

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 07-3924
)
TODD RAVEN,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal administrative hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings, on October 18, 2007, in Bradenton, Florida.

APPEARANCES

For Petitioner: Robert Shapiro, Esquire
School Board of Manatee County
Post Office Box 9069
Bradenton, Florida 34206-9069

For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent's refusal to attend an investigatory interview, scheduled for April 17, 2007, is a violation of the Florida Administrative Code Rule and/or School Board policy.

Whether Respondent's conduct on April 17, 2007, rises to the level of just cause to terminate Respondent's employment as a teacher with Petitioner.

PRELIMINARY STATEMENT

On April 19, 2007, Roger Dearing, Superintendent of the Manatee County School District, advised Respondent that he would recommend to the School Board that Respondent be suspended without pay, pending his recommendation that Respondent's employment with Petitioner be terminated. The Superintendent's recommendation was placed on the April 23, 2007, School Board agenda. On the same date, Petitioner filed with the School Board a Petition for Evidentiary Hearing in which Petitioner denied the ultimate facts alleged in the Superintendent's recommendation. On August 28, 2007, this matter was referred to the Division of Administrative Hearings (DOAH) to conduct an administrative hearing.

Following discovery and the filing of Pre-hearing Stipulations by the parties, a formal administrative hearing was conducted on October 18, 2007. Petitioner offered the testimony of three witnesses: Dr. Roger Dearing, Superintendent; Debra Horne, investigator for the Office of Professional Standards for the School District; and John Bowen, School Board Attorney. Petitioner's Exhibits 1 through 7 were offered and admitted in evidence. Respondent testified in his own behalf and offered

the testimony of Brady McCabe, a detective with the Manatee County Sheriff's Office. Respondent's Exhibits 1 through 7 were offered and admitted in evidence.

The parties were given 10 days from the filing of the transcript to file proposed findings of fact and conclusions of law. The Transcript was filed on November 20, 2007. Following two requests by the parties, orders granting extensions of time in which to file proposed orders were issued. Each party timely filed their Proposals on December 14, 2007. Each proposal has been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent's employment as a teacher on annual contract with Petitioner began on August 1, 2005. Respondent's contract was renewed for the 2006-2007 school year, and he was assigned to teach at Bayshore High School.

2. On March 14, 2007, Respondent received notification by his principal that he was not being recommended for reappointment for the 2007-2008 school year. Effective May 25, 2007, Respondent's contract with the School District, as a teacher at Bayshore High School, expired.

3. On or about March 27, 2007, Debra Horne (Horne), the investigator for Petitioner's Office of Professional Standards

(OPS), became aware of an allegation that Respondent was inappropriately close to a student in one of his classes.

4. The OPS investigator is considered a "caregiver" under Chapter 39, Florida Statutes, and therefore, if she has a suspicion of child abuse, it is her duty to report it to law enforcement.

5. On March 28, 2007, Child Protective Services (CPS) informed Horne that there was an allegation of possible inappropriate interaction against Respondent with a female student at Bayshore High School. The CPS Investigator, Tequila Crenshaw, advised her that she was in the process of conducting a joint investigation into the allegations with Detective McCabe from Crimes Against Children (CAC), a unit of the Manatee County Sheriff's Office.

6. Horne inquired as to whether she could move forward with an OPS investigation. She was told that the CPS and CAC investigations were ongoing. At that point, Horne suspended her investigation. This was consistent with her practice of not moving forward until she got clearance from CPS and CAC. She did not wish to interfere or impede in their investigation in any way.

7. On April 11 and 12, 2007, Horne received clearance from CAC and CPS, respectively. The two agencies informed her that

they had concluded their investigations, and no criminal charges would be filed.

8. Horne had continuing concerns about the alleged inappropriate interactions. She determined to go forward and conduct an internal investigation on behalf of the School District.

9. On April 12, 2007, Horne called Respondent, by telephone, and directed him to report to the Office of Professional Standards on the following day, April 13, 2007, so that she could conduct an investigatory interview. Respondent was advised that failure to appear would result in a charge of insubordination.

10. During the telephone conversation with Respondent, he confirmed that he was not a member of the union. Respondent asked if he could have his private attorney present during the investigatory interview. Horne responded that it was not permissible.

11. Prior to their telephone conversation, Horne had received information from the Manatee Education Association (MEA), the teacher's union, that Respondent was not a member of the union.

12. On April 13, 2007, Horne had a telephone message from attorney Melissa Mihok (Mihok), a specialist in labor and school law, stating that Mihok had been retained by Respondent to

represent him in allegations of inappropriate interactions with students at Bayshore High School. Mihok asked if the interview scheduled on the 13th could be postponed until the 17th of the month, so that she could meet with Respondent prior to the interview.

13. Soon after retrieving the telephone message from Mihok, Horne was advised that Respondent and a different attorney, James Dirmann, had arrived at the Office of Professional Standards (OPS). After greeting Respondent and his attorney, Horne requested that John Bowen, the Manatee County School Board Attorney, sit in on the discussion, since the employee's attorney was present.

14. Bowen, Dirmann, Raven, and Horne sat at the conference table and discussed whether or not a private attorney would be allowed to sit with Respondent during his interview relating to this matter. During the conversation, Bowen made it clear that the private attorney would not be allowed to be present during Horne's investigatory interview with Respondent. Dirmann then advised Bowen and Horne that Respondent would not be answering any questions because he was being denied representation and, also, that he was invoking his Fifth Amendment privilege against self incrimination.

15. Bowen advised Dirmann to seek the advice of a labor lawyer because his advice to his client, to not answer

questions, could result in the termination of Respondent's employment.

16. Melissa Mihok then participated in a subsequent discussion, on the same day, by telephone, which included all of the above participants. Dirmann and Mihok expressed a desire to confer with their client prior to an interview. It was agreed to postpone the investigatory interview until April 17, 2007, at 10:00 a.m., at the OPS office.

17. Thereafter, Respondent received legal advice from Mihok regarding his rights in connection with the investigation by OPS. Respondent remained concerned that any information obtained by Horne, during the interview, would be shared with CAC and/or CPS, to his detriment.

18. On April 17, 2007, Horne received a telephone call from Dirmann who stated that he had spoken with Mihok and they had advised Respondent not to participate in the OPS interview that was scheduled for 10:00 a.m., on April 17, 2007.

19. Subsequently, Horne received a letter by facsimile from Dirmann, which stated in pertinent part:

After further thought and consultation with me and with Mrs. Melissa Mihok, Attorney at Law, our client will respectfully decline to answer any questions regarding your current investigation.

20. The letter from Dirmann to Horne, dated April 17, 2007, does not state that the reason Respondent would not submit

to an interview was because he was not permitted to have an attorney present.

21. Respondent did not appear at the rescheduled interview on April 17, 2007.

22. Respondent was suspended without pay by the School Board effective April 24, 2007.

23. Petitioner's policy, denying a non-union employee from having a private attorney present during an investigatory interview, had not changed.

24. The School Board's policy regarding representation of School Board employees by private attorneys in investigatory interviews was subsequently delineated in a memorandum to School Board members and the Superintendent from School Board Attorney John Bowen in a memorandum, dated August 20, 2007.

25. In that memorandum, which addressed "employee rights when meeting with the employer," Bowen stated that citizens do not have the right to have an attorney with them at all times. Bowen stated that, in accordance with the Sixth Amendment to the United States Constitution, a citizen has the right "to have the assistance of counsel for his defense," but that right is restricted to criminal prosecutions. Bowen noted that under Subsection 120.57(1)(b), Florida Statutes (2007), a person whose substantial interests are being determined by an agency is entitled to "be represented by counsel or other qualified

representative" in a formal hearing, but that right is restricted to the formal hearing itself. It does not extend to meetings between the employee and the employee's supervisor or other administrators that precede the formal hearing. Bowen stated that Subsection 120.62(2), Florida Statutes (2007), provides that any person appearing "before any presiding officer or agency in an investigation or in any agency proceeding" has the right to be accompanied, represented, and advised by counsel or other qualified representative." Bowen pointed out that the right to counsel provided in Subsection 120.62(2), does not extend to meetings with an individual's supervisor or other administrator as they are not a "presiding officer" and they do not constitute an "agency" and such meetings are not an "agency proceeding."

26. Bowen further advised the members of the School Board and the Superintendent that Florida's Public Employees Relations Commission (PERC) has held that a public employee is entitled to union representation, if requested, in any investigatory interview where the employee has a reasonable belief that disciplinary action may result from the interview.

27. Bowen also noted that outside of the "Weingarten right," an employee does not have the right to have any representative at a meeting with the employee's supervisor or other administrator. The memorandum stated as follows:

"It is the inherent right of the employer to direct employees. Employees have no right to place conditions on compliance with an employer's lawful directive. It is insubordination to refuse to meet as directed or attempt to impose conditions not agreed to by the employer. Such insubordination subjects the employee to discipline, including termination of employment. An attorney who counsels his or her client to refuse to meet with an employer puts that client in serious peril of termination."

28. It is the practice of the OPS investigator to advise employees, who are not members of the MEA, that she has been informed that the MEA does not represent non-members.

29. Consistent with Bowen's memorandum to the School Board Members and the Superintendent, employees, in the past, have been disciplined by the School Board for refusing to submit to an investigatory interview without their private attorney being present.

30. The OPS investigator has been authorized by the School Board to investigate possible employee misconduct that may lead to disciplinary action more serious than a written reprimand. The Investigator conducts interviews in order to gather information to either clear an individual of the allegations made, or to substantiate the allegations based on the information given to the investigator by the witnesses.

31. The Investigator's direct supervisor is the Staff Attorney with whom she consults on her investigations. After

the investigation is completed, the investigator prepares an investigatory report, which is reviewed by the Staff Attorney for editing and addition of the "violations" section, if any.

32. Once the report is complete, the investigator sets a meeting with the individuals in the chain of command of the employee, and a meeting is held during which a recommendation to the Superintendent is formulated. The OPS investigator attends the meeting. Her role is to answer questions about the report that she has prepared and to answer questions about past practices.

33. After the meeting of these individuals, the Assistant Superintendent for the District takes the information to the Superintendent.

34. Other employees of the School Board are also charged with investigating complaints that may lead to discipline, but only actions which may result in an oral or written reprimand. Any allegation that may result in discipline in excess of a written reprimand is only investigated by the OPS investigator.

35. Superintendent Roger Dearing (Dr. Dearing) testified that the factual basis for his recommendation that Respondent be terminated was his refusal to come in and submit to an investigatory interview by the District's Office of Professional Standards. Dr. Dearing testified that Respondent's effectiveness had been impaired in the system as a result of his

actions in not submitting to the interview. Allegations were made by peers, in this case, regarding Respondent, this warranted an investigation to make sure the safety and care of students was maintained.

36. Dr. Dearing testified that he believed that Respondent's effectiveness had been impaired by his refusal to cooperate in an investigatory proceeding. This he is required to do under the School Board's rules and policies, and as a part of his professional ethics as a certificated individual. Dr. Dearing testified that Respondent's failure to cooperate left a "cloud of doubt" with the administration and the parents of other children who would be in Respondent's classroom. This impaired his effectiveness.

37. Dr. Dearing also testified that, in his opinion, Respondent's refusal to cooperate constituted a violation of Florida Administrative Code Rule 6B-1.001(3), which provides:

[a]ware 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.

38. Dr. Dearing also testified that he had a concern about an employee, who was allegedly having inappropriate interactions with a female student and who did not submit to an investigatory

interview. This would be a violation of Florida Administrative Code Rule 6B-1.001(3).

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of these proceedings, pursuant to Section 120.569 and Subsections 120.57(1) and 1012.33(6)(a), Florida Statutes (2007).¹

40. The School Board of Manatee County (Petitioner) is an "agency" under the Florida Administrative Procedure Act, Chapter 120, Florida Statutes (APA). §§ 120.52(1)(b) and (6), Fla. Stat. e.g. Sublett v. District School Board of Sumter County, 617 So. 2d 374, 377 (Fla. 5th DCA 1993).

41. Respondent is a teacher, as defined by Subsection 1012.33(1)(a), Florida Statutes, and is employed by Petitioner under an annual contract, for the school year 2006-2007.

42. The Superintendent has the authority to make recommendations to the Petitioner that a teacher be dismissed from employment, pursuant to Subsection 1012.27(5), Florida Statutes. The School Board has the authority to terminate teachers, pursuant to Subsections 1001.42(5) and 1012.22(1)(f), Florida Statutes, for just cause.

43. Pursuant to Subsection 1012.33(1), Florida Statutes, "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."

44. Section 1012.33, Florida Statutes, does not purport to be an all inclusive list of conduct that constitutes "just cause" for dismissal. By specifically providing that just cause "includes, but is not limited to," the Florida Legislature has given school boards wide discretion to determine what actions constitute just cause for suspension or dismissal. Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2d DCA 1994).

45. Petitioner has the burden of proof in this employee dismissal hearing and must meet that burden with a preponderance of the evidence. Dileo v. School Board of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990). Preponderance of the evidence is defined as "the greater weight" of the evidence.

46. The Legislature has given local school districts great discretion in drafting and interpreting their personnel policies. § 1012.23(1)(a), Fla. Stat. (2007)(districts can "adopt rules governing personnel matters, including the assignment of duties and responsibilities for all district employees."). Specifically, local districts can provide procedures and policies for discipline of employees. § 1012.22(1), Fla. Stat. (2007). However, the School Board may

not exercise any power that conflicts with the Florida Constitution or general law. § 1001.32(2), Fla. Stat. (2007).

47. Petitioner has adopted a Policy and Procedures Manual, which includes the district work rules. It also creates the Office of Professional Standards (OPS) and grants it the authority to conduct investigations into alleged employee misconduct and make recommendations.

48. Section 6.13 of the Policies and Procedures of the School Board of Manatee County provides that all board employees shall cooperate fully with OPS or other appropriate authorities who are conducting investigations. Failure to cooperate completely and truthfully will subject an employee to disciplinary action.

49. Section 6.11 of the Policies and Procedures of the School Board of Manatee County provides that any employee of the School Board may be temporarily suspended, with or without pay, or permanently terminated from employment for "just cause" including, but not limited to immorality, misconduct in office, incompetence, gross insubordination, willful neglect of duty, drunkenness, conviction of a crime involving moral turpitude, violation of the Policies and Procedures Manual of the School District of Manatee County, violation of any applicable Florida Statute, or violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

50. In this case, OPS was conducting an investigation into the possible misconduct of a teacher. Under the authority granted to the OPS investigator under Petitioner's Policy 6.13(4), Respondent was ordered to appear at her office in order to answer questions relating to her investigation. Respondent appeared at the appointed time on April 13, 2007. However, he was accompanied by private counsel. Respondent requested that counsel be present and give him advise during the course of the interview. This request was denied, based on the school board's legal counsel's interpretation of Policy 6.13 and the fact that Respondent was not a member of the MEA.

51. The investigative interview was postponed until April 17th. An experienced labor law attorney was consulted by Respondent. On Monday, April 17, 2007, Respondent, through counsel, declined to participate in the interview and did not appear at the rescheduled interview.

52. Petitioner's position had not changed. Had Respondent appeared for the interview with an attorney, legal counsel would not be permitted to be present.

53. Petitioner seeks to terminate Respondent from his employment as a teacher for his violation of the above cited Policies, as well as, state law and regulations relating to insubordination.

54. However, since Petitioner is an "agency," under state law, it is subject to the provisions of the Florida Administrative Procedure Act.

55. Section 120.62, Florida Statutes (2007), Agency Investigations provides:

(1) Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript or recording of his or her oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her expense, to be accompanied, represented, and advised by counsel or other qualified representatives.

56. Respondent was compelled to appear before the OPS investigator during the course of an official School Board investigation. Therefore, Respondent was entitled to be accompanied, represented, and advised by counsel at his own expense, pursuant to Section 120.62, Florida Statutes.

57. Petitioner argues that Respondent was not entitled to representation at the investigatory interview at issue, pursuant to Subsection 120.62(2), Florida Statutes, based on the assertion that the OPS investigator is not the agency or a presiding officer. This argument is misplaced.

58. Petitioner is the "agency" in this matter by definition. § 120.52(1)(b)7., Fla. Stat. The School Board delegated all of its investigatory powers, including its power to conduct investigatory interviews, to the OPS investigator, under its Policy 6.13. Because the School Board delegated, through an official policy, all of its investigatory power to OPS and its investigator, Horne is the authorized representative of the agency for purposes of Subsections 120.62(1) and (2), Fla. Stat. (2007).

59. The School Board can act only through its agents or representatives. e.g. McLeod v. Barber, 764 So. 2d 790, 793 (Fla. 5th DCA 2000); Cedar Hill Prop. Corp. v. Eastern Federal Corp., 575 So. 2d 673, 676 (Fla. 1st DCA 1991); State v. Wellington Metals, Inc., 510 So. 2d 902, 904 (Fla. 1987); Buckner v. Lower Florida Keys Hosp. Dist., 403 So. 2d 1025, 1027 (Fla. 3d DCA 1981); Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 498 U.S. 533, 548 (1991); Will v. Michigan Dept. of State Police, 491 U.S. 58, 79 (1989). Agency principles dictate that any action taken by the "School Board" is actually conducted by a representative of the School Board, such as one of the members of the School Board, the Superintendent, the School Board attorney, or other individuals vested with the authority to act on behalf of the School Board. The School Board, as a legal entity, cannot take any action

without the assistance of individuals. An agency "may as a general rule employ others to assist [it] . . . and the completed acts will be regarded as acts of the agen[cy]. . . ." Shreveport Engraving Co. v. U.S., 143 F.2d 222, 227 (5th Cir. 1944), citing, 2 Am. Jur. 199; Rest. 2d (Agency) § 78, Mechem Agency, § 315. If the individual agent taking action on behalf of the School Board is endowed with the authority to do so, and is acting within the scope of his or her employment, the School Board is bound by the actions of the agent. e.g. Sparks v. Pilot Freight Carriers Inc., 830 F.2d 1554, 1558, (11th Cir. 1987) citing, Rest.2d (Agency) § 219(1); Hunter v. Allis-Chalmers Corp., Engine Div., 797 F.2d 1417, 1422 (7th Cir. 1986); U.S. v. Aisenberg, 247 F. Supp. 2d 1272, 1309 n. 15 (M.D. Fla. 1986). This liability is based upon the premise that the delegation of authority by the agency is what empowered the agent to act. Sparks, 830 F.2d at 1559-60, citing, Horn v. Duke Homes, Div. of Windsor Mobile Homes, Inc., 755 F.2d 599, 605 (7th Cir. 1985).

60. The School Board has given the OPS investigator the authority to use discretion in conducting employee investigations. Horne decides first what allegations warrant an investigation by OPS. If she determined that an investigation is in order, Horne decides what course of action to take. She determines who, if anyone, should be interviewed, when the

interview takes place, and what questions she will ask. Horne conducts whatever interview she sees fit, without any discussion or guidance from the School Board, its chairman or members, the Superintendent, or even her direct supervisor. She conducts all investigations of all employees who may suffer discipline more serious than a written reprimand with autonomy.

61. Petitioner would not have suffered any hardship in allowing Respondent to have representation at the investigatory interview. This is evident by the fact that the OPS investigator would have permitted the representation if Respondent was a member of MEA, or even if MEA had appointed a representative to counsel Respondent for the purpose of the interview, despite his non-member status. Any representative who would have attended would have been prohibited from asking questions or otherwise interfering with the interview. Simply put, there was no reasonable rationale to deny Respondent the right to representation. Even if the Petitioner did articulate some hardship, one must assume that the Legislature considered any such hardship that an agency may encounter when drafting Subsection 120.62(2), Florida Statutes, and found that the policy concerns favored the employees' rights to representation. See NASA v. Federal Labor Relations Authority, 527 U.S. 229, 245 (1999).

62. It would be inconsistent with the intent of the Legislature in enacting Subsection 120.62(2), Florida Statutes, to allow an agency to circumvent the rights of an employee to representation during an investigatory interview simply by delegating the authority to conduct investigations to a representative. See generally Tinker Air Force Base, Oklahoma City Air Logistics Center, Oklahoma City, Oklahoma v. America Fed. of Gov't Employees Local 916, 2001 WL 36022704, *6-7 (2001). To find otherwise would promote agencies to reorganize their investigatory scheme to shirk duties imposed by the Legislature and would be inconsistent with the purposes and policies of the statute. Id. NASA, 527 U.S. at 239-40 (to require an investigator to be from an agency that bargains with the union would encourage employers to use conduits to conduct investigations).

63. Petitioner's refusal to allow Respondent to have legal representation during the investigatory interview with the OPS investigator, either on April 13th or April 17th, was a violation of Subsection 120.62(2), Florida Statutes.

64. In view of the above, discussion of the parties differing positions on the applicability of federal case law, especially the case of National Labor Relations Board v. Weingarten, 420 U.S. 251 (1975), and the right to employee

representation during an investigatory interview by an employer, commonly referred to as a "Weingarten right," is unnecessary.

65. In addition, the fact that Respondent may have also sought to invoke his Fifth Amendment privilege against self-incrimination during the interview cannot be held against him. Respondent is only charged with refusal to attend an investigatory interview. He is not charged with failure to answer questions during an interview. Such a charge could only have been made had an interview taken place and Respondent then refused to answer questions posed by the OPS investigator. Only then could Respondent be charged with violating Petitioner's Policy 6.13(4) and disciplinary sanctions sought. Then, Petitioner would have a right to inquire into matters under investigation, and would be permitted to seek disciplinary action, in the event its employees refuse to respond to those inquiries.

66. Petitioner has failed to establish by a preponderance of evidence that Respondent's refusal to attend an investigatory interview and to provide any statement concerning the allegations of misconduct without the presence of legal counsel constituted a violation of Policy 6.13(4)(A) and (B) of the Policies and Procedures Manual of the School Board of Manatee County.

67. Therefore, Petitioner has failed to establish by a preponderance of evidence that Respondent's refusal to attend an investigatory interview, concerning the allegations of his misconduct, without the presence of legal counsel constituted a violation of Florida Administrative Code Rule 6B-4.009(3), which defines misconduct in office as a violation of the Code of Ethics of the Education Profession as adopted in Florida Administrative Code Rule 6B-1.006, which is so serious as to impair the individual's effectiveness in the school system.

68. Petitioner has failed to establish by a preponderance of the evidence that Respondent's continued refusal to attend an investigatory interview, concerning allegations of his misconduct, without the presence of legal counsel constituted a violation of Florida Administrative Code Rule 6B-4.009(4), which defines gross insubordination or willful neglect of duty as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority.

69. Petitioner has failed to establish by a preponderance of the evidence that Respondent's refusal to attend an investigatory interview, concerning allegations of his misconduct, without the presence of legal counsel, constituted a violation of Florida Administrative Code Rule 6B-1.001(3), which requires an employee to strive to achieve and sustain the

highest degree of ethical conduct to maintain the respect and confidence of his colleagues, students, parents and other members of the community.

70. Although the April 17, 2007, letter from Dirmann to the OPS investigator is devoid of any mention of the reason Respondent was declining to be interviewed, Petitioner was well aware that he sought the opportunity to have private counsel present during any interview. The fact that the letter constitutes a flat refusal to submit to the investigatory interview under any circumstances, does not excuse Petitioner for its violation of Respondent's statutory right, by refusing to allow Respondent to have legal counsel present.

71. School Boards have broad discretion to renew or decline to renew a teacher's annual contract. An Administrative Law Judge is without authority to order a School Board to reinstate Respondent to his former position, if the date of the recommended order is beyond the expiration date of the teacher's contract. See generally Dietz v. Lee County School Board, 647 So. 2d 217 (Fla. 2d DCA 1994).

72. An Administrative Law Judge is without authority to reserve jurisdiction in a Subsection 120.57(1), Florida Statutes, hearing, or to award attorney's fees and costs, unless specifically authorized by statute to do so. Neither Chapter 120, nor Chapter 1012, Florida Statutes, grants such authority.

RECOMMENDATION

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

RECOMMENDED that the School Board of Manatee County enter a final order finding:

1. Respondent did not violate any of the charges alleged in the charging letter;
2. Reverse Respondent's suspension as a teacher without pay; and
3. Compensate Respondent for the period from April 24, 2007, until the expiration of his contract, May 25, 2007.

DONE AND ENTERED this 5th day of February, 2008, in Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of February, 2008.

ENDNOTE

^{1/} All references to Florida Statutes are to Florida Statutes (2007), unless otherwise indicated.

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.