STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 10-10087
	)	
CHARLES E. WILLIS,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

On January 18 and 19, 2011, a formal administrative hearing was conducted by video teleconference in Tallahassee and Sarasota, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Scott A. Martin, Esquire
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For Respondent: Melissa C. Mihok, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Manatee County School Board (Petitioner) has just cause to terminate the employment of Charles Willis (Respondent).

PRELIMINARY STATEMENT

By an Administrative Complaint dated October 7, 2010, the Petitioner alleged that during 2010, the Respondent maintained accounts on Facebook and Formspring, wherein he posted comments, allegedly inappropriate and unprofessional, which were accessible to the public, including students. The Petitioner further alleged that the Respondent was verbally inappropriate in class, that he used school property without authorization for the purpose of organizing a private trip to New York in which some students participated, that he provided students with passes from class without complying with school policy, and that he left the Braden River High School (BRHS) campus during the school day without complying with school procedures. The Administrative Complaint included additional allegations, unrelated to those set forth herein, that were dismissed by the Petitioner prior to the hearing.

The Respondent denied the allegations and requested a formal administrative hearing. The Petitioner forwarded the dispute to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of 11 witnesses and had Exhibits 1 through 10 admitted into evidence. The Respondent testified on his own behalf, presented

the testimony of 14 witnesses, and had Exhibits 1 through 24 admitted into evidence.

A three-volume Transcript of the hearing was filed on February 3, 2011. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a drama teacher employed by the Petitioner to work at BRHS pursuant to a professional services contract.

2. During 2010, the Respondent had an account on Facebook, a social networking internet website.

3. Facebook allows an individual user to create and maintain a personal "page" including text and photographs, which can be viewed by other users. Users can also provide links to content posted elsewhere on the internet, and viewers can access the linked information.

4. Facebook allows users to establish privacy settings that restrict access to various types of content. Such privacy options include the identification of other Facebook users as "friends." Privacy settings can be established that prevent users from posting comments to content posted by a user, or from viewing comments posted by other users.

5. Social networking websites are used by some teachers to communicate classroom assignments or other educational information to students. Social networking websites are widely used by students and, at least based on the testimony presented at the hearing, by parents and other adults as well.

6. Prior to the allegations underlying this dispute, the Respondent's privacy settings permitted his Facebook "friends" to view all content posted by the Respondent.

7. The Respondent had in excess of 100 BRHS students identified as friends on his Facebook account.

8. At all times material to this case, the Petitioner had no policy, written or otherwise, that restricted an employee from having an account on a social networking website, or regulated the use of any social networking website by an employee.

9. At various times during 2010, the Respondent posted remarks on his Facebook page that included certain acronyms. Such acronyms, and their commonly understood meaning, included the following:

WTF (What the Fuck)

OMFG (Oh My Fucking God)

F'n (Fucking)

LMAO (Laughing My Ass Off)

ROTFLMFAO (Rolling On The Floor Laughing My Fucking Ass Off)

10. At the hearing, the Respondent asserted that he intended the "F" in the above acronyms to be understood as "fricking."

11. There was no credible evidence that any student or parent who read the Respondent's Facebook remarks understood the "F" to mean anything other than "fucking."

12. On his Facebook page dated July 31, 2010, the Respondent posted a remark that stated "[I]t's not who you know, it's who you blow," in an apparently derogatory reference to the judging of a student competition.

13. On his Facebook page dated March 30, 2010, the Respondent posted a photograph of a bumper sticker that read "[F]uck the man, become the man" that was taken by a student on a trip to New York. The Respondent explained his posting of the photo by claiming that the people on the trip had agreed that all photos taken on the trip would be posted without censorship and that he had posted several hundred trip photos onto Facebook.

14. On his Facebook page dated August 7, 2010, the Respondent posted a photograph (titled "Accidental Porn") that he obtained from another Facebook user's page. The photograph displayed a television weatherman standing in front of a map

showing an elongated weather system. Based on the location of the weatherman and the weather system, the image was perceived by some viewers as depicting the broadcaster holding his penis in a sexually-suggestive position. Comments on the Respondent's Facebook page made it apparent that his viewers were aware of the perception.

15. On his Facebook page dated August 20, 2010, the Respondent posted a link to content titled "[I]t's a great day to whoop somebody's ass."

16. On his Facebook page dated June 26, 2010, the Respondent, apparently intoxicated, posted remarks indicating that he'd consumed excessive alcohol one evening and then posted remarks on the next day indicating that he had a headache related to the consumption.

17. Although the Respondent asserted that some of the posts referenced herein occurred during summer months when he was not "on contract" as a teacher, his students, past and future, were able to freely access the Respondent's Facebook pages during the summer.

18. The Respondent also had an account on Formspring, another social networking internet website. Formspring presents user content in a "questions and answer" format.

19. In an undated post to the Respondent's Formspring page, a student commented "[T]hanks for letting me skip your

class today." The Respondent wrote in response, "[Y]ou're welcome, but now you owe me....LOL....just do an amazing job at the encore show."

20. The Respondent acknowledged that he allowed the student to miss his class in order to attend a rehearsal.

21. While the Respondent may have failed to comply with school attendance policy by permitting the student to miss class, the Petitioner's assertion that the posting created the impression of an inappropriate arrangement between a teacher and a student was not supported by credible evidence.

22. In another undated post to the Respondent's Formspring page, an unidentified Formspring user asked "what happened with the whole UP dvd thing," apparently in reference to an incident wherein the Respondent played a movie in class. The Respondent replied, "I got areprimand [sic] for showing an unauthorized video and not following the counties [sic] video policy."

23. The Petitioner's assertion that the Respondent's response was an inappropriate discussion of an employer/employee disciplinary matter with a student was not supported by credible evidence. The reprimand was public record. The identity of the person posting the question was unknown.

24. Upon the initiation of this disciplinary action, the Respondent altered his privacy settings on the social networking sites to limit access of personal content to adults.

25. There was no evidence that social networking internet websites cannot be used for appropriate educational purposes.

26. On more than a few occasions, the Respondent was known in the classroom to use "spoonerisms" in speech, wherein letters in various words were deliberately switched to alter a verbalization of a phrase. While in class and in the presence of students, the Respondent used phrases such as "nucking futs" or "doggammit." The school received a complaint about the practice. On one occasion in the classroom, the Respondent referred to his former wife as a "bitch." On at least one occasion, the Respondent used a hand gesture in the presence of students to signify the word "bullshit." On April 30, 2010, the BRHS principal directed the Respondent to refrain from making such statements and gestures. There was no credible evidence that the Respondent continued to engage in such verbal or physical communication after the April 30, 2010, directive.

27. At the start of the 2009-2010 school year, the Respondent approached the BRHS principal to inquire about organizing a theatre trip to New York for some of his drama students. The principal declined to authorize the travel as a school-sponsored event. The Respondent thereafter organized the trip on a private basis. Eight students expressed interest in going on the trip, and the trip ultimately occurred with a number of parents traveling as chaperones.

28. At times, the Respondent discussed the proposed trip in his classes. The announcement of an organizational meeting occurred during class. The meeting was conducted on the school grounds at a time and place where play rehearsals were occurring, which had been previously arranged by the Respondent.

29. There was no evidence that the Respondent mislead any participant to incorrectly presume that the trip was sponsored by the school. The participants in the trip were aware that the travel was not a school-sponsored event. There was no credible evidence that any participant or parent believed that the trip was a school-sanctioned event.

30. The Respondent failed to comply with the school procedure for private use of the facility, which requires application and approval by school administration. Although execution of a facility lease may be required for larger groups, there was no evidence that such a lease would have been required for this meeting.

31. There was no evidence that there was any adverse consequence to the Respondent's failure to seek permission to hold the organizational meeting in the previously-approved play rehearsal space. The time and location of the organizational meeting was not unreasonable, given the nature of the trip and the expected participants.

32. Teachers who need to leave BRHS grounds during the workday are directed to obtain permission from a school administrator and then document the early departure in a log book maintained in the school office.

33. The school administrators are the principal and the assistant principals, who are identified as such during formal meetings at the beginning of the school year.

34. On September 2, 2010, the Respondent needed to go home on his lunch break and switch cars with his wife.

35. The Respondent testified that he could not locate an administrator and that he thereafter went to the office of Bob McCabe, the BHRS "administrative parent liaison" and advised Mr. McCabe that the Respondent was leaving campus early.

36. Mr. McCabe is not a school administrator and has no authority to approve a request to leave school grounds. Mr. McCabe works with parents and on student disciplinary matters.

37. Mr. McCabe told the Respondent that he would tell the administrators, and the Respondent left the school. Mr. McCabe testified that shortly after the Respondent left, an assistant principal inquired as to whether the Respondent had left the grounds.

38. Mr. McCabe also testified that the assistant principal had told him that she was present in her office at the time the

Respondent claimed to be unable to find her, but the hearsay testimony was not otherwise corroborated.

39. The evidence establishes that, had the Respondent requested to leave campus, the request would have most likely been granted, as such authorization, absent use of leave, was routinely granted by school administrators.

40. There was no credible evidence that other teachers who have left school grounds without prior administrative approval have been subjected to discipline for the infraction.

41. The Petitioner presented the expert testimony of Terry Osborn, dean of the University of South Florida College of Education, Sarasota-Manatee campus, who opined that some of the Respondent's social networking interactions could have had negative effects on the learning environment, could cause anxiety for some students, and potentially result in a loss of credibility by the educator. Mr. Osborne essentially based his opinion on very limited literature. There was no credible evidence that any of the adverse impacts identified by the witness has occurred.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

43. The Petitioner has the burden of proving by a preponderance of the evidence the allegations set forth in the Administrative Complaint underlying the proposed termination of the Respondent's employment. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996); Dileo v. Sch. Bd. of Dade Cnty., 569 So. 2d 883 (Fla. 3d DCA 1990). In this case, the evidence failed to establish that the Respondent's employment should be terminated based on the allegations set forth in the Administrative Complaint.

44. Manatee County School Board Policy 6.11(12)(c) states as follows:

> Any employee of the School Board may be terminated from employment for just cause, including, but not limited to, immorality, misconduct in office, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude, violation of the Policies and Procedures Manual of the School District of Manatee County, violation of any applicable Florida statute, violation of the Code of Ethics and the Principles of Professional Conduct of the Education Profession in Florida.

45. The Administrative Complaint filed in this case alleged that the Respondent committed misconduct in office and gross insubordination sufficient to warrant termination.

46. Florida Administrative Code Rule 6B-4.009 sets forth the following applicable definitions:

> The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for each of such charges is hereby defined:
>
> * * *
>
> (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.

47. The Administrative Complaint alleged that the Respondent violated the following provisions of the Code of Ethics of the Education Profession as set forth at Florida Administrative Code Rule 6B-1.001:

> 6B-1.001 Code of Ethics of the Education Profession in Florida.
>
> * * *
>
> (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.

48. The evidence established that the Respondent failed to exercise the best professional judgment in his use of social networking internet websites. The evidence failed to establish that the violation of the Code of Ethics was so serious as to impair the Respondent's effectiveness in the school system.

49. Students were permitted to view material that some persons regarded as unsuitable. Although there was testimony from persons who felt that the Respondent's use of the sites was inappropriate, others testified that students commonly used the same acronyms as did the Respondent.

50. A number of educational employees, including the Respondent, use the sites for educational purposes. At the time of the hearing, the Petitioner had no policy related to the use of such sites by employees.

51. The evidence failed to establish that the Respondent was made aware of any problem with his use of social networking sites until the initiation of this disciplinary action. The evidence established that, when the Respondent became aware of the issue, he altered the privacy settings to limit student access to the content on his pages.

52. The Administrative Complaint alleged that the Respondent violated the following provision of the Principles of Professional Conduct for the Education Profession in Florida as set forth at Florida Administrative Code Rule 6B-1.006:

> 6B-1.006 Principles of Professional Conduct for the Education Profession in Florida.
>
> (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.

53. The evidence was insufficient to establish that the Respondent engaged in any actions harmful to learning, or to the health or safety of any student.

54. The Petitioner asserted that the Respondent committed gross insubordination. Rule 6B-4.009 sets forth the following applicable definitions:

> The basis for charges upon which dismissal action against instructional personnel may be pursued are set forth in Section 231.36, Florida Statutes. The basis for each of such charges is hereby defined:
>
> * * *
>
> (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.

55. The evidence failed to establish that the Respondent intentionally refused to obey any direct order in this case.

56. The Petitioner asserted that on September 2, 2010, the Respondent was absent without leave from school grounds.

57. Section 1012.67, Florida Statutes (2010), provides as follows:

> Absence without leave.--Any district school board employee who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his or her employment shall be subject to termination by the district school board.

58. Manatee County School Board Policy 6.2(2)(a) provides the following definition:

> An employee is determined to be on unauthorized leave at any time when the employee is absent from performance of required duties without giving notice and without having made provisions for appropriate leave as defined in these procedures.

59. The evidence established that, on one occasion, the Respondent left school grounds during the lunch hour without obtaining approval from a school administrator. The evidence established that, had the Respondent located an administrator and requested permission to leave the school grounds, he would in all likelihood have received permission.

60. There was no evidence that the Respondent has abused leave privileges. There was no evidence that the Respondent was actually absent from the performance of his duties on September 2, 2010. There was no evidence that termination of employment would be an appropriate penalty for a single violation of the school's leave approval policy.

61. The Administrative Complaint alleged that, on September 22, 2010, the Respondent was arrested and charged with a violation of section 827.03(1)(b), Florida Statutes (2009). The Administrative Complaint specifically stated that the Respondent's "actions violated Section 827.03(1)(b), Florida Statutes (2009)." The referenced statute provides as follows:

> 827.03 Abuse, aggravated abuse, and neglect of a child; penalties.--
>
> (1) "Child abuse" means:
>
> * * *
>
> (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child . . .
>
> A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

62. The charges were referenced in the Petitioner's investigative report that formed the basis for the disciplinary decision underlying this proceeding. Prior to the hearing, the Petitioner dismissed the allegations related to the charges.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Manatee County School Board enter a final order, dismissing the Administrative Complaint filed against Charles E. Willis.

DONE AND ENTERED this 31st day of March, 2011, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 31st day of March, 2011.

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.