Respondent.

FINAL ORDER

This matter having come before the School Board of Pinellas County, Florida, sitting as a quasi-judicial body, and the Board having reviewed the entire record consisting of Petitioner's Findings of Fact, Conclusions of Law and Supporting Memorandum, the Respondent's Findings of Fact, Conclusions of Law and Supporting Memorandum, the Transcript of the hearing, the Administrative Law Judge's Recommended Order, and the Superintendent's Exceptions to the Recommended Order, and the Board having heard arguments of counsel, considered the recommendations of the Superintendent, and being otherwise advised in the premises, it is

ORDERED AND ADJUDGED, that the Administrative Law Judge's Recommended Order dated September 6, 2002, attached hereto as Exhibit "A" and incorporated herein, be adopted as this Board's Final Order, with the exception of the following:

1. The Administrative Law Judge recommended that the School Board suspend Mr. Malfa for five months rather than dismiss him.
2. School Board Policy 8.25(1)(m), (p) and (v) all allow dismissal as a disciplinary option.
3. The determination for setting the penalty for violating School Board policy is within the substantive jurisdiction of the School Board.
4. School Board Policy 2.14 gives the School Board the authority to "impose a less severe or a more severe penalty in its sole discretion", so long as the School Board reviews the entire record and states with particularity its reasons for imposing such penalty.
5. Based upon the findings that Mr. Malfa did grab the buttocks of Alice Mertz, whom he supervised, the School Board concludes that such conduct is so egregious that it warrants termination of his employment. Additionally, the fact that Mr. Malfa's own testimony was inconsistent as set forth by the Administrative Law Judge in

paragraphs 24-26, and the seriousness of such conduct, the School Board considers these to be issues of credibility and judgment sufficient such that Respondent's employment is hereby terminated.

6. Respondent is hereby notified of his right to appeal this Order to the Second District Court of Appeal by filing notice of the intent to do so upon the Clerk of the Court and the Clerk of the School Board within thirty (30) days of the date of this Order.

DONE AND ORDERED this 12th day of November, 2002.

THE SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA

By: Lee Benjamin
Chairman

Attest: John M. Hines, Jr.
Ex-officio Secretary