STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-4478
	)	
ANTHONY C. BROOKS,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This case initially came before Administrative Law Judge John G. Van Laningham for final hearing on April 22, 2005, in Miami, Florida, and resumed, by video teleconference, on June 27, 2005, at sites in Tallahassee and West Palm Beach, Florida.

APPEARANCES

For Petitioner: Madelyn P. Schere, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Respondent: Larry R. Handfield, Esquire
4770 Biscayne Boulevard
Miami, Florida 33137

STATEMENT OF THE ISSUE

The issue in this case is whether a high-school assistant principal made inappropriate remarks to two female students on campus during school hours, and then later harassed one of them,

thereby entitling the district school board to suspend the administrator for 30 workdays without pay.

PRELIMINARY STATEMENT

At its regular meeting on December 15, 2004, Petitioner School Board of Miami-Dade County suspended Respondent Anthony C. Brooks for 30 workdays, without pay, from his position as a high-school assistant principal. This action resulted from allegations that on February 12, 2004, Mr. Brooks had made inappropriate comments to two female students about modeling and had proposed to at least one of them that he take pictures of her at the beach.

Anticipating Petitioner's adverse decision, Mr. Brooks had requested a formal hearing by letter dated December 9, 2004. Thus, on December 16, 2004, the matter was referred to the Division of Administrative Hearings for further proceedings. There, the final hearing was scheduled for April 22, 2005.

At the final hearing, Petitioner called the following witnesses: students M. D. and F. J.; Miranda J. (F. J.'s mother); DanySu Pritchett, an administrator in Petitioner's Office of Professional Standards; and Deborah Love, principal of the school where Mr. Brooks worked. In addition to these witnesses, Petitioner offered into evidence Petitioner's Exhibits 1 through 16, all of which were admitted.

Mr. Brooks testified on his own behalf and called Frantzy Pojo and Derek Edwards as witnesses. No Respondent's Exhibits were received in evidence as part of Mr. Brooks's case.

The third and last volume of the final hearing transcript was filed on August 2, 2005. Each party timely filed a Proposed Recommended Order before the established deadline, which was September 1, 2005.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2005 Florida Statutes.

FINDINGS OF FACT

1. The Miami-Dade County School Board ("School Board"), Petitioner in this case, is the constitutional entity authorized to operate, control, and supervise the Miami-Dade County Public School System.

2. As of the final hearing, Respondent Anthony C. Brooks ("Brooks") had been employed as either a teacher or administrator in the Miami-Dade County Public School System for approximately 23 years. At all times relevant to this case, Brooks was an assistant principal at Miami Jackson Senior High School, where his primary responsibility was discipline.

3. The operative contract of employment between Brooks and the School Board required Brooks to "observe and enforce faithfully the state and federal laws, rules, regulations, and School Board Rules insofar as such laws, rules, regulations, and

policies are applicable to the position of employment." Pursuant to the contract, Brooks agreed "to become familiar and comply with state and federal laws, rules, regulations and policies of the School Board and of the Department of Education for which [he] w[ould] be held accountable and subject to[.]" The agreement entitled the School Board to suspend or dismiss Brooks for just cause including "the failure to fulfill the obligations under this Contract."

The Alleged Inappropriate Remarks

4. The School Board alleges that on February 12, 2004, Brooks told M. D., a female student, that she should consider becoming a model, and that he would take pictures of her at the beach. The School Board alleges further that, the same day, Brooks separately encouraged another female student, F. J., to think about modeling. The evidence presented at hearing failed persuasively to substantiate these charges. The findings that follow in this section, based on evidence that is in substantial conflict, depict the likeliest scenario derivable from the instant record,[1] though the undersigned's confidence in the accuracy of some aspects of this historical narrative is relatively limited.[2]

5. On the morning of February 12, 2004, a security monitor called Brooks to a classroom where some students were creating a disturbance. Upon his arrival, the teacher pointed out to

Brooks the four students who had been causing problems. Brooks asked them to step outside. One of the four was M. D.

6. Brooks told the students, in effect, to straighten up. In the course of lecturing the students, Brooks said to M. D., "You could be a model or something like that." Brooks was not attempting to proposition M. D. His remark was intended to boost her self-esteem and encourage M. D. to set higher standards of personal behavior for herself.

7. Later that day, Brooks ran into M. D. outside the cafeteria. M. D. was talking to a security monitor, and Brooks overheard her say, "Mr. Brooks said I could be a model." The security monitor loudly and rudely scoffed at that idea. Thereafter, Brooks took M. D. aside, to the doorway of the SCSI (indoor suspension) room, and warned her not to discuss her personal business with everyone.

8. Sometime later (perhaps the same day), Brooks was walking in the cafeteria, and F. J., a friend of M. D.'s, stepped on his foot. F. J. continued on her way without pausing and sat down at a table outside the SCSI room. Brooks walked over to her and invited an apology. F. J. declined. Brooks informed her that he would "model" good manners for her and proceeded to deliver an apology. Then, he left.

9. Soon M. D. and F. J. reported to their cheerleading coach that Brooks had expressed interest in taking them to the

beach for a photo shoot. The coach passed this allegation along to the administration, which in turn called the school police and the State Attorney's Office. The prosecutor declined to press criminal charges against Brooks; the Office of Professional Standards ("OPS") requested a personnel investigation.

10. Detective Pedro Valdes conducted the investigation. He interviewed M. D., F. J., Brooks, and Trust Counselor Patricia Manson (who disclaimed personal knowledge of the events in dispute). The detective evidently did not believe (or at least gave little weight to) Brooks's denial of wrongdoing, for he determined that the students' statements were sufficiently credible to support the conclusion that Brooks had violated a School Board rule prohibiting improper employee/student relationships. The detective's report announcing that this charge had been "substantiated" was released in July 2004.

11. Having effectively been found guilty by the detective, Brooks was summoned to a conference-for-record ("CFR"), which was held on August 11, 2004. There, Brooks was given an opportunity to deny the charge (but not to confront M. D. and F. J., whose statements comprised the "evidence" against him). He failed to persuade the administrators that the detective had reached the wrong conclusion. The administrators issued several directives to Brooks, including the following:

1. Refrain from contacting anyone involved in this investigation at any time.

2. Refrain from inappropriate contact and/or comments with students.

The Alleged Harassment

12. On August 25, 2004, F. J. came to school dressed inappropriately, in a short skirt and tank top. At the beginning of second or third period, a security monitor named Frantzy Pojo noticed that F. J. was in violation of the dress code and attempted to remove her from class. The teacher refused to let F. J. leave with the security monitor. Faced with the teacher's obstructiveness, Mr. Pojo called Brooks, the assistant principal in charge of discipline whose portfolio included dress code enforcement.

13. Mr. Brooks came to the classroom and spoke with the teacher. He asked that the teacher instruct F. J. to put on a jacket to cover up. The teacher——and F. J.——complied.

14. The very next day, Mr. Pojo spotted F. J. and saw that she was, once again, not dressed appropriately. Mr. Pojo called Brooks to handle the situation. Brooks found F. J. in the library and agreed that she was in violation of the dress code. He observed that two or three other girls were also dressed inappropriately. Mr. Pojo and Brooks escorted these girls to the SCSI room and left them there. Brooks instructed the teacher-in-charge not to suspend the students but rather to let

them call their parents and request that appropriate clothes be brought to school.

15. F. J. called her mother and complained that Brooks was harassing her. F. J.'s mother became angry and arranged to meet with the principal, Deborah Love, that afternoon.

16. When F. J., her mother, and Ms. Love met as scheduled, F. J. accused Brooks of having followed her to classes and singled her out unfairly for discipline in connection with the dress code violations. At Ms. Love's request, F. J. submitted written statements concerning the events of August 25 and August 26, 2004.[3]

17. Ms. Love believed F. J. and apparently had heard enough. Without investigating F. J.'s allegations or even asking Brooks to respond to them, Ms. Love prepared a memorandum, dated August 27, 2004, in which she charged Brooks with insubordination. Specifically, Ms. Love alleged that Brooks had violated the directive, given at the recent CFR, to refrain from contacting anyone involved in the investigation stemming from the allegation that Brooks had made inappropriate remarks to M. D. and F. J.

18. On or about August 27, 2004, Ms. Love ordered Brooks not to return to campus but instead to report to an alternate worksite pending further action on the charges against him.

19. At its regular meeting on December 15, 2004, the School Board voted to accept the recommendation of OPS that Brooks be suspended without pay for 30 workdays.

Ultimate Factual Determinations

20. Brooks's conduct was not shown to have been outside the bounds of accepted standards of right and wrong. He is therefore not guilty of immorality, as that offense is defined in Florida Administrative Code Rule 6B-4.009(2).

21. Brooks did not fail to make a reasonable protective effort to guard either M. D. or F. J. against a harmful condition; had he neglected such duty, Brooks could have been disciplined for misconduct in office.

22. Brooks did not intentionally expose either M. D. or F. J. to unnecessary embarrassment or disparagement; had he done so, Brooks could have been disciplined for misconduct in office.

23. Brooks did not harass or discriminate against M. D. or F. J. on the basis of any improper consideration, such as race, color, or religion; had he done so, Brooks could have been disciplined for misconduct in office.

24. Brooks did not exploit a relationship with either M. D. or F. J. for personal gain or advantage; had he done so, Brooks could have been disciplined for misconduct in office.

25. Brooks did not constantly or continually refuse intentionally to obey a direct and reasonable order, which

willful defiance, had he shown it, would have constituted "gross insubordination" under Florida Administrative Code Rule 6B-4.009(4).

26. Brooks did not violate School Board Rule 6Gx13-4A-1.21, which prohibits unseemly conduct and abusive or profane language.

27. Brooks did not violate School Board Rule 6Gx13-4-1.09, which prohibits unacceptable relationships and/or communications with students.

28. Accordingly, it is determined that Brooks is not guilty of the charges that the School Board has brought against him.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 1012.33, 120.569, and 120.57(1), Florida Statutes.

30. In an administrative proceeding to suspend or dismiss an employee, the School Board, as the charging party, bears the burden of proving, by a preponderance of the evidence, each element of the charged offense(s). See McNeill v. Pinellas County School Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Sublett v. Sumter County School Bd., 664 So. 2d 1178, 1179 (Fla. 5th DCA 1995); MacMillan v. Nassau County School Bd., 629 So. 2d 226 (Fla. 1st DCA 1993).

31. Brooks's guilt or innocence is a question of ultimate fact to be decided in the context of each alleged violation. McKinney v. Castor, 667 So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

32. In its Amended Notice of Specific Charges served on March 18, 2005, the School Board advanced five theories for suspending Brooks: Immorality (Count I); Misconduct in Office (Count II); Gross Insubordination (Count III); Unbecoming Conduct for a School Board Employee (Count IV); and Prohibited Employee-Student Relationship. (Count V)

A. Statutory Grounds for Dismissal

33. The School Board is authorized to suspend or dismiss

> [a]ny member of the district administrative or supervisory staff . . . any time during the term of the contract; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. Whenever such charges are made against any such employee of the district school board, the district school board may suspend the employee without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid.

§ 1012.33(6)(b), Fla. Stat. (emphasis added).

34. The terms "immorality," "misconduct in office," and "gross insubordination" are defined in Florida Administrative

Code Rule 6B-4.009, which prescribes the "criteria for suspension and dismissal of instructional personnel" and provides, in pertinent part, as follows:

> (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, F.A.C., and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, F.A.C., which is so serious as to impair the individual's effectiveness in the school system.
> (4) Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

1. Immorality

35. The undersigned has determined, as a matter of ultimate fact, that Brooks's conduct was not shown to have been beyond the bounds of accepted standards of right and wrong. Because the relevant definition of "immorality" can be applied to the historical facts as found herein without analysis, it is unnecessary to make additional legal conclusions with regard to this charge.

2. Misconduct in Office

36. The Code of Ethics of the Education Profession (adopted in Florida Administrative Code Rule 6B-1.001) and the Principles of Professional Conduct for the Education Profession in Florida (adopted in Florida Administrative Code Rule 6B-1.006), which are incorporated in the definition of "misconduct in office," provide in pertinent part as follows:

> 6B-1.001 Code of Ethics of the Education Profession in Florida.
> (1) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.
> (2) The educator's primary professional concern will always be for the student and for the development of the student's potential. The educator will therefore strive for professional growth and will seek to exercise the best professional judgment and integrity.
> (3) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.
>
> * * *
>
> 6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.
> (1) The following disciplinary rule shall constitute the Principles of Professional Conduct for the Education Profession in Florida.

(2) Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.
(3) 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.

* * *

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

* * *

(g) Shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background 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.

37. As shown by a careful reading of Rule 6B-4.009,[4] the offense of misconduct in office consists of three elements: (1) A serious violation of a specific rule[5] that (2) causes (3) an impairment of the employee's effectiveness in the school system. The second and third elements can be conflated, for ease of reference, into one component: "resulting ineffectiveness."

38. The School Board alleges that Brooks breached the duty, imposed under Florida Administrative Code Rule 6B-

1.006(3)(a), to protect students from harmful conditions; and that he committed the offenses described in subparagraphs (3)(e), (3)(g), and (3)(h) of that Rule. The undersigned has determined, however, as a matter of ultimate fact, that Brooks did not: (a) fail to make a reasonable protective effort to guard either M. D. or F. J. against a harmful condition; (b) intentionally expose either M. D. or F. J. to unnecessary embarrassment or disparagement; (c) harass or discriminate against M. D. or F. J. on the basis of any improper consideration, such as race, color, or religion; or (d) exploit a relationship with either M. D. or F. J. for personal gain or advantage. Because the relevant provisions of Rule 6B-1.006(3) can be applied to the historical facts as found herein without analysis, it is unnecessary to make additional legal conclusions with regard to these allegations.

3. Gross Insubordination

39. To constitute gross insubordination or willful neglect of duties, an employee's "intentional" defiance must be "constant or continuing," and involve the disobedience of a "direct" order. Fla. Admin. Code R. 6B-4.009(4). Accordingly, "one isolated act of contempt is not synonymous with 'gross insubordination,'" Smith v. School Bd. of Leon County, 405 So. 2d 183, 185 (Fla. 1st DCA 1981), nor is contemptuous conduct that "does not involve a violation of any direct order or a

gross violation of any personnel rule," Rosario v. Burke, 605 So. 2d 523, 524 (Fla. 2d DCA 1992).

40. The School Board contends that Brooks violated the directives that had been given to him at the CFR, which, to repeat for convenience, included these:

> 1. Refrain from contacting anyone involved in this investigation at any time.
>
> 2. Refrain from inappropriate contact and/or comments with students.

More precisely, the School Board maintains that Brooks violated the first directive by twice "contacting" F. J. in August 2004 in connection with her violations of the dress code.

41. The School Board's position is premised on the belief that the directive clearly forbade Brooks from having any contact——even obviously appropriate, job-related contact——with either M. D. or F. J. To accept this premise requires that the phrase "anyone involved in this investigation" be understood expansively to include, among others, the persons who made the allegations against Brooks——namely his accusers, M. D. and F. J. Yet, while this might be a reasonable interpretation of the language in question, it is certainly not the only one.

42. Another reading of the phrase "anyone involved in this investigation" understands it more narrowly as referencing only the persons who had taken part in the official inquiry into whether the allegations against Brooks had a basis in provable

fact. These would be certain school police personnel and perhaps some OPS administrators——but not the accusers/alleged victims who, for good reason, should never be (and were not in this instance) allowed to investigate their own allegations.[6]

43. The preceding interpretation is reinforced by the legal conclusion that the second directive, being explicit in its prohibition of inappropriate contact with students (a category that unambiguously includes M. D. and F. J.), controls over the first directive, which latter, if it includes the student-accusers within its field of operation, does so only in broad, general terms. See Gretz v. Florida Unemployment Appeals Com'n, 572 So. 2d 1384, 1386 (Fla. 1991)(specific statute controls over general statue covering the same subject matter); accord, Cone v. State Dept. of Health, 886 So. 2d 1007, 1012 (Fla. 1st DCA 2004).

44. Accordingly, it is concluded that the second directive can reasonably be construed as applying exclusively to students such as M. D. and F. J., while concomitantly reading "anyone involved in this investigation" as excluding students, including M. D. and F. J., who would not be investigators. This being the case, the first directive is at least ambiguous, as a matter of law, with respect to the question whether it includes the student-accusers among the persons "involved in this investigation."

45. Because the first directive is not a clear, unambiguous, and direct order to refrain from having appropriate, job-related contact with either M. D. or F. J., Brooks cannot be found guilty of having intentionally violated said directive.

46. Further, even if the School Board's interpretation of the first directive were the only reasonable one (which it is not), there is no persuasive evidence——and hence the undersigned has not found——that Brooks intentionally refused to obey the directive. Thus, Brooks cannot be found guilty, in fact, of having intentionally violated the directive at issue.

47. Further still, even if Brooks had intentionally violated the first directive (which he did not do), there is no persuasive evidence——and hence the undersigned has not found——that Brooks constantly or continually refused to obey the directive. To the contrary, and contrary to the School Board's argument, Brooks had no direct "contact" with F. J. on August 25, 2004——he spoke, instead, with her teacher. At most, Brooks had "contact" with F. J.——and appropriate contact at that——only on August 26, 2004, when he escorted her and other dress code violators to the SCSI room. One act of defiance (which this was not) is not "gross insubordination."

48. In short, Brooks is not guilty of gross insubordination.

B. Contractual Grounds for Dismissal[7]

49. The School Board alleges that Brooks failed to comply with School Board Rules 6Gx13-4A-1.21 and 6Gx13-4-1.09. The first of these Rules provides as follows:

> All persons employed by the School Board . . . are expected to conduct themselves, both in their employment and in the community, in a manner that will reflect credit upon themselves and the school system.
>
> Unseemly conduct or the use of abusive and/or profane language in the workplace is expressly prohibited.

S.B.R. 6Gx13-4A-1.21.

50. School Board Rule 6Gx13-4-1.09 provides in relevant part as follows:

> [A]ll School Board personnel are strictly prohibited from engaging in unacceptable relationships and/or communications with students. Unacceptable relationships and/or communications with students include, but are not limited to the following: dating; any form of sexual touching or behavior; making sexual, indecent or illegal proposals, gestures, or comments; exploiting an employee-student relationship for any reason; and/or demonstrating any other behavior which gives an appearance of impropriety.

1. Unseemly Conduct; Use of Abusive or Profane Language

51. There is no evidence——indeed the School Board made no attempt to prove——that Brooks used abusive or profane language in the workplace. Thus, he cannot be found guilty of that

offense, which is specifically described in School Board Rule 6Gx13-4A-1.21.

52. The Rule proscribes but does not define "unseemly conduct." In ordinary usage, the word "unseemly" usually suggests inappropriateness manifesting indecency, bad taste, or poor form (e.g. a crude joke in mixed company). Brooks's conduct, as described herein, was not indecorous in that sense, and thus he is not guilty of having acted in an "unseemly" fashion.

53. The School Board has charged Brooks with having engaged in unbecoming conduct. Assuming, however, that School Board Rule 6Gx13-4A-1.21 can reasonably be read (as the School Board seems to urge) as prohibiting any public or work-related conduct which, if known, would cause someone or some persons not to feel esteem for the employee or the school system, the School Board has failed to prove that Brooks is guilty of committing a prohibited act.

54. As an initial observation, it should be pointed out that the Rule fails to identify the person or persons whose opinions about the relative worthiness of the employee's conduct must be considered. Yet credit (or "esteem," which is synonymous in this context), like beauty, is in the eye of the beholder. Whether a person's behavior entitles him to esteem or respect is a value judgment, reflecting an evaluation that is

inherently subjective. Thus, the question whether certain conduct "reflected credit" upon the actor is unanswerable in the abstract; to respond to the query, one must know whose regard for the actor is relevant.

55. Consequently, if Rule 6Gx13-4A-1.21 makes it a disciplinable offense to behave in a way that causes someone not to hold the employee or the school system in high regard, then the decision-maker could apply the Rule in accordance with the rule of law only if he were able to conceptualize an objective standard of conduct, a neutral principle for defining reasonably esteem-worthy behavior under the circumstances at hand.

56. The School Board neither proved nor argued for the existence of such a standard of conduct. Without a neutral principle to apply, the undersigned, were he to attempt to pass judgment on Brooks's behavior, would be merely voicing a personal opinion——the very antithesis of the rule of law.

57. Accordingly, to the extent the School Board has charged Brooks with a general failure to behave in a manner that reflects credit on himself and the school system, it has failed to offer sufficient evidence to sustain the charge.

2. Prohibited Employee-Student Relationship

58. The undersigned has found, as a matter of ultimate fact, that Brooks did not have an unacceptable relationship, or

engage in an unacceptable communication, with either M. D. or F. J.

59. The School Board argues that Brooks's behavior at least gave the "appearance of impropriety." Whether conduct "appeared" improper is a value judgment. Consequently, just as the undersigned could not, for reasons just explained, appropriately render an opinion as to whether he personally considers Brook's conduct worthy of esteem, neither can he properly hold Brooks accountable (or acquit him) for having behaved in a manner that the undersigned might (or might not) personally believe gave an "appearance of impropriety."

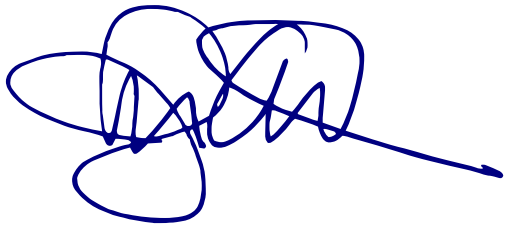
60. To determine in accordance with the rule of law (as opposed to personal preference) whether particular behavior gave the appearance of impropriety, the fact-finder would need to employ a neutral standard of conduct——a principle defining reasonably appropriate-looking behavior under the particular circumstances——against which the behavior in question could be measured. It was the School Board's burden to prove such a standard. Cf. Purvis v. Department of Professional Regulation, Bd. of Veterinary Medicine, 461 So. 2d 134, 137 (Fla. 1st DCA 1984). The School Board failed to carry its burden.

61. Therefore, Brooks must be found not guilty of the charge that he engaged in an unacceptable relationship or communication.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board enter a final order (a) rescinding its previous decision to suspend Brooks without pay and (b) awarding Brooks back salary, plus benefits, that accrued during the suspension period of 30 workdays, together with interest thereon at the statutory rate.

DONE AND ENTERED this 17th day of October, 2005, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2005.

ENDNOTES

[1]/ To the extent any finding of material fact herein is inconsistent with the testimony of one witness or another, the finding reflects a rejection of all such inconsistent testimony in favor of evidence that the undersigned deemed to be more believable and hence entitled to greater weight.

[2]/ That said, the likelihood that any given affirmative finding above is accurate is not less than 50 percent. The difficulty here is that Brooks's testimony, while being on balance more credible than that of his two accusers (whose respective prior inconsistent statements called each one's truthfulness into question), was not always readily believable. But, significantly, Brooks did not have the burden of proof and thus was not required to substantiate any exculpatory fact by a preponderance of the evidence. The School Board, in contrast, needed to persuade the undersigned that the likelihood of its charges being true is at least a little better than 50 percent, and this it failed to do.

[3]/ In the undersigned's opinion, there are material inconsistencies between these written statements and F. J.'s verbal report as recorded in Ms. Love's contemporaneous memorandum of the meeting, but the principal evidently thought otherwise. In any event, the findings above reflect the undersigned fact-finder's determination of what likely occurred, based on the conflicting evidence in the record.

[4]/ Florida Administrative Code Rules 6B-4.009, 6B-1.001, and 6B-1.006 are penal in nature and must be strictly construed, with ambiguities being resolved in favor of the employee. See Rosario v. Burke, 605 So. 2d 523, 524 (Fla. 2d DCA 1992); Lester v. Department of Professional and Occupational Regulations, 348 So. 2d 923, 925 (Fla. 1st DCA 1977).

[5]/ To elaborate on this a bit, the Rule plainly requires that a violation of both the Ethics Code and the Principles of Professional Education be shown, not merely a violation of one or the other. The precepts set forth in the Ethics Code, however, are so general and so obviously aspirational as to be of little practical use in defining normative behavior. It is one thing to say, for example, that teachers must "strive for professional growth." See Fla. Admin. Code R. 6B-1.001(2). It is quite another to define the behavior which constitutes such striving in a way that puts teachers on notice concerning what conduct is forbidden. The Principles of Professional Conduct accomplish the latter goal, enumerating specific "*do*s" and "*don't*s." Thus, it is concluded that that while any violation of one of the Principles would also be a violation of the Code of Ethics, the converse is not true. Put another way, in order to punish a teacher for misconduct in office, it is necessary but not sufficient that a violation of a broad ideal articulated in the Ethics Code be proved, whereas it is both necessary and

sufficient that a violation of a specific rule in the Principles of Professional Conduct be proved. It is the necessary and sufficient condition to which the text refers.

[6]/ One problem with construing the phrase "anyone involved in this investigation" so broadly as to encompass putative witnesses such as M. D. and F. J. is that the phrase would then also reference others who, though not themselves investigators, nevertheless played some part in the events that followed the students' making allegations against Brooks. For example, Ms. Love was a participant in the CFR at which Brooks was given the directives at issue. Thus, if M. D. and F. J. were involved in the investigation because their allegations triggered it, then so too was Ms. Love who, as Brooks's principal, was involved in the administrative response to the investigation. But to include Ms. Love among those whom Brooks was not to contact would make little or no sense; she was, after all, his direct supervisor, and thus someone with whom Brooks would be expected to have regular contact. Because absurd or improbable results are presumed not to have been intended, it is reasonable to avoid construing the first directive so broadly as to bring about such results. See, e.g., Huntington on the Green Condominium v. Lemon Tree I-Condominium, 874 So. 2d 1 (Fla. 5th DCA 2004)("[I]f one interpretation would lead to an absurd conclusion, then such interpretation should be abandoned and the one adopted which would accord with reason and probability[.]").

Along the same line, to include students M. D. and F. J. in the "no contact" category (as opposed to the "no inappropriate contact" category) would have prevented Brooks, who was in charge of student discipline, from disciplining M. D. or F. J., were either of them to misbehave, as F. J. in fact would do. While it is undoubtedly true, as the School Board insists, that other administrators were available to discipline M. D. and F. J. should the need have arisen, the undersigned believes that if the intent of the administrators at the CFR had been to order Brooks not to fulfill his ordinary responsibilities as assistant principal vis-à-vis M. D. and F. J., then the directives would have (and should have) said so explicitly.

[7]/ Because § 1012.33(6)(b), Fla. Stat., does not specifically empower the School Board to suspend or dismiss an administrator for reasons other than the ones enumerated in the statute, it is possible that the employment contract between Brooks and the School Board is not enforceable to the extent it purports to authorize such adverse employment actions based on violations of

School Board Rules and other offenses not listed in the statute. Brooks has not made this particular argument, however, and so the undersigned will proceed to decide the merits of the remaining charges.

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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.