



employment with the Sarasota County School Board should be terminated.

PRELIMINARY STATEMENT

By letter dated January 5, 2004, Gene Witt (Mr. Witt) superintendent of schools for Petitioner, Sarasota County School Board (School Board), notified Respondent, Nancy Jones (Ms. Jones), that probable cause had been found for her termination. Mr. Witt advised Ms. Jones that he would recommend at the February 3, 2004, School Board meeting that she be terminated effective February 4, 2004, and informed her of her right to challenge her termination by requesting a hearing pursuant to Chapter 120, Florida Statutes (2003).

Ms. Jones, by letter dated January 21, 2004, requested an administrative hearing, and on January 29, 2004, the matter was referred to the Division of Administrative Hearings.

On February 5, 2004, the parties' Joint Response to Initial Order was filed. On February 10, 2004, a Notice of Hearing, scheduling the final hearing for April 7, 2004, in Sarasota, Florida, and an Order of Pre-hearing Instructions were entered.

On February 18, 2004, Mr. Witt notified Ms. Jones by letter that insubordination and misconduct in office were additional causes in support of her termination.

On February 23, 2004, Ms. Jones' attorney, Anthony D. Demma, filed a motion to withdraw as counsel of record, and on

March 2, 2004, an Order allowing withdrawal of Attorney Demma as counsel of record was entered.

On March 29, 2004, the School Board filed a Motion for Continuance of the final hearing, and on March 31, 2004, an Order continuing and rescheduling the final hearing to May 14, 2004, was entered.

At the final hearing on May 14, 2004, the undersigned delayed the proceeding for 45 minutes awaiting appearance of Ms. Jones, but she failed to appear. In Ms. Jones' absence, the School Board presented the testimony of seven witnesses: L.J., M.N., N.K., J.M., Susan Rae Snyder, Jody Dumas, and John Lempe and offered 22 exhibits (P-1 through P-22), which were admitted into evidence. Ms. Jones was provided written notice of both her termination by the School Board and of this proceeding. She elected not to attend this proceeding, and she did not otherwise notify the Division of Administrative Hearings of reasons for her absence.

The one-volume Transcript of this proceeding was filed on June 16, 2004. Ms. Jones did not file a proposed recommended order. The School Board's Proposed Recommended Order was filed on June 16, 2004, and has been considered in preparation of this Recommended Order.

## FINDINGS OF FACT

1. The School Board is a political subdivision and an administrative agency of the State of Florida charged with the duty to operate, control, and supervise all public schools and personnel in the Sarasota County School District. Mr. Witt is the superintendent of schools for the Sarasota County School District.

2. At all times relevant, Ms. Jones was employed with the School Board by contract as a school bus driver. In that capacity, Ms. Jones was classified as a non-professional and non-administrative contract employee of the School Board's transportation department. She agreed to accept the contractual appointment (school bus driver) to perform such duties and services as may be required to comply with all laws of the State of Florida and rules and regulations made by the School Board.

3. The School Board's transportation department operated a bid policy for its school bus drivers. Under the School Board's bid policy, each school bus driver was afforded an opportunity to bid (make a written selection of a particular school bus route) on the school bus route for the forthcoming school year. At the start of the 2003-2004 school year, Ms. Jones bid upon and was awarded the Oak Park School (Oak Park) bus route. Oak Park was attended by elementary through high school-aged exceptional students or exceptional student education ("ESE")

students, as defined under Section 4.12 of the School Board's policies manual. Ms. Jones was assigned bus number 9615.

4. The first responsibility of the school bus driver is the safe operation of the school bus, and the second responsibility is providing discipline to those who are transported.

5. In October of the 2003-2004 school year, Susan Snyder (Ms. Snyder) was assigned to work on school bus number 9615 as the school bus attendant. A school bus attendant's primary responsibilities are to ensure the safety of and provide care to the students that are being transported on the bus and to minimize distractions to the school bus driver caused by the students while being transported. The students who were being transported by Ms. Jones to Oak Park have behavioral issues, are physically handicapped, and/or have been unsuccessful at other schools within the Sarasota County School District.

6. At various times during the 2003-2004 school year, between eight and 12 students between the ages 14 and 17 rode the bus driven by Ms. Jones. Four of those students were L.J., M.N., N.K., and J.M. The collective testimonies of these four witnesses established that they frequently used profanity on the bus in their daily conversations with each other and in their daily conversation, in the context of discipline, with

Ms. Jones. The students would routinely yell among themselves and at Ms. Jones, and she, in return, would yell at them.

7. When Ms. Jones told the students to do something, "sit down," "stop playing around," or "don't open the windows on the bus," the students refused to obey, and Ms. Jones would threaten the students with physical violence. Those threats would elicit like-kind responsive threats from the students. The evidence is inconclusive for the purpose of identifying specific profanity uttered by a specific student. However, the evidence is clear that an exchange of profanity occurred between Ms. Jones and the students identified in paragraph 4 hereinabove.

8. At some unspecified time, but prior to December 9, 2003, Ms. Jones had previously and repeatedly instructed the students to leave the bus windows up while traveling. As they were traveling down Interstate 75 (I-75), N.K., ignoring Ms. Jones' previous instructions to leave the windows up, began lowering the window. Ms. Jones observed N.K.'s actions and repeated her instructions to leave the window up. She was unable to stop on the interstate, but when she reached the Fruitville, I-75 exit, Ms. Jones exited the interstate and stopped the bus. She then turned off the engine, got up from the driver's seat, and went to N.K.'s seat where she pushed N.K., and N.K. pushed her back. The shoving back and forth between Ms. Jones and N.K. ended with Ms. Jones slapping N.K.

At the end of her bus run for that day, Ms. Jones reported the incident by a Student Discipline Referral Report. N.K. told his mother of the incident, and she informed Oak Park administration. After consideration of all the facts, Oak Park administration disciplined N.K. for his conduct on the bus. It is found that Ms. Jones willfully violated the School Board's policy by slapping N.K.

The "Yugioh" playing cards incident

9. The students would play a card game known as "Yugioh." The cards belonged to L.J. Ms. Jones had previously instructed the students not to play "Yugioh" on the bus because of the disturbance the game caused, and she specifically instructed L.J. not to bring his "Yugioh" cards on the bus. On December 9, 2003, L.J. and other students, with disregard of Ms. Jones' previous instruction not to play "Yugioh" on the bus, were again playing "Yugioh." Ms. Jones asked them to stop, and they ignored her. She asked L.J. to bring the cards to her, and he refused to obey her request.

10. When she reached the stop sign at the intersection of South Briggs Avenue and Bahia Vista Street, in Sarasota County, Florida, Ms. Jones stopped the bus, turned off the engine, and approached L.J. where he was seated. An argument ensued, which was accompanied by Ms. Jones' attempt to take the cards from L.J. and his refusal to relinquish his cards.

11. During this altercation, Ms. Jones struck L.J. about his head, shoulders, and face. She pinched his cheeks. L.J. and Ms. Jones exchanged vulgar insults back and forth. Ms. Jones told M.N., another student, to grab L.J.'s "titties" and pinch them, and he did so.

12. It was noted that L.J. has a large body with an extraordinary fleshly chest. After the "tittie"-pinching incident, L.J. asked to be let off the bus at that location, which was not his usual bus stop, and Ms. Jones, as she returned to the driver's seat, initially refused to do so. After sitting in the driver's seat, Ms. Jones granted L.J.'s request to exit the bus at the intersection of South Briggs Avenue and Bahia Vista Street.

13. It is found that Ms. Jones did not violate the School Board's policy by permitting L.J. to get off the bus at a location other than his normal pick up and exit stop. Drivers are not allowed to prevent a student from getting off the bus; they can only call transportation dispatch and report the student by name and the location the student got off the bus.

14. It is found that Ms. Jones did, however, violate the School Board's policy when she struck L.J. and when she requested and encouraged another student to inappropriately touch L.J.'s chest.



15. When he arrived home, L.J. reported the bus incident to his parents, and they immediately registered a complaint against Ms. Jones with Oak Park administration. Two days later, December 11, 2003, L.J.'s father, L.J., Sr., filed a police report with the Sarasota County Sheriff's Department. An officer investigated the matter on December 19, 2003, by interviewing only L.J. and Ms. Snyder. Based upon those two interviews, the investigating officer recommended that the charge of battery be filed against Ms. Jones. There is no further evidence of record regarding the battery charge recommendation made by the investigating officer.

16. The School Board's transportation dispatcher was informed of L.J.'s parents' complaint, and he radioed Ms. Jones and Ms. Snyder instructing them, upon completing the evening bus run, to report directly to his office and to give written reports of the L.J. incident. In her written report given immediately following the incident, Ms. Jones acknowledged that there was an exchange of profanity between her and the students involved, but she denied hitting L.J. or telling other students to pinch L.J.'s titties.

17. The evidence of record reflects that Ms. Snyder did not dispute Ms. Jones' version of the incident. Ms. Snyder also executed a written incident report immediately following the incident containing her version of what occurred. According to

the School Board, Ms. Snyder's initial written incident report was inexplicably lost. At the hearing, the School Board introduced an unsigned document (the School Board's Exhibit P-9) that was not sworn to by Ms. Snyder, purporting it to be a second revised report written by Ms. Snyder. This document is found to be unreliable.

18. Later on the evening of December 9, 2003, after giving her written report that was somehow lost, Ms. Snyder called her Union representative and gave a description of what took place on the bus on December 9, 2003. A meeting was arranged with the director of transportation, Jody Dumas (Dumas). At the meeting, Ms. Snyder gave a version of the December 9, 2003, bus incident that was contrary to her earlier confirmation of Ms. Jones' December 9, 2003, written incident report.

19. Ms. Snyder's recall of the December 9, 2003, incident alleged that Ms. Jones slapped and verbally abused and humiliated L.J. She went on to include a claim that Ms. Jones intimidated her and the students by telling everyone on the bus that they were to say nothing happened on December 9, 2003.

20. Mr. Dumas conducted his investigation of Ms. Snyder's allegations by interviewing M.N. and J.M. on December 12, 2003. During the initial interview, M.N. confirmed Ms. Jones' version of the incident. Under the pressure of Mr. Dumas' continuous

questioning, coupled with the promise that he would not be required to ride Ms. Jones' bus anytime in the future, M.N. capitulated and confirmed the "tittie"-pinching version of the incident and agreed with Ms. Snyder's "say nothing happened on December 9, 2003," addition to her version of the incident.

21. It is found that Ms. Jones did in fact instruct another student to pinch L.J.'s titties, and the student, for reasons of his own, complied with the request while L.J. sat there humiliated. The evidence of record in support of Ms. Snyder's allegation that Ms. Jones intimidated her and all the students on the bus by telling them "say nothing happened on December 9, 2003," is unreliable and rejected by the undersigned.

22. On December 10, 2003, Mr. Dumas suspended Ms. Jones with pay pending further investigation of the December 9, 2003, incident. Mr. Dumas, after his review of Ms. Snyder's version of what occurred and his interviews with unnamed students, met with Ms. Jones and confronted her with the "slapping and verbal abuse of [L.J.]" allegations. Ms. Jones denied slapping and verbally abusing L.J., at which time Mr. Dumas advised Ms. Jones that he would recommend her termination to the School Board.

23. It is found that the suspension of Ms. Jones by Mr. Dumas was appropriate and in accordance with the School Board's policy.

24. On December 19, 2003, in his memorandum to Scott Lempe (Mr. Lempe), director of human resources, Mr. Dumas set forth specific factual bases in support of his recommended termination of Ms. Jones: (1) Ms. Jones slapped L.J. at least two times in the face; (2) Ms. Jones told another student on the bus, M.N., to go over to L.J. and pinch his titties; and (3) on at least one other occasion, Ms. Jones told one student to slap another student because he was putting a window down.

25. Mr. Lempe prepared a notice of termination on January 5, 2004, containing his detailed explanation of the grounds for the termination based upon Ms. Jones' violations of Section 5.30(2)(c) of the Sarasota County School Board policies manual, regarding corporal punishment and the Policy Manual, Code of Professional Conduct of Non-Instructional Support Staff, and Sections 1012.22 and 1012.27, Florida Statutes (2003), insubordination and misconduct in office. On February 18, 2004, the School Board terminated the employment of Ms. Jones with its transportation department as a school bus driver.

26. The School Board proved, by a preponderance of credible evidence, that Ms. Jones violated the School Board's policy and the Code of Professional Conduct of Non-Instructional

Support Staff employed by the Sarasota County School District, as alleged in the notice of termination dated February 18, 2004.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

28. The School Board has the burden of proof in this non-instructional employee dismissal hearing. The standard of proof in this proceeding is by a preponderance of the evidence.

McNeill v. Pinellas County School Board, 678 So. 2d 476, 477 (Fla. 2nd DCA 1996); Dileo v. School Board of Dade County, 569 So. 2d 883, 884 (Fla. 3rd DCA 1990).

29. Because Ms. Jones is not classified as instructional or administrative personnel, Section 1012.33, Florida Statutes (2003), is inapplicable. Ms. Jones falls within the "other school employees" category as that term is found in Subsections 1012.22(1)(f) and 1012.27(5), Florida Statutes.

30. The School Board is authorized to discipline "other school employees" under Subsection 1012.22(1)(f), Florida Statutes (2003), that provides:

Suspension, dismissal, and return to annual contract status.--The district school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the

instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

31. The School Board is authorized to direct the work of its employees and to discipline those employees under Section 1012.27(5), Florida Statutes (2003) that provides:

SUSPENSION AND DISMISSAL.--Suspend members of the instructional staff and other school employees during emergencies for a period extending to and including the day of the next regular or special meeting of the district school board and notify the district school board immediately of such suspension. When authorized to do so, serve notice on the suspended member of the instructional staff of charges made against him or her and of the date of hearing. Recommend employees for dismissal under the terms prescribed herein

32. Section 5.30(2)(c) of the School Board policy precludes and prohibits corporate punishment in all forms by all employees. Violation of this prohibitive principle will subject the violator to disciplinary action under Subsections 1012.22(1)(f) and 1012.27(5), Florida Statutes (2003). Section 5.30(2)(c) of the School Board policy provides:

The teacher, other members of the instructional staff or bus drivers shall assume such authority for the control and supervision of students as they maybe assigned by the principal or the principal's designated representative and shall keep order in the classroom or other places when in charge of students. Corporate punishment shall not be administered in the Sarasota County School System.

33. The School Board maintains a Code of Professional Conduct for Non-Instructional Support Staff employed by the Sarasota County School District, which provides:

The following shall constitute the principles of professional conduct and ethics for non-instructional support staff employed by the School Board of Sarasota County. Violation of any of these principles shall subject the individual to suspension, termination and/or other penalties as provided by law.

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.

\* \* \*

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

34. Ms. Jones, as a non-instructional or administrative employee under contract, is subject to the above-cited Florida Statutes and the School Board's policy and Code of Professional Conduct for Non-Instructional Support Staff employed by the Sarasota County School District.

35. Undisputed evidence of record clearly demonstrated that Ms. Jones violated the School Board's policy and Code of Professional Conduct of Non-Instructional Support Staff.

Ms. Jones struck students on her bus on or about December 9, 2003. She used profanity in talking to students on her bus with the intent to, and did, humiliate and embarrass those students to whom she spoke.

36. The School Board has proven, by a preponderance of the evidence, that Ms. Jones' violation of the School Board's policy and Code of Professional Conduct for Non-Instructional Support Staff employed by the Sarasota County School District justified her termination.

RECOMMENDATION

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

RECOMMENDED that Petitioner, Sarasota County School Board, enter a final order terminating the contractual employment of Respondent, Nancy Jones.

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



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

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.